

Reducing supplier disincentives to detect and investigate gas theft – uniform network code proposal UNC231V and other changes

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Target audience: Suppliers, shippers, gas transporters, customer representative groups and the Health and Safety Executive

Overview:

Ofgem determines whether modifications to the Uniform Network Code (UNC), a gas industry code, should be approved or rejected.

This document consults on our minded to view to accept a modification proposal (UNC231V) to reduce the commercial disincentives on gas suppliers to detect and prevent gas theft on large gas transporters' networks. This proposal increases the amount of compensation available to gas suppliers and improves existing governance arrangements.

We are also requesting views on associated consequential amendments to the gas transporters licence to facilitate UNC231V, further improvements to the gas transporter licence and the arrangements for independent gas transporter (IGT) networks.

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Context

We welcome this industry initiative to improve the arrangements for tackling gas theft. Theft of gas can increase gas prices for customers. It also has safety risks.

This consultation is consistent with our commitment in the Ofgem Corporate Plan and Strategy 2010-2015 to respond to industry initiatives and consider whether further action is necessary to tackle energy theft.

Associated Documents

- Modification Report - Changes to the Reasonable Endeavours Scheme to better incentivise the detection of Theft Modification Reference Number 0231V - Version 3.0, 2 March 2010. Published on the Joint Office website.
http://www.gasgovernance.co.uk/sites/default/files/02%20March%202010%20Final%20Modification%20Report%200231V%20v3_0.pdf
- Report of the Theft of Energy Incentive Group – Final Proposals, June 2007. ENA and ERA.
http://www.energynetworks.org/spring/regulation/pdfs/Theft_of_Energy/THEFT_Final%20ProposalsJune2007_070816.pdf
- Report of the Theft of Energy Work Group, April 2006. ENA and ERA.
http://www.energynetworks.org/spring/regulation/pdfs/Theft_of_Energy/ElectricityandGasReportFinalVersionpdf.pdf
- Theft of Gas and Electricity - Next Steps, January 2005. Ofgem (Ref: 06/05)
http://www.ofgem.gov.uk/Markets/RetMkts/Compl/Theft/Documents1/9342-next_steps.pdf
- Theft of Gas and Electricity - Discussion Document, April 2004. Ofgem (Ref: 85/04)
<http://www.ofgem.gov.uk/Markets/RetMkts/Compl/Theft/Documents1/6839-8504Energytheft.pdf>

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Summary

We have actively supported the industry's efforts to address disincentives to detect and investigate theft. This includes our support for the workgroup developing UNC231V.

Impact of theft

Theft of gas can increase gas prices for customers if suppliers can't recover their costs from customers that have taken an illegal supply. Theft of gas also has safety risks. A reduction in theft is expected to reduce costs for customers and improve safety on the gas network.

In 2009, 2,017 cases of theft of gas were reported to xoserve¹. For 2010, up to November, the figure is 2,181. The number of actual thefts is expected to be much higher. We have not been able to estimate accurately the extent of gas theft. Estimates used in industry processes for shrinkage put the figure at around £64m. Other commentators consider that the figure is considerably higher.

Issue to be addressed

Whilst the industry and customers as a whole would benefit from a reduction in gas theft, individual suppliers are subject to commercial disincentives. In particular, suppliers report that proactive theft detection and investigation is costly and carries significant risk that costs will not be recovered.

Proposals

British Gas raised a proposal to modify the Uniform Network Code (UNC231V) on 7 October 2009. UNC231V seeks to address disincentives faced by individual suppliers to detect and investigate theft. It proposes to do this by increasing compensation for suppliers when they have made reasonable efforts but have not been able to recover charges from the customer.

Standard Licence Condition 7 (SLC7) of the gas transporters licence provides compensation for a supplier that has tried, but failed, to recover its charges from a customer that has taken an illegal gas supply. These values are not considered to reflect the true costs incurred by suppliers and therefore do not sufficiently reduce suppliers' disincentives from being proactive.

SLC7 requires gas transporters to set out the steps that a supplier must undertake before a payment can be made. This is known as the "Reasonable Endeavours Scheme" (RES). The RES must be approved by the Authority. The compensation values for gas suppliers are currently set out in a scheme designated by the Authority. This is known as the "Reasonable Endeavours Allowances Scheme" (REAS).

¹ Xoserve is the agent of the large gas transporters (GDNs).

In addition to amending the values payable under the REAS for each large gas transporter, UNC231V proposed to move the RES in place for each large gas transporter² and the values payable under the REAS under the governance of the UNC. By doing so, UNC231V aims to increase transparency and provide a role for shippers and suppliers in the governance of these arrangements.

Whilst we are minded to approve the modification, we are requesting further information to allow us to take a final decision. In particular, we are requesting views on whether the audit provisions for when payments can be made, and the amount that could be claimed under the revised arrangements, are appropriate.

Implementing UNC231V would require consequential changes to SLC7 and each large gas transporter's REAS and RES. This consultation therefore also seeks views on our approach to these amendments. If the amendments to SLC7, REAS and the RES are not made we are not minded to approve UNC231V.

Further issues

We are taking this opportunity to request views on the arrangements for compensating suppliers on Independent Gas Transporter (IGT) networks, including if these should be brought into line with UNC231V.

In addition, we have proposed amendments to clarify the wording and intent of SLC7.

Next steps

In addition to UNC231V, we have asked suppliers to improve their performance³ and we will continue to support the significant proposals that are being developed to tackle gas theft. We will conduct an Impact Assessment (IA) in Q1 2011 to review these proposals⁴.

If, following consideration of respondents' views, we are still minded to approve UNC231V, we will formally consult relevant gas transporters on a modification to SLC7. We would anticipate doing so in Q1 2011. Our view is that, before making a final decision, we should then check the compatibility of UNC231V with the broader direction of the theft arrangements following the IA. We do not therefore intend to make a final decision on UNC231V until Q2 2011.

If UNC231V is approved, we would seek to co-ordinate with the Joint Office such that UNC231V, the proposed amendments to SLC7, the REAS and the RES took place on the same date.

² For the purpose of this document we have distinguished large gas transporters (GDNs) from independent gas transporters (IGTs), who are governed by a separate Uniform Network Code (the IGT UNC).

³ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=43&refer=Markets/RetMkts/Compl/Theft>

⁴ The IA will consider setting up a National Revenue Protection Service (www.gasforum.co.uk/nrps-workgroup) and introducing a supplier incentive scheme (www.gasgovernance.co.uk/0277).

1. Introduction

Chapter Summary

In this Chapter we summarise the scale and impact of gas theft. We also set out the previous work to improve the arrangements for tackling theft.

Definition and scale of theft

1.1. This document is focused on the arrangements for tackling theft of gas associated with meter tampering and other mechanisms for preventing a customer's meter from correctly registering consumption⁵. It does not relate to other issues where customers have not paid for consumption, such as customer debt.

1.2. The transportation and energy costs of stolen gas are currently smeared across Smaller Supply Points⁶ (SSPs). These costs are recovered from customers who have not taken an illegal supply⁷.

1.3. During 2009, 5,410 suspected theft cases⁸ were reported to xoserve⁹. Of these, 2,017 were confirmed as actual detected cases of gas theft¹⁰. For 2010, up to November, 5,165 suspected theft cases were reported. Of these, 2,181 were confirmed as actual gas theft¹¹.

1.4. Theft of gas involves high safety risks. Industry has reported cases of inappropriate and dangerous interference with gas fittings which have led to injuries, and in some instances, fatalities.

1.5. Measuring the amount of theft in the gas market is difficult. For example, theft is one of a number of causes for gas to be lost from the gas distribution networks. Theft is not distinguished from other network losses such as meter errors and gas escapes. Based on the industry figures¹² highlighted as part of the process for calculating shrinkage for 2010/11, we estimate that the retail cost of gas for which suppliers are responsible would be between approximately £40m and £60m per

⁵ Meter tampering (paragraph 10(1) of Schedule 2B to the Gas Act 1986), restoration of supply without consent (paragraph 11(2) of Schedule 2B to the Gas Act 1986), or in cases where a supply is taken on a deemed contract by customers who are not the lawful occupants of premises and do not intend to pay for it (paragraph 8(2) of Schedule 2B to the Gas Act 1986).

⁶ SSP customers are customers with an annual consumption of gas below 73,200KWh.

⁷ New industry arrangements from April 2011 are likely to apportion some of this unaccounted for gas to Large Supply Point (LSP) customers, ie those with an annual consumption of gas above 73,200KWh.

⁸ In 2009, 4,858 cases related to theft at the meter and were for gas suppliers/shippers to investigate. The remaining 552 cases were related to theft in conveyance and were for the gas transporter to investigate. For 2010, the figures were 4,546 and 619 respectively.

⁹ Xoserve is the agent of the GDNs.

¹⁰ 1,934 cases were reported by suppliers/shippers, and 83 cases were reported by transporters.

¹¹ 2,030 cases were reported by suppliers/shippers, and 161 cases were reported by transporters.

¹² For shrinkage calculations, GDNs have estimated that theft in conveyance (which they are required to tackle) is equivalent to 0.02% of throughput. Their estimates on theft for which suppliers are responsible range between 0.18% and 0.28% of throughput.

annum. However, we note that some parties have estimated that the value of stolen gas may more than £200m per annum¹³.

1.6. We aim to provide further information on the scale and impact of theft in an IA that we propose to publish in Q1 2011.

Previous work to review the theft arrangements

1.7. In April 2004, Ofgem consulted the market on whether the current theft arrangements were fit for purpose. In January 2005, we published a follow-up document summarising concerns with the arrangements and welcoming the commitment of the Energy Retail Association (ERA) and the Energy Networks Association (ENA) to establish a workgroup to develop proposals for change.

1.8. In 2007, the ERA/ENA workgroup concluded its review and set out a number of options to improve supplier incentives.

1.9. The workgroup identified that participants are not sufficiently commercially incentivised under the current regime to detect, investigate and prevent theft of gas. It concluded that the existing supplier compensation scheme was burdensome, did not adequately cover suppliers' costs in investigating theft, and in some cases did not cover the administrative costs of making a claim.

1.10. These findings prompted the industry to revisit the supplier compensation arrangements. In October 2009, British Gas raised a modification proposal (UNC231V) to the UNC to amend the arrangements in place to tackle theft of gas.

1.11. UNC231V is one of a number of changes being considered by the industry. These include the implementation of a National Revenue Protection Service (NRPS), an incentive regime (SETS) and a code of practice for detecting theft.

¹³ This would be the equivalent of nearly 1% of throughput.

2. Current supplier compensation arrangements

Chapter Summary

The current supplier compensation arrangements for unrecovered theft costs are set out in SLC7 of the gas transporters licence. This Chapter provides background on these arrangements and on the use of the scheme by suppliers.

Question box

Question 1: What factors have led to the limited number of suppliers using the current compensation arrangements?

Introduction

2.1. SLC7(5) of the gas transporters licence make compensation available for gas suppliers who have detected and investigated theft but have been unable to recover charges to which they are entitled¹⁴ from the customer.

2.2. SLC7(8) requires gas transporters to set out the steps that a supplier must undertake before a compensation payment can be made. This is known as the Reasonable Endeavours Scheme (RES)¹⁵. The RES must be approved by the Authority¹⁶.

2.3. SLC7(6) provides for the supplier compensation values to be designated by the Authority¹⁷. This is known as the Reasonable Endeavours Allowances Scheme (REAS)¹⁸.

Reasonable Endeavours Scheme (RES)

2.4. The actions that a supplier must undertake before being eligible to claim compensation, are set out in the RES. It is the responsibility of each gas transporter to issue a RES¹⁹.

¹⁴Further discussion on these charges and our proposals to clarify the intent of this provision through an amendment to SLC7(5) is set out in Chapter 5.

¹⁵ Each type of allowance under the REAS may only be claimed by a supplier if it has taken a specific set of actions described in the RES in order to recoup the charges associated to the gas being stolen.

¹⁶ An example of a RES can be found here: <http://epr.ofgem.gov.uk/index.php?pk=doc200851>

¹⁷ An example of a REAS can be found here: <http://epr.ofgem.gov.uk/index.php?pk=doc206903>

¹⁸ The Authority is responsible for designating the REAS, setting out the principles for the recovery of costs incurred by suppliers in detecting, investigating and preventing theft of gas. The REAS also sets out the type of allowances that may be claimed, as well as the amounts associated to each type of allowance.

¹⁹ The RES is prepared by each gas transporter and is subject to consultation with the relevant gas shippers and gas suppliers. After being approved by the Authority, gas transporters must provide a copy of the document on request to any relevant shipper or supplier.

2.5. All of the large gas distribution networks (GDNs) currently have in place common RES arrangements²⁰. These detail seven actions for suppliers. A claim can only be made once a supplier has undertaken all applicable actions²¹.

2.6. In summary, the required actions are:

Action 1: Send a report of the investigation to the police;

Action 2: Undertake steps to identify the person with whom the supplier has a contract or deemed contract;

Action 3: Ask the person (if identified) to pay the relevant charges (relating to the gas that has been stolen and the costs of investigation);

Action 4: Make payment arrangements (including offering a prepayment meter) available to the identified person. Such arrangements should aim to recover charges over a maximum period of 24 months;

Action 5: If payment arrangements are not agreed, or the full set of payments have not been completed, the supply of gas must be cut off, or disconnected, for more than 28 days;

Action 6: A claim has been filed where the identified person has become bankrupt/gone into liquidation/administrative receivership/voluntary agreement; and

Action 7: Civil proceedings are taken to secure payments, or reasons not to take civil proceedings are provided, where the identified person is not a domestic customer.

2.7. The required actions set out in the RES have not been materially amended since 1997. We consider that a review should be undertaken to ensure that they are fit for purpose²².

Reasonable Endeavours Allowance Scheme (REAS)

2.8. We have designated a REAS for each of the GDNs under SLC7(6). Each contain equivalent wording. The principle established in each REAS is that suppliers'

²⁰ The arrangements for IGTs are discussed further in Chapter 4.

²¹ Where the identity of the offender is known all actions must (so far as is applicable) be completed. Where the identity of the customer cannot be established under action 2, the supplier is considered to have met the reasonable endeavours standard once actions 1 and 2 have been met.

²² If UNC231V is accepted we would expect such a review to be undertaken under the governance arrangements set out in the UNC. If UNC231V is not accepted but the scheme is retained, then Ofgem will request that GDNs undertake this review.

compensation should be set at a level that removes any disincentives to investigate theft and use reasonable endeavours to recover the charges to which it is entitled.

2.9. The REAS refers to two types of compensation values to be paid by the transporter. These are:

- a reduction in any shipper charges that the gas transporter would have levied for the amount of gas illegally taken; and
- a further reduction to a shipper's transportation charges equivalent to the costs associated with the theft investigation.

2.10. Special Condition E3 of the DN licence provides for GDNs to adjust their transportation revenues to pass through the costs of such payments to suppliers.

2.11. Further information on the compensation values associated with theft investigation is set out in the section below.

Supplier allowances for unrecovered theft investigation costs

2.12. To provide a transparent framework for the compensation that suppliers can claim, Ofgem set out values in the REAS to be awarded when the required actions in the RES have been undertaken.

2.13. These compensation values, which have not been amended since introduction in October 1997, include a mix of fixed and capped amounts and, in one instance, actual costs.

2.14. The table below shows the allowance types and compensation values contained in each large gas transporter REAS:

Table 1 – REAS – Allowances types and values

<p>Allowance (i) Attendance at premises (including at primary or secondary sub-deduct premises) following a breach of paragraph 10(1) of Schedule 2B²³, including preparation of investigation report and notification to the police (actions 1 and 2 in the Reasonable Endeavours Scheme document (RES))</p>	<p>A fixed amount of £125</p>
<p>Allowance (ii) Attendance at premises (including at primary or secondary sub-deduct premises) following a breach of paragraph 11(2) of Schedule 2B²⁴, including preparation of investigation report and notification to the police (actions 1 and 2 in the RES)</p>	<p>A fixed amount of £125</p>
<p>Allowance (iii)</p>	<p>A fixed amount</p>

²³ Meter interference and injury.

²⁴ Restoration of supply without consent.

In cases (i) and (ii) above the assessment and pursuit of charges for gas taken (actions 3, 4 and 5 in the RES)	of £125
Allowance (iv) Attendance at premises (including at primary or secondary sub-deduct premises) where a supply has been taken in such circumstances as are mentioned in Standard Condition 7(4)(c) ²⁵ of the licence including assessment and pursuit of charges and attempted identification of person taking supply (actions 2, 3, 4 and 5 in the RES)	A fixed amount of £125
Allowance (v) Meter exchange costs, including material, labour and sundry costs relating to new meter and its installation	Actual costs for meter exchange up to U16 size with a limit of £250
Allowance (vi) Forensic costs	Actual cost up to a limit of £120
Allowance (vii) Court fees including issue of summons, service, judgement and execution fees	Actual costs

2.15. The table also shows which actions (see paragraph 2.6 above) need to have been completed to qualify for each allowance, although all applicable actions must have been completed before a claim can be paid.

2.16. The REAS provides specific guidance on when the payments noted in Table 1 above can be made:

- For each case of theft of gas under the Gas Act 1986, only one of the allowances (i), (ii) and (iv) in Table 1 above may be claimed; and
- If a portion of the charges incurred while investigating theft have been recovered, the amounts in Table 1 above shall be reduced proportionally.

2.17. In addition to receiving a payment under (i), (ii) or (iv) in Table 1, the claimant may make further claims for the other amounts (i.e. iii, v, vi and vii), as are relevant in that case.

Use of the current arrangements

2.18. Table 2 below shows how frequently claims have been made by suppliers during 2009 and 2010 (up to November)²⁶:

²⁵ The circumstances mentioned in SLC7(4)(c) are the cases where a supply is taken on a deemed contract by customers who are not the lawful occupants of premises and do not intend to pay for it.

²⁶ Xoserve manages the information processes related to theft of gas. It receives the cases reported by the industry and its claims for the allowances in the REAS. It checks whether cases reported are valid i.e. whether information has been provided on whether the relevant action has been completed.

Table 2 – REAS claims in 2009 and 2010 (up to November)

Year	Number of confirmed cases of theft reported by suppliers	Claims accepted	
		Number of claims accepted	Percentage of confirmed cases
2009	1,934	236	12%
2010 (up to Nov)	2,030	409	16%

Source: xoserve

2.19. We understand that all the claims in Table 2 were made by one supplier.

2.20. Some parties have argued that the relatively low value of compensation has deterred take-up. They have suggested that, if the amount of compensation is not sufficient to cover suppliers' costs in pursuing the RES actions, they may be discouraged from proactively seeking to detect theft and fully investigating these cases.

2.21. From industry discussions it is apparent that the current supplier compensation arrangements are not well understood²⁷. This may also have been a contributory factor to its poor take-up.

2.22. We would welcome further views on why only one supplier is making use of the current compensation arrangements²⁸.

²⁷ In particular, there has been confusion over whether suppliers needed to complete all applicable actions under the RES before making a claim. We confirm that this is the case.

²⁸ Further details on the steps that are required to be undertaken to make a compensation claim are set out in Appendix 2. This Appendix shows a flow diagram provided by xoserve detailing the flow of the RES actions, and where during the process each of the allowance amounts in the REAS may be claimed.

3. UNC231V modification proposal

Chapter Summary

This Chapter summarises modification proposal UNC231V. It also sets out industry views and the voting at the UNC Panel which led to the proposal not being recommended.

3.1. The UNC is a legal and contractual framework containing a common set of rules to facilitate supply competition. The UNC governs key industry processes such as the balancing of the gas system, customer transfers, network planning and the allocation of network capacity.

3.2. Gas transporters and gas shippers²⁹ can raise proposals to modify the UNC. Modification proposals are assessed by the UNC Panel, which will decide whether or not to recommend them. Ofgem will then approve or reject each modification proposal.

Background to the proposal

3.3. UNC231V was raised by British Gas in October 2009. Its aim was to amend the supplier compensation arrangements in place for the detection and investigation of theft of gas.

3.4. The modification proposer considered that the RES provided a sound basis for the current arrangements and offered suppliers the opportunity to recover some of their costs in investigating theft. However, it considered that the level of compensation available under these arrangements was insufficient to incentivise increased supplier activity to identify and tackle theft.

3.5. The proposer further argued that the current regime for the detection, investigation, and prevention of theft of gas provided a perverse incentive whereby suppliers who are actively engaged in the detection of theft are exposed to the full cost of the energy they notify as stolen, often with little chance of recovering these costs from the end user.

3.6. Finally, British Gas expressed concern that, as the REAS and the RES are not part of the UNC, this has led to the REAS and the RES schemes being less clear and more difficult to understand.

²⁹ Third parties designated by the Authority may also raise modification proposals in certain circumstances described in Annex VI of the Modification Rules (see www.gasgovernance.co.uk)

Modification proposal

3.7. UNC231V proposes to insert the RES and the supplier compensation values set out in the REAS into the UNC. It also proposes to increase the amount of compensation available. Further detail is set out in the section below.

Incorporate RES within the UNC

3.8. UNC231V proposes to replicate the current RES in place for each large gas transporter into a UNC Related Document³⁰, which would be created specifically for this purpose. This new UNC Related Document can only be amended by raising a further modification proposal.

3.9. Guidance on the application of the RES, which is currently appended to each RES established by each large gas transporter³¹, will remain outside of the UNC.

Incorporate relevant parts of the REAS within the UNC

3.10. The provisions within the REAS that set out the supplier compensation allowances would be set out in the UNC.

3.11. Under this proposal a new paragraph 5 would be added to Section S of the UNC Transportation Principal Document. This would reflect the current wording of the REAS with one exception. In addition to refunding charges associated with the gas illegally offtaken from the pipeline network, the UNC would clarify that suppliers are only able to recover the values set out in a prescribed table of allowances rather than also being able to claim for other reasonable costs as is currently the case³².

3.12. In summary, the UNC would require gas transporters, when the RES requirements had been met, to adjust the transportation charges for a shipper to:

- Treat the amount of gas to which the suppliers charges³³ relate as not having been taken from the system, and
- Provide compensation as set out in a table of allowances to be inserted in the UNC.

3.13. The proposed change to the UNC will retain the principle currently set out by the Authority in the REAS that the purpose of the compensation arrangements is to

³⁰ UNC Related Documents are support documents to specific sections of the UNC, usually complementing and/or providing further details to the relevant section.

³¹ This guidance, which is appended to the end of each large transporter RES, does not form part of the RES and was provided by each large gas transporter to assist clarity on how they would expect to interpret the scheme.

³² In making this amendment from the original text of the REAS, the modification proposer took account of views from the industry and Ofgem, that this better reflected the intent of SLC7(6) of the gas transporters licence.

³³ Supplier charges are the charges to which a supplier was entitled under a contract or deemed contract.

remove any disincentives that a supplier may have in investigating theft and using its reasonable endeavours to recover the charges to which it is entitled.

Increase the allowances in the REAS

3.14. UNC231V proposes to increase the current levels of compensation payable to suppliers to improve supplier incentives to detect and investigate theft of gas.

3.15. UNC231V also specifies that, for the current allowances where the level of compensation available to the suppliers is fixed, the allowance should be changed to a capped amount.

3.16. With the exception of one type of allowance (Allowance (vii) in Table 3, which has no limitation on the amount that can be claimed by the supplier), UNC231V proposes that all other allowance types will be for actual costs up to a maximum of £1,000.

Table 3 – Proposed table of allowances for gas suppliers

Allowance (i) Attendance at premises (including at primary or secondary sub-deduct premises) following a breach of paragraph 10(1) of Schedule 2B, including preparation of investigation report and notification to the police (Actions 1 and 2 in the Reasonable Endeavours Scheme document (RES))	Actual costs up to a maximum of £1,000
Allowance (ii) Attendance at premises (including at primary or secondary sub-deduct premises) following a breach of paragraph 11(2) of Schedule 2B, including preparation of investigation report and notification to the police (Actions 1 and 2 in the RES)	Actual costs up to a maximum of £1,000
Allowance (iii) In cases (i) and (ii) above the assessment and pursuit of charges for gas taken (Actions 3, 4 and 5 in the RES)	Actual costs up to a maximum of £1,000
Allowance (iv) Attendance at premises (including at primary or secondary sub-deduct premises) where a supply has been taken in such circumstances as are mentioned in Standard Condition 7(4)(c) of the licence including assessment and pursuit of charges and attempted identification of person taking supply (Actions 2, 3, 4 and 5 in the RES)	Actual costs up to a maximum of £1,000
Allowance (v) Meter exchange costs, including material, labour and sundry costs relating to new meter and its installation	Actual costs up to a maximum of £1,000
Allowance (vi) Forensic costs	Actual costs up to a maximum of £1,000
Allowance (vii) Court fees including issue of summons, service, judgement and execution fees	Actual costs

3.17. By way of comparison, UNC231V proposes to replace the fixed compensation of £125 for Allowances (i) to (iv) with a maximum compensation cap of £1,000 (paid against the actual costs incurred by the supplier). It will also increase the levels of maximum compensation to £1,000 in the case of Allowances (v) and (vi) from the current cap of £250 and £120 respectively. Allowance (vii) remains unchanged under the UNC231V proposals.

3.18. The Final Modification Report (FMR) confirms that UNC231V does not require xoserve, as the agent of the GDNs, to undertake any additional audit checks to that which is currently required.

Summary of the representations to the UNC Panel

3.19. Industry parties are able to make representations to the UNC Panel on the proposed modification proposal. The UNC Panel take these views into consideration when deciding whether or not to recommend the FMR for Ofgem's approval.

3.20. Seven representations were made to the UNC Panel. Four supported the proposal, one offered qualified support, one offered comments, and one was not in support. The main issues raised were; the safety risks and costs of theft for consumers, the implications of the proposals for the GDNs' ability to pass through the costs of the scheme under their price control arrangements, and the potential dual governance that could result under the UNC and the gas transporter licence.

Safety issues and higher charges

3.21. British Gas and RWE Npower highlighted the safety concerns in relation to theft of gas. They also noted the impact of higher charges to customers that result from theft.

Distribution Network pass-through items

3.22. National Grid Distribution noted that the existing allowance payments under the REAS are classified as "Distribution Network allowed pass-through items" under Special Condition E3 of their distribution network licence. In the event of implementation, such payments would be paid pursuant to the UNC, and these should also be classified as "Distribution Network allowed pass-through items".

3.23. Scotia Gas Networks (SGN) noted an error in the drafting of SLC7 of the gas transporters licence. In setting out a transporter's rights to pass through the costs of compensating suppliers under the scheme, SLC7(5) incorrectly refers to a "standard licence condition" that sets out gas transporters' charging arrangements. SGN noted that, for the GDNs to have a means of recovering the money paid to suppliers, the wording of the licence should be amended to refer to a "special licence condition".

Dual governance

3.24. SGN expressed concern that, if the proposals were to be implemented without changes being made to the gas transporters licence (i.e. to remove transporters' obligations to put in place an approved RES), transporters would be exposed to obligations set out in both the UNC and their licences.

3.25. This view was supported by Wales & West Utilities and EDF Energy. If this obligation is retained in the gas transporters licence but also set out in the UNC, changes to the RES requirements would need to be synchronised between the two governance regimes. For example, a modification to the UNC may mean that the RES being used by gas transporters under the UNC was not compatible with the scheme approved by the Authority under SLC7(8).

3.26. In addition, SGN was concerned that an obligation to make a payment under the UNC, following implementation of UNC231V, which was not accompanied by the removal of a requirement to make a payment under the licence, may lead to "double recovery" by suppliers.

3.27. SGN did not support the implementation of UNC231V without appropriate licence amendments being made in parallel.

UNC Panel recommendation

3.28. The UNC Panel votes on whether or not to recommend implementation of a modification proposal. At the UNC Panel meeting held on 21 January 2010, of the 10 votes cast, five votes were cast in favour of implementing UNC231V. The UNC Panel therefore did not recommend implementation.

3.29. The FMR was submitted for Ofgem's approval on 2 March 2010³⁴. Our role is to consider whether the proposal will better meet the relevant UNC objectives and our principal objective and statutory duties and should be approved or rejected.

³⁴ The FMR was originally submitted in March 2010 with legal text. Legal text was re-submitted with amendments in April 2010 and with further amendments on 9 September 2010.

4. Ofgem's minded to view on UNC231V

Chapter Summary

This Chapter sets out the reasons for our minded to view to approve UNC231V. It also sets out the areas where we are seeking further views to assist our decision.

Question box

Question 1: Do you agree that the £1,000 cap per allowance (apart from Allowance (vii)) is reasonable? Please provide supporting arguments.

Question 2: (For suppliers only) Do you have further supporting information on your actual costs associated with each of the activities set out in Table 1? Information on average costs and the range and distribution of costs would be particularly helpful.

Question 3: Views are invited on whether the audit and compliance arrangements for the payment of allowances to suppliers are appropriate. In particular, are they sufficient to meet the implied requirement under SLC7 of the gas transporters licence to only make payments when the relevant criteria are met?

Question 4: Do you agree that an equivalent modification should be raised to the IGT UNC?

Question 5: Views are requested on the compatibility of UNC231V with the proposed NRPS, SETS or any other industry developments (see paragraph 4.36).

Ofgem's minded to position on UNC231V

4.1. We have considered the issues raised by the modification proposal and the FMR dated 2 March 2010. We have considered and taken into account the responses to the Joint Office's consultation on the modification proposal which are attached to the FMR³⁵. We are minded to conclude that:

- implementation of the modification proposal is likely to better facilitate the achievement of the relevant objectives of the UNC³⁶; and
- directing that the modification be made is likely to be consistent with the Authority's principal objective and statutory duties³⁷.

4.2. While the Authority considers that UNC231V is likely, in general, to better facilitate the achievement of its statutory duties and the UNC relevant objectives, we

³⁵ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.com

³⁶ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see: http://epr.ofgem.gov.uk/document_fetch.php?documentid=6547

³⁷The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Gas Act 1986.

have some specific concerns and are seeking industry views prior to making a final decision.

Reasons for our current minded to position

4.3. UNC Panel members and consultation respondents expressed mixed views on whether UNC231V would better facilitate the relevant objectives of the UNC. We have set out our initial assessment against these objectives below. We have also set out our assessment of the impact of the modification on our duty to carry out our functions in a manner that protects the public from dangers arising from the use and conveyance of gas through pipes.

4.4. Our minded to view is that UNC231V may better facilitate relevant objective (a). We do not consider that it is likely to better facilitate relevant objective (b) although this is not expected to materially reduce the extent to which UNC231V better meets this relevant objective. Subject to changes to SLC7, the large transporters' RES and REAS also being made, we consider that UNC231V is neutral in relation to relevant objective (c). Subject to further comments received on the appropriateness of the compensation values and audit provisions, we also consider that UNC231V may better facilitate relevant objective (d). The effect of the proposal on the remaining relevant objectives is expected to be neutral.

4.5. We further consider that approving UNC231V may facilitate our statutory duty to carry out our functions in the manner which we consider is best calculated to protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes.

Standard Special Condition A11.1 (a): the efficient and economic operation of the pipe-line system to which this licence relates

4.6. The proposer considers that, by removing disincentives on suppliers to detect theft, UNC231V would increase network efficiency by reducing the instances of unsafe interference. It also considers that increased theft detection would reduce the costs of dealing with the damage associated with gas explosions caused by unidentified gas theft.

4.7. We consider that increasing the level of compensation will improve suppliers' ability to recover costs associated with investigating theft. Increased compensation is expected to reduce, in part, the financial disincentive that a gas supplier will face in detecting theft of gas, preventing the theft from continuing to occur, and following this up through an investigation. We agree that this is likely to have a positive impact on the safety of the network and the costs of dealing with the damage associated with gas explosions caused by unidentified gas theft.

4.8. However, it is our view that the steps that a supplier must undertake before a payment can be made continue to require considerable effort on the part of the

supplier. This is particularly the case when the identity of the customer is known³⁸. It is not clear from the proposal to what extent suppliers intend to make use of the revised compensation arrangement. We therefore note that it is uncertain whether UNC231V will in practice lead to greater theft detection, investigation and ultimately prevention.

4.9. We therefore consider that this modification proposal could in principle improve the efficient and economic operation of the pipe-line system, although it is not clear to what extent the objective will be better met in practice.

Standard Special Condition A11.1 (b): the coordinated, efficient and economic operation of the combined pipe-line system and/or the pipe-line system of one or more other relevant gas transporters

4.10. The modification proposer considered that, for the same reasons relevant objective (a), ie the reduction in unidentified unsafe meter interference, objective (b) is also better met.

4.11. We do not consider that this argument is relevant in relation to this specific relevant objective. It has not been clearly demonstrated that UNC231V will improve the co-ordinated operation of gas transporters.

4.12. We are therefore neutral in relation to this objective. However, we note that, by setting out changes to the UNC only, i.e. by not making equivalent changes to the IGT UNC, there may be an argument that suppliers will need to have in place different arrangements for dealing with IGTs and GDNs which may be less efficient.

Standard Special Condition A11.1 (c): the efficient discharge of the licensee's obligations under this licence

4.13. SLC7 places an obligation on gas transporters to investigate any suspected theft in conveyance and seek to recover any charges due. We note that UNC231V may increase the instances where a gas transporter is required to act under its licence requirements. However, this is not expected to improve the efficiency of the discharge of the licensee's obligation. We therefore do not agree with the proposer that UNC231V will allow gas transporters to better meet their obligations on theft in conveyance under SLC7 of their licences.

4.14. As noted above, some parties were concerned that placing the RES in the UNC without removing the licence obligation to establish a RES, approved by the Authority, would create a risk of dual governance. We propose to amend the gas transporters licence to mitigate this risk. Our proposals are set out in the next chapter.

³⁸ When the identity of the customer is not known, only actions 1 and 2 in the RES must be completed before compensation can be paid.

4.15. Some gas transporters have expressed concern that UNC231V would require them to make two payments to suppliers for the same claim. One payment being required under the UNC and one under the gas transporters licence. We note that the legal text set out in the FMR for UNC231V refers to the requirement for a gas transporter to adjust charges under SLC7(5). However, it does not establish a separate requirement to make such an adjustment to shipper charges under the UNC. Accordingly, we do not consider it necessary to amend SLC7(5) to address this concern.

4.16. We have also reviewed the concerns (see paragraph 3.22) that the drafting of each GDNs' Special Condition E3 would need to be amended to allow for the pass through arrangements to continue to work. We consider that our proposals to amend the RES and REAS (set out in Chapter 4) means that this is not necessary and pass through will continue to be permitted.

4.17. In conclusion, if the change to SLC7 noted above is agreed, we consider that the effect of UNC231V is neutral in relation to relevant objective (c).

Standard Special Condition A11.1 (d): the securing of effective competition between relevant Shippers, between relevant Suppliers, and between Distribution Network operators and relevant shippers

4.18. We consider that, by increasing the value of charges that can be recoverable, UNC231V will reduce supplier disincentives to detect and investigate theft. However, as noted above, the actions that a supplier must demonstrate, particularly when the identity of the customer is known, are substantial. The extent to which UNC231V is therefore expected to improve theft detection, investigation and prevention is unknown so the effect may potentially be marginal.

4.19. To the extent that there is an increase in the volume of theft of gas detected and prevented, this is likely to reduce the level of unaccounted for gas. Consequently, we consider that this modification may help support effective competition between shippers and suppliers by leading to an improvement in the allocation of energy and more accurate targeting of costs.

4.20. More accurate information on consumption is likely to lead to more accurate AQ values. We consider that this will also help to secure effective competition between shippers and suppliers by improving the accuracy of the allocation of transportation charges.

4.21. We also consider that UNC231V may also improve transparency and the change control provisions by moving the arrangements to the UNC. In particular, moving the detail of the scheme into the UNC will provide shippers (and therefore potentially suppliers) with a direct role in any potential further changes to the process.

Appropriateness of the compensation cap and audit provisions

4.22. The value of the compensation paid to suppliers under UNC231V (as with the existing arrangements) will be smeared back to all suppliers and shippers through an adjustment to transportation charges. Under UNC231V, the maximum value of a claim has risen from £620 plus unlimited court fees to £4,000 plus unlimited court fees.

4.23. We consider that the value of the payments made, and quality of the audit provisions must be proportionate as the compensation costs will be borne by customers. We also consider that the level of compensation should be consistent with the aim of the scheme. This aim is to reduce the disincentives that a supplier may have to investigate and recover charges from a customer.

4.24. Two suppliers have provided us with information on their costs in tackling theft. We are disappointed that more suppliers have not been forthcoming with information and that analysis has not been provided to support the move from fixed values to a capped value and from the current values to the £1,000 cap. The evidence provided does not support an increase in the level of compensation under each claim category to £1,000 although it does point to the need to increase it from current values. We also acknowledge that costs in tackling theft will vary and that in certain circumstances they will be higher than the average figures presented to us.

4.25. The increase in available compensation and move from fixed rates to payments based on actual costs increases the focus on the audit provisions to ensure that the payments requested and made are accurate (ie that they are based on actual costs) and that those costs are appropriate. In particular, we consider that the previous use of fixed values rather than capped amounts sought to strike a balance between the need to compensate suppliers and the difficulty in assessing whether a supplier's request for compensation was appropriate, given that these costs will ultimately be paid for by customers.

4.26. The modification proposal does not refer to an audit process for these arrangements. The FMR confirms that xoserve will not be required to undertake any additional audit checks to that which is currently required. Xoserve has confirmed that, in relation to the current scheme, it requests evidence from suppliers to demonstrate that they have fulfilled the relevant actions in the RES before making a payment³⁹.

4.27. Xoserve has indicated that, if UNC231V is implemented, it would expect to continue to require evidence to demonstrate that the relevant actions have been taken before a payment was made. In addition, xoserve has indicated that it will confirm whether the receipts and cost breakdown provided by suppliers match the claims for compensation. However, xoserve is not expecting to determine whether the level of those costs is appropriate.

³⁹ For example, in relation to claims one and two, xoserve will require evidence of Police notification, or a witness statement or report, or detail of Police attendance, or a crime reference number or any other supporting evidence.

4.28. We note that gas transporters are required under SLC7 to make payments when a supplier has indicated in writing or in such other manner as the transporter has informed the shipper as is acceptable. As the current scheme provides for fixed payments in the majority of cases, that there is no analysis required on whether the costs claimed by a supplier are appropriate. However, given the proposed move to capped payments, we are requesting views on whether the proposed audit requirements are fit for purpose. We also note that sanctions against a supplier that makes a false claim are not set out under the modification.

4.29. We are inviting views on the appropriateness of the £1,000 cap for each chargeable line in the table (other than the court fees) and on the move from a fixed amount payment to a capped amount. In this context we would also request views on the appropriateness of the proposed audit arrangements to ensure that the compensation claims are accurate and appropriate and what alternative arrangements or commitments could be made to alleviate any potential concerns.

Ofgem's statutory duty to carry out its functions in a manner that protects the public from dangers arising from the use and conveyance of gas through pipes

4.30. By encouraging suppliers to be more active in detecting and investigating theft we consider that UNC231V will help identify and prevent unsafe gas situations. We consider that UNC231V can therefore contribute to reducing the risks of accidents related to theft and protecting the safety of the pipe-line system, although as noted above, the extent to which this is likely to be improved is not clear.

Related issues – NRPS, SETS and IGTs

4.31. In this section we consider the potential for linkages between UNC231V and other proposed improvements to the arrangements for the prevention, investigation and detection of theft. We also consider the arrangements for tackling theft on IGT networks.

Impact of other industry developments – NRPS and SETS

4.32. Industry is developing two significant proposals which seek to address theft of gas issues. These are the creation of a National Revenue Protection Service (NRPS)⁴⁰, and the development of incentives for theft detection under the Supplier Energy Theft Scheme (SETS) which is set out in UNC277⁴¹.

4.33. The NRPS would have access to industry data to identify supply points that should be investigated for potential theft activity. The NRPS would provide field agents to conduct investigation. Alternatively, suppliers could make separate arrangements for the investigation. All parties would be required to adopt the same

⁴⁰ This proposal links to UNC274 and is currently being developed by the Gas Forum (www.gasforum.co.uk/NRPS+Workgroup)

⁴¹ Details for UNC277 are set out on the Joint Office website (www.gasgovernance.co.uk)

standards for investigation and recovery of charges from customers that have taken an illegal supply.

4.34. UNC277 proposes to introduce the SETS scheme. Under this scheme suppliers will receive an incentive payment if they better the average industry performance in detecting theft. Those suppliers that perform below the industry average will be required to make payments into the scheme.

4.35. Ofgem is proposing to conduct an Impact Assessment on the NRPS and SETS proposals for gas in Q1. We are considering whether, in addition to gas, the IA should cover the electricity industry.

4.36. Ofgem would welcome views on the compatibility of UNC231V with the NRPS and the SETS schemes. In particular:

- Would it be appropriate for suppliers to receive UNC231V compensation payments if the NRPS model was implemented, when they are not in control of the decision to detect or investigate theft and would not therefore be in a position to respond to the intent of the scheme to reduce supplier disincentives;
- If either the NRPS or SETS models were implemented, would UNC231V encourage suppliers to go over and above the performance anticipated by either model; and
- Could UNC231V could provide interim benefits before either the NRPS or SETS are implemented.

Incentive schemes for IGTs

4.37. SLC7 of the gas transporters licence applies to IGTs as well as the GDNs. IGTs are therefore required to have in place an Authority approved RES and to make payments in accordance with a REAS.

4.38. The IGT UNC is independent from the large transporter UNC. If we approve UNC231V it will only modify the large transporter UNC and it will not have effect on IGT networks.

4.39. This gives rise to the potential for different arrangements to be in place to compensate suppliers depending on whether the site is on an IGT or large transporter network. We would welcome views on whether an equivalent modification proposal should therefore be raised to the IGT UNC.

5. Proposed amendments to SLC7, the REAS, and the RES

Chapter Summary

In this Chapter we firstly set out the timetable for our proposed changes. We then explain our proposals to amend SLC7, and each large gas transporter REAS and RES.

Question box

Question 1: Views are requested on our proposals to amend SLC7 and each large gas transporter REAS and RES.

Question 2: Views are requested on our proposed timetable to amend SLC7 and each large gas transporter REAS and RES.

Question 3: Do any of the proposed changes have potential detrimental consequences for the arrangements on IGT networks?

Question 4: (For gas transporters only) Would you accept a notice period of less than six months for the proposed changes to the RES and REAS?

Timing of proposed changes

5.1. For the reasons set out in Chapter 4, we are minded to accept UNC231V. For the avoidance of doubt, we have not made a final decision on UNC231V, and we intend to first give consideration to any responses to the issues raised in response to this consultation.

5.2. To facilitate UNC231V we would expect to make a number of amendments to SLC7 of the gas transporters licence⁴² and to the REAS in place for each large gas transporter. We would also expect to revoke our approval of the RES in place for each large gas transporter.

5.3. Should the responses to this consultation confirm our view that UNC231V should be approved, we will then initiate the formal CLM process to amend the gas transporters licence. We intend to do this in Q1 2011. We will also, at this time write to GDNs confirming our intention to amend the REAS and to revoke our approval of the RES.

⁴² The formal process for amending the standard conditions of the gas transporters licence is set out in section 23 of the Gas Act 1986. This document is an informal consultation on our proposals to amend the transporters licence. To initiate the formal process Ofgem will issue a formal licence modification proposal notice. Relevant licence holders who are not content with a proposed modification may register their formal objection with Ofgem as specified in the modification proposal notice (within the period specified being no less than 28 days). In this instance we consider that all licensed gas transporters with SLC7 active in their licences will be relevant licence holders. The proposed modification can only be implemented where no more than 20 percent of relevant licence holders by number, or 20 percent of relevant licence holders weighted by market share register a formal objection.

5.4. Before making changes to the RES and REAS, both schemes require us to consult the relevant gas transporter and provide six months notice unless the licensee agrees, in writing, to a shorter period. We are requesting views from gas transporters now on whether they would in principle accept a shorter notice period for our proposed changes.

5.5. Before making a final decision, we intend to check the compatibility of UNC231V with the broader direction of the theft arrangements following our proposed IA next year. We do not therefore intend to make a final decision on UNC231V until Q2 2011. We will make clear to gas transporters that our decision to modify the licence to facilitate UNC231V and make changes to the RES and REAS will be conditional on us accepting UNC231V.

5.6. If gas transporters do not prevent the licence change from being made then we will, subject to compatibility with the outcome of the IA, approve UNC231V and co-ordinate with the Joint Office⁴³ for its simultaneous implementation with UNC231V, and a revised scheme under SLC7 for all gas transporters.

Summary of our proposed changes

5.7. Our aim is to ensure that arrangements are in place to facilitate compensation for suppliers on large gas transporter and IGT networks.

5.8. We propose to retain the requirement to designate a REAS and to approve a RES for each gas transporter. For IGTs, these arrangements will have a similar effect to the current arrangements. For GDNs, we will reference the relevant parts of the UNC in our designated scheme.

5.9. We also propose to take this opportunity to improve the drafting and layout of the schemes.

5.10. Because of the extent of our proposed changes, we intend to revoke the existing arrangements for GDNs and IGTs and introduce new schemes. Further detail on these new schemes is set out in Appendix 4.

Supplier compensation - Proposal to amend SLC7(6)⁴⁴

5.11. SLC7(6) sets out the scope of the allowance to be paid to gas suppliers when the requirements of the RES have been met. This includes the requirement for the compensation to reflect the reasonable costs of the gas supplier and for it to be calculated in accordance with the principle⁴⁵ set out in a scheme designated by the

⁴³ We anticipate that, were UNC231V to be approved, the Joint Office would co-ordinate with parties on the appropriate date for its implementation.

⁴⁴ Appendix 3 contains a draft statutory notice for the proposed amendments to SLC7.

⁴⁵ The principle set out by the Authority for the REAS is for the amounts that can be recovered by supplier to be set at a level such that they will improve any disincentives that a supplier may have in investigating theft and using its reasonable endeavours to recover the charges to which it is entitled.

Authority. Both the principle and the compensation values are currently set out in the REAS.

5.12. UNC231V proposes to include the principle and (amended) compensation allowances within the UNC. To facilitate this proposal we need to make amendments to the current REAS in place for each large gas transporter.

5.13. We intend to retain a requirement for the Authority to designate a REAS but to clarify that the principle and compensation values can be set out in a document (i.e. the UNC) referenced by the REAS.

5.14. Our proposal reflects the different approaches for GDNs and IGTs. For IGTs, the allowance is expected to continue to be that described explicitly within a scheme designated by the Authority unless a modification to the IGT UNC is proposed.

5.15. We therefore propose to amend SLC7 to reflect UNC231V by removing the current text of SLC7(6) and replacing it with the following:

“The allowance referred to in paragraph 5 is one set out in:

(a) a scheme; or

(b) a document described in a scheme,

designated by the Authority for the purposes of this condition”.

Reasonable endeavour requirements - Proposal to amend SLC7(8)

5.16. Under SLC7(8), each gas transporter is required to prepare a RES document in consultation with relevant shippers and suppliers. This document must be approved by the Authority. The gas transporter is also required to bring the RES to the attention of relevant suppliers and shippers and to provide shippers and suppliers with a copy on request.

5.17. As noted above, concerns have been raised over dual governance of the RES if it is also replicated in the UNC.

5.18. To mitigate this concern, we propose to amend SLC7(8). In the case of the GDNs, we propose to set out in this scheme that the supplier arrangements are set out in the UNC⁴⁶. For IGTs, where no equivalent modification is made to the IGT UNC, we will replicate the current requirements under SLC7(8) in the text of the scheme.

⁴⁶ We intend to designate a scheme for each large gas transporter that provides for the reasonable endeavours requirements to be set out under the UNC. For clarity, the scope of our proposed amendment to SLC7(8) would retain the ability of the Authority to require each large gas transporter to separately establish a RES if that was considered appropriate. We do not envisage that such a move is likely or would be undertaken without consultation and any associated changes to industry documentation.

5.19. The proposed new wording for SLC7(8) is:

"Without prejudice to paragraph 10, for the purposes of paragraphs 5 and 7, the supplier concerned shall be presumed to have used its reasonable endeavours if it has acted in a manner laid down in:

(a) a document described in a scheme; or

(b) a document prepared by the licensee in accordance with a scheme,

designated by the Authority for the purposes of this condition."

6. Additional proposed changes to SLC7

Chapter Summary

This Chapter sets out our proposals to make additional changes to SLC7 to improve clarity. These changes are not impacted by UNC231V.

Question box

Question 1: Do you agree with our further proposals to improve the drafting of SLC7?

6.1. We have identified further amendments to SLC7 that we consider would be beneficial. We propose to use this opportunity to consult on modifying SLC7 to rectify these matters. We consider that these changes could take place regardless of whether UNC231V is approved.

6.2. In summary, these changes fall into two categories:

- In 1997, licence modifications were made by Ofgas⁴⁷ ('the 1997 modifications') to rectify a number of errors and improve the drafting of the predecessor. However, when the gas transporter licence was updated again in 2000, it appears that some of the errors and outdated drafting were reintroduced.
- Additional clarifications which we have identified.

SLC7(3) – Theft in conveyance

6.3. SLC7(3) allows a gas transporter to be compensated when it has met its obligation to tackle theft of gas in conveyance but has not been able to recover all of its costs from the customer.

6.4. The obligations to tackle theft in conveyance are set out in SLC7(1) and SLC7(2). However, SLC7(3) only refers to the recovery of costs under SLC7(1). We consider that a gas transporter should also be able to recover its costs when the obligations under SLC7(2) (which specifically relate to sub-deduct premises) have been met.

6.5. We note that a reference to the ability of gas transporters to recover charges for sub-deduct premises was previously included as part of the 1997 modifications but was subsequently removed, presumably in error, in 2000.

⁴⁷ Ofgas was the gas regulator. It merged with OFFER, the electricity regulator in 2000 to establish the Gas and Electricity Markets Authority (the Authority). The Authority is supported by Ofgem.

SLC7(3) and (5) – Incorrect reference to a “standard” condition

6.6. SLC7 (3) and (5) make an incorrect reference to “any *standard* condition of this licence which limits the charges which may be made in pursuance of transportation arrangements or the revenue derived therefrom” [emphasis added].

6.7. For the GDNs, the condition of their licence which sets out how such adjustments should be treated for the purpose of their price controls and transportation charging is Special Condition E3 of the Distribution Network licence⁴⁸.

6.8. To reflect the actual location of the licence condition which establishes the transportation arrangements we propose to remove the word “standard” so that the reference is to “any condition of this licence”.

6.9. Provisions that provide for IGT transportation charges are set out under Special Condition 1 of each IGT’s licence. We therefore consider that our proposal to amend the wording of SLC7(3) and (5) is also appropriate for IGTs.

SLC7(4)(c) – Compensation not available when bill paid

6.10. SLC7(4) describes relevant offences under the Gas Act for which a supplier can make a compensation claim.

6.11. SLC7(4)(c) relates to the circumstance where the occupier of the premises is not the lawful occupant and does not intend to pay charges for the gas consumed. It also covers the instance where a person has ceased to be the owner or occupier and has not informed the supplier of their new address.

6.12. In relation to the last scenario described above, the 1997 modification sought to clarify that compensation was only payable where the customer, that had ceased to be the owner or occupier, had not already paid the supplier for the gas consumed. However, this amendment was omitted from the version of the licence modified in 2000.

6.13. We consider that the 1997 modification is a sensible clarification to ensure that the supplier may only make compensation claims when it has not been able to recover charges from the customer. We therefore propose to amend SLC7(4)(c) as follows. The addition is shown as double underlined.

“(c) a supply of gas has been taken by the occupier at any premises in such circumstances as are mentioned in paragraph 8(2) of the said Schedule (or,

⁴⁸ The cost elements that each year GT can pass through to its customers are set out in Special Condition E3 of the Gas Distribution network licence. The pass through cost element related to theft of gas is defined in paragraph 2 of Special Condition E3 as “an amount equal to any allowance made, in aggregate, for the reasonable cost incurred by a supplier as set out in paragraphs 5, 6 and 7 of standard condition 7 (Provision of Information Relating to Gas Illegally Taken) of this licence;”

where the premises are secondary sub-deduct premises, a supply was taken by the occupier in circumstances that would have been those mentioned in that paragraph had the gas been conveyed to the premises by the licensee) and the supplier concerned has reasonable cause to believe either that the person in question both –

(i) is not, or may not be, in lawful occupation of the premises; and

(ii) does not genuinely intend to pay charges for the gas taken,

or that the person in question has ceased to be the owner or occupier of the premises and has not paid, or made arrangements which reasonably may be expected to lead to payment, for gas which has been taken and has not informed the supplier concerned of his present address,”

SLC7(5) – Charges to which a supplier is entitled

6.14. The 1997 modifications, simplified this paragraph by removing the references to charges that were recoverable under contracts, deemed contracts and in relation to sub-deduct premises. These changes were undone in 2000. However, we consider that this is a sound principle and therefore propose to simplify the text as shown below.

6.15. The 1997 modifications also clarified that partial payment from the customer should lead to an associated reduction in a supplier's compensation. We consider that this is an appropriate clarification and have made the associated proposed amendment as shown below.

6.16. There is also an incorrect reference to paragraph 3(a) in SLC7(5)(a)(ii). We consider that this reference should be to 4(a) to reflect the circumstances when supplier compensation arrangements are available. However, our proposals to simplify the drafting of SLC7(5) remove this reference entirely

6.17. The proposed new wording for SLC7(5) is as follows. Omissions are shown as strike through with additions being double underlined. For completeness we have also shown the proposed amendment noted above in paragraph 6.8:

“Where this paragraph applies and –

a) the relevant shipper has requested, or in pursuance of a contract, required the supplier concerned -

(i) to investigate the matter; and

(ii) subject to the outcome of that investigation, to use its reasonable endeavours to recover the charges to which it is entitled, ~~whether~~ whether under such a contract or deemed contract as may be applicable ~~is mentioned in paragraph 3(a) or, as the case may be, under a deemed contract arising under paragraph 8(2) of Schedule 2B to the Act or (where the premises in question are~~

~~secondary sub-deduct premises) otherwise, in respect of a supply of gas taken in respect of the supply of gas taken in any of the circumstances as mentioned in paragraph 4, ("the supplier's charges");~~

- b) ~~the supplier concerned has complied with that request or requirement but has failed, and cannot reasonably be expected, to recover some or all of those charges; and~~
- c) ~~the relevant shipper has notified the licensee that this paragraph applies and the standard conditions in sub-paragraphs (a) and (b) have been satisfied and has done so either in writing or in such other manner as the licensee may have informed the shipper is acceptable,~~

~~the licensee shall treat the amount of gas to which so much of the supplier's charges as have not been, and cannot reasonably be expected to be recovered, relate as not having been taken out of its pipe-line system by the relevant shipper for the purposes of calculating and claiming charges to be paid to it by that shipper in pursuance of the arrangements between them and shall further reduce those charges by an amount equal to that of the allowance mentioned in paragraph 6; and, accordingly, only the charges so calculated and paid shall be taken into account for the purposes of any ~~standard~~ condition of this licence which limits the charges which may be made in pursuance of transportation arrangements or the revenue derived therefrom."~~

SLC7(7) – Incorrect reference to a "standard condition"

6.18. SLC7(7) clarifies the requirements of SLC7(5) where the shipper and the supplier are one and the same party.

6.19. SLC7(7)(a) makes an incorrect reference to a "standard condition" in SLC7(5)(a) and (5)(b). Having reviewed previous versions of this licence condition it is clear that the reference was intended to be to any "condition" (i.e. requirement or obligation) set out in those paragraphs. This error appears to have been introduced when the standard conditions of the gas transporters' licence were introduced in 2000. To clarify the matter and to avoid potential confusion we propose to replace the words "standard condition" with "obligation".

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Appendices

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Appendix 1 - Consultation Response and Questions

1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document.

1.2. We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter heading and which are replicated below.

1.3. Responses should be received by 31 January 2011 and should be sent to:

Cesar Coelho, Economist
Retail and Market Processes
Ofgem
9 Millbank
London, SW1P 3GE
Telephone: 020 7901 1883
Email: cesar.coelho@ofgem.gov.uk

1.4. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem 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. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

1.6. Next steps: Having considered the responses to this consultation, Ofgem intends to consider whether to approve UNC231V and move to consult formally on amending SLC7 and its associated documents. Any questions on this document should, in the first instance, be directed to:

Andrew Wallace, Senior Manager
Retail and Market Processes
Ofgem
9 Millbank
London, SW1P 3GE
Telephone: 020 7901 7067
Email: andrew.wallace@ofgem.gov.uk

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CHAPTER: Two

Question 1: What factors have led to the limited number of suppliers using the current compensation arrangements?

CHAPTER: Four

Question 1: Do you agree that the £1,000 cap per allowance (apart from Allowance (vii)) is reasonable? Please provide supporting arguments.

Question 2: (For suppliers only) Do you have further supporting information on your actual costs associated with each of the activities set out in Table 1? Information on average costs and the range and distribution of costs would be particularly helpful.

Question 3: Views are invited on whether the audit and compliance arrangements for the payment of allowances to suppliers are appropriate. In particular, are they sufficient to meet the implied requirement under SLC7 of the gas transporters licence to only make payments when the relevant criteria are met?

Question 4: Do you agree that an equivalent modification should be raised to the IGT UNC?

Question 5: Views are requested on the compatibility of UNC231V with the proposed NRPS, SETS or any other industry developments.

CHAPTER: Five

Question 1: Views are requested on our proposals to amend SLC7 and each large gas transporter REAS and RES.

Question 2: Views are requested on our proposed timetable to amend SLC7 and each large gas transporter REAS and RES.

Question 3: Do any of the proposed changes have potential detrimental consequences for the arrangements on IGT networks?

Question 4: (For gas transporters only) Would you accept a notice period of less than six months for the proposed changes to the RES and REAS?

CHAPTER: Six

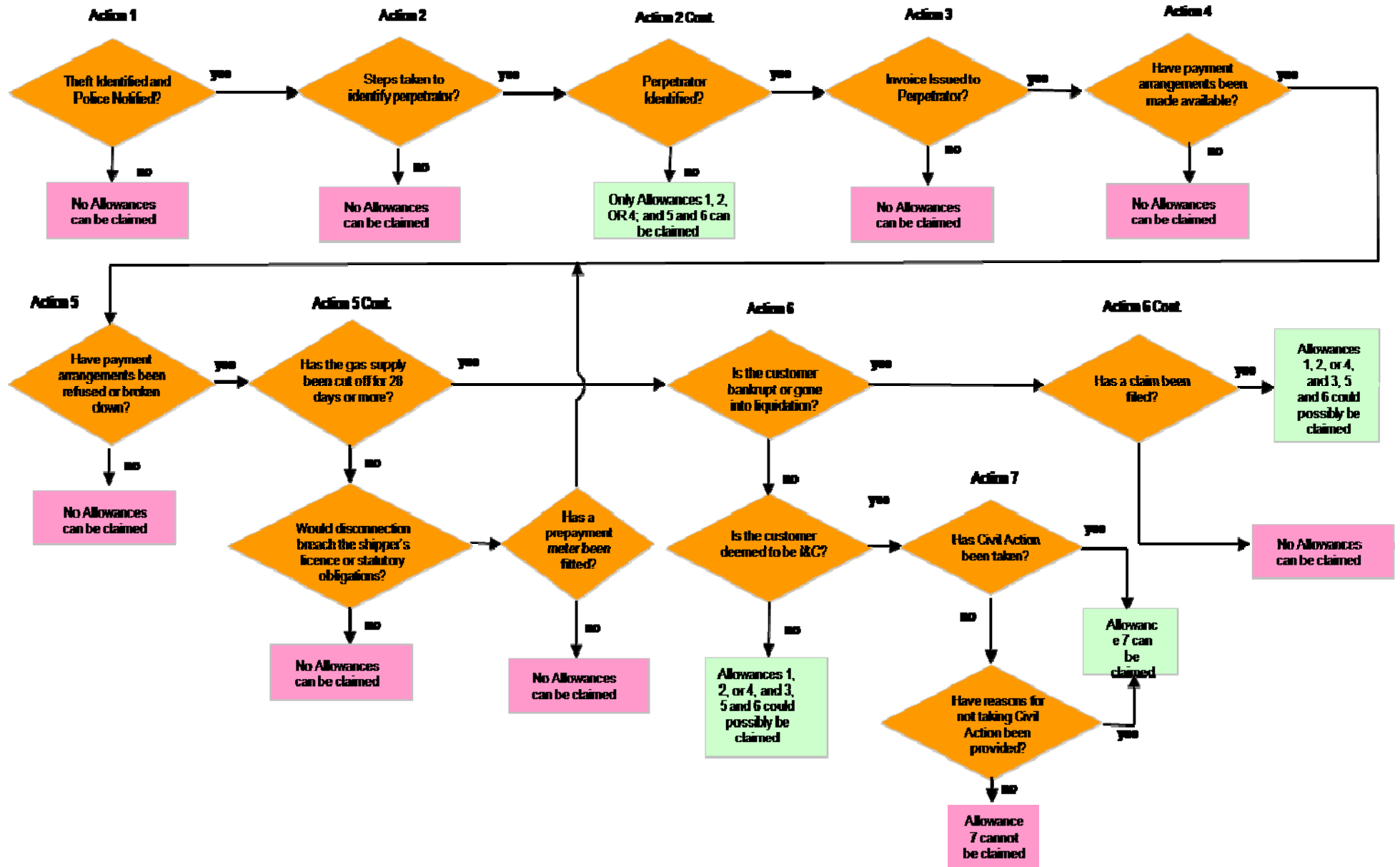
Question 1: Do you agree with our further proposals to improve the drafting of SLC7?

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Appendix 2 – Process description

1.1. Xoserve has provided the following flow diagram which describes how it operates the current supplier compensation arrangements, set out in the REAS and RES. As this process is not intended to change under UNC231V, we understand that this process flow will be broadly the same going forward.

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Source: xoserve

Appendix 3 – Proposed modification to SLC7

1.1. This appendix sets out our draft modification proposals for SLC7 of the gas transporter licence. This modification makes changes to facilitate UNC231V set out in Chapter 5 and to further improve the drafting of the licence condition as set out in Chapter 6.

1.2. Replace paragraph 3 with:

“Where the licensee has, as required by paragraph 1 or 2, recovered, or attempted to recover, the value of the gas taken or, as the case may be, the specified amount, then any condition of this licence that limits, or has the effect of limiting, the charges made in pursuance of transportation arrangements or the revenue derived therefrom which is specified in a scheme designated by the Authority for the purposes of this condition shall be modified as provided in that scheme to take account of -

(a) the costs of any such investigation as is mentioned in paragraph 1 or 2;

(b) any amount recovered as so mentioned;

(c) the costs of any such recovery or attempted recovery so mentioned; and

(d) any costs to the licensee attributable to any gas being acquired, or not being disposed of, by it by reason of the taking of the gas,

so as to secure that, as nearly as may be and taking one year with another, the licensee suffers no financial detriment, and acquires no financial benefit, as a result of the taking of the gas and its compliance with paragraph 1 or 2.”

1.3. Replace paragraph 4 with:

“Paragraphs 5, 6, 7 and 8 shall apply where –

(a) an offence under paragraph 10(1) of Schedule 2B to the Act has been, or may have been, committed at any premises and, before the matter has been remedied, the owner or occupier of the premises has taken a supply of gas which has been conveyed to those premises (or, where those premises are secondary sub-deduct premises, to the relevant primary sub-deduct premises) by the licensee in pursuance of arrangements made with a gas shipper;

(b) an offence under paragraph 11(2) of the said Schedule has been, or may have been, committed at any premises (or an offence would have been, or might have been, so committed but for the fact that the premises in question are secondary sub-deduct premises) and such a supply of gas as aforesaid has been taken by the owner or occupier of the premises

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without the agreement of either the licensee or of a gas supplier which cut off the supply of gas or is, or is about to become, the relevant supplier; or

(c) a supply of gas has been taken by the occupier at any premises in such circumstances as are mentioned in paragraph 8(2) of the said Schedule (or, where the premises are secondary sub-deduct premises, a supply was taken by the occupier in circumstances that would have been those mentioned in that paragraph had the gas been conveyed to the premises by the licensee) and the supplier concerned has reasonable cause to believe either that the person in question both –

(i) is not, or may not be, in lawful occupation of the premises; and

(ii) does not genuinely intend to pay charges for the gas taken,

or that the person in question has ceased to be the owner or occupier of the premises and has not paid, or made arrangements which reasonably may be expected to lead to payment, for gas which has been taken and has not informed the supplier concerned of his present address,

and, in this paragraph and paragraphs 5, 6, 7 and 8, “the supplier concerned” means the relevant supplier or, in such circumstances as are mentioned in sub-paragraph (2) of paragraph 8 of the said Schedule, the appropriate supplier within the meaning of sub-paragraph (3) of that paragraph.

1.4. Replace paragraph 5 with:

“Where this paragraph applies and –

(a) the relevant shipper has requested, or in pursuance of a contract, required the supplier concerned -

(i) to investigate the matter; and

(ii) subject to the outcome of that investigation, to use its reasonable endeavours to recover the charges to which it is entitled under such a contract or deemed contract as may be applicable in respect of the supply of gas taken in any of the circumstances mentioned in paragraph 4, (“the supplier’s charges”);

(b) the supplier concerned has complied with that request or requirement but has failed, and cannot reasonably be expected, to recover some or all of those charges; and

(c) the relevant shipper has notified the licensee that this paragraph applies and the standard conditions in sub-paragraphs (a) and (b) have been satisfied and has done so either in writing or in such other manner as the licensee may have informed the shipper is acceptable,

the licensee shall treat the amount of gas to which so much of the supplier’s charges as have not been, and cannot reasonably be expected to be recovered, relate as not having been taken out of its pipe-line system by the relevant shipper for the purposes of calculating and claiming charges to be paid to it by that

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shipper in pursuance of the arrangements between them and shall further reduce those charges by an amount equal to that of the allowance mentioned in paragraph 6; and, accordingly, only the charges so calculated and paid shall be taken into account for the purposes of any condition of this licence which limits the charges which may be made in pursuance of transportation arrangements or the revenue derived therefrom."

1.5. Replace paragraph 6 with:

"The allowance referred to in paragraph 5 is one set out in:

(a) a scheme; or

(b) a document described in a scheme,

designated by the Authority for the purposes of this condition."

1.6. Replace paragraph 7 with:

"For the purposes of paragraphs 5 and 6, where, in relation to the premises in question, the same person (being a gas supplier) is both the relevant shipper and the supplier concerned –

(a) the obligations in paragraph 5(a) and (b) shall be deemed to have been satisfied if that person has:

(i) investigated the matter;

(ii) subject to the outcome of that investigation, used its reasonable endeavours to recover the supplier's charges; and

(iii) failed and cannot reasonably be expected to recover those charges; and

(b) paragraph 6 shall have effect as if the reference to the reasonable cost of complying with such a request or requirement as mentioned in paragraph 5 were a reference to the reasonable cost of such investigation and reasonable endeavours as are mentioned in subparagraph (a)."

1.7. Replace paragraph 8 with:

"Without prejudice to paragraph 10, for the purposes of paragraphs 5 and 7, the supplier concerned shall be presumed to have used its reasonable endeavours if it has acted in a manner laid down in:

(a) a document described in a scheme; or

(b) a document prepared by the licensee in accordance with a scheme,

designated by the Authority for the purposes of this condition."

Appendix 4 – Proposed Authority designated scheme for the purposes of SLC7

1.1. Chapter 5 sets out our views on amending the documents that we have put in place to facilitate the supplier compensation arrangements.

1.2. This appendix sets out our proposals in more detail.

Summary of the revised scheme for GDNs

1.3. For each GDN we propose to designate a new document that each contain three parts:

- Part 1: Replicates the existing ability of the gas transporter to recover its costs associated with its efforts to tackle theft in conveyance;
- Part 2: Sets out that the compensation amounts referred to under (amended) SLC7(6) are defined in the UNC; and
- Part 3: States that the requirements a supplier would need to undertake to be eligible for compensation are set out in the UNC.

Summary of the revised scheme for IGTs

1.4. For each IGT that currently have in place a designated REAS and Authority approved RES, or intends to operate under these arrangements, we propose to set out a document which also has three parts:

- Part 1: Replicates the existing arrangement for the IGT to recover costs associated with its efforts to tackle theft in conveyance;
- Part 2: Sets out, on the face of the scheme, the compensation amounts referred to under (amended) SLC7(6). We do not intend to amend the current values available to suppliers; and
- Part 3: Replicates the existing requirements of SLC(8) and requires an IGT to establish a RES and for that document to be designated by the Authority. For those IGTs with a RES already in place, we propose to designate that document for the purpose of this scheme.

1.5. For IGT networks that do not currently have designated/approved supplier compensation arrangements in place, we first intend to review responses to this consultation on whether an equivalent modification should be made to the IGT UNC. Were an equivalent modification not considered to be appropriate, or subsequently not to be forthcoming, we would move to designate an equivalent scheme to that which we propose for those IGTs that currently have in place a RES and REAS.

1.6. We note that IGTs do not currently have pass through provisions under their price control arrangements to allow them to recoup the costs of making payments to

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suppliers or in tackling theft in conveyance. We note that the price control provisions for IGTs are to be reviewed by Ofgem with a consultation expected to be published next year. Once the price control review has concluded (in the absence of alternative cost allocation mechanism being put forward in the interim period) we would expect to have established acceptable arrangements for IGT networks within six months. In advance of these discussions concluding, parties may consider other innovative ways for the costs of paying allowances to suppliers to be undertaken.

Proposed scheme for GDNs

1.7. Below is a draft of the document that we intend to put in place for GDNs following the proposed amendment to SLC7.

1.8. The draft document sets out the arrangements for recovery of costs associated with theft in conveyance. It also states that the tasks that a supplier would have to undertake, and the compensation available, are set out in the UNC.

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[addressee]

**GAS TRANSPORTERS LICENCE
STANDARD CONDITION 7 (PROVISION OF INFORMATION RELATING TO GAS
ILLEGALLY TAKEN)**

**Designations issued by the Gas and Electricity Markets Authority pursuant
to Standard Condition 7 (Provision of Information Relating to Gas Illegally
Taken)**

WHEREAS:

- (a). [xxx] ('the licensee'), a company registered in England and Wales with company number [xxx], is the holder of a gas transporters licence ('the licence') treated as granted by the Gas and Electricity Markets Authority ('the Authority') under section 7 of the Gas Act 1986.

- (b). On 1 May 2005 the Authority designated two schemes pursuant to paragraphs 3 and 6 of Standard Condition 7 ('the 2005 schemes') of the licence and gave approval to a document prepared by the licensee pursuant to paragraph 8 of Standard Condition 7 ('the 2005 approval') of the licence.

NOW THEREFORE:-

- 1. The Authority hereby revokes the 2005 schemes and the 2005 approval and, subject to paragraph 2 below, designates the three schemes annexed to this letter in accordance with Standard Condition 7.

- 2. This designation shall take effect on and from the date specified below and shall continue until revoked or amended by the Authority following consultation with the licensee on giving six months prior written notice to the licensee or such other period as may be agreed in writing by the Authority and the licensee.

Dated the -----20[xx]

[xxx]

Duly authorised by the Authority

ANNEX 1**Scheme designated by the Gas and Electricity Markets Authority pursuant to paragraph 3 of Standard Condition 7 of the gas transporter licence treated as granted to [xxx] under section 7 of the Gas Act 1986 (Provision of Information Relating to Gas Illegally Taken)**

1. In this scheme, unless the context otherwise requires —

“the licensee” means [xxx];

“the Act” means the Gas Act 1986 (as amended);

“the licence” means the licence treated as granted under section 7 of the Act to the licensee which was amended and restated by a licensing scheme made by the Secretary of State for Trade and Industry pursuant to paragraph 19 of Schedule 7 to the Utilities Act 2000 on 28 September 2001 in respect of the [xxx];

“primary sub-deduct premises” means premises to which gas is conveyed by the licensee before being conveyed to secondary sub-deduct premises;

“Schedule 2B” means Schedule 2B to the Act;

“secondary sub-deduct premises” means premises to which gas is conveyed in pursuance of an exemption from section 5(1)(a) of the Act granted under section 6A thereof, for supply by a gas supplier;

2. Paragraph 3 below shall apply:

(i) where it appears that:

(a) sub-paragraph (1) of paragraph 9 of Schedule 2B may apply by reason that a person has, or may have, taken a supply of gas in the course of conveyance by the licensee; or

(b) sub-paragraph (2) of the said paragraph 9 may apply by reason that a person has, or may have, taken a supply of gas at any premises which has been conveyed thereto by the licensee, and

in either of the above cases, the licensee has investigated the matter and, subject to the outcome of that investigation, used reasonable endeavours to recover, in pursuance of the said sub-paragraphs (1) or (2), the value of the gas, being for this purpose the amount which, if the gas had been taken in such circumstances as are mentioned in paragraph 8(2) of Schedule 2B, could reasonably be expected to have been payable in respect of that gas under a contract deemed to have been made by virtue of that sub-paragraph; or

(ii) where it appears that:

(a) a person has, or may have, taken a supply of gas previously conveyed

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by the licensee to primary sub-deduct premises in circumstances where sub-paragraph (1) of paragraph 9 of Schedule 2B to the Act might have applied but for the fact that the gas was, at the time of such taking, in the course of being conveyed to secondary sub-deduct premises; or

- (b) a person has, or may have, taken a supply of gas previously conveyed by the licensee to primary sub-deduct premises in circumstances where sub-paragraph (2) of the said paragraph 9 might have applied but for the fact that the premises to which the gas had, at that time, been conveyed were secondary sub-deduct premises, and

in either of the above cases, the licensee has investigated the matter and subject to the outcome of that investigation, used reasonable endeavours to recover the amount which, if the gas had been taken in such circumstances as are mentioned in paragraph 8(2) of Schedule 2B, could reasonably be expected to have been payable in respect of that gas under a contract deemed to have been made by virtue of that sub-paragraph.

- 3. Where this paragraph applies, Special Condition E3 of the licence, which limits or has the effect of limiting the charges made by the licensee in pursuance of transportation arrangements or the revenue derived therefrom, shall be modified;

- (i) by deducting from Transportation Revenue the costs incurred by the licensee
 - (a) in carrying out investigations referred to in paragraph 2 above;
 - (b) in the recovery or attempted recovery of the amount referred to in paragraph 2(i) or 2(ii) above; and
 - (c) which are attributable to any gas being acquired, or not being disposed of, by the licensee by reason of the taking of gas in the circumstances set out in paragraph 2 above, and
- (ii) by adding to Transportation Revenue all of any of the amount recovered by the licensee referred to in paragraph 2(i) or 2(ii) above,

so as to secure that, as nearly as may be and taking one year with another, the licensee suffers no financial detriment, and acquires no financial benefit, as a result of the taking of the gas and its compliance with paragraphs 1 and 2 of Standard Condition 7.

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ANNEX 2

Scheme designated by the Gas and Electricity Markets Authority pursuant to paragraph 6 of Standard Condition 7 of the gas transporter licence treated as granted to [xxx] under section 7 of the Gas Act 1986 (Provision of Information Relating to Gas Illegally Taken)

1. In this scheme “the licence” means the licence treated as granted under section 7 of the Act to the licensee which was amended and restated by a licensing scheme made by the Secretary of State for Trade and Industry pursuant to paragraph 19 of Schedule 7 to the Utilities Act 2000 on 28 September 2001 in respect of the [xxx];
2. The allowance referred to in paragraph 5 of Standard Condition 7 of the licence is one calculated in accordance with Section S, paragraph 5 of the UNC Transportation Principal Document.

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ANNEX 3

Scheme designated by the Gas and Electricity Markets Authority pursuant to paragraph 8 of Standard Condition 7 of the gas transporter licence treated as granted to [xxx] under section 7 of the Gas Act 1986 (Provision of Information Relating to Gas Illegally Taken)

1. In this scheme "the licence" means the licence treated as granted under section 7 of the Act to the licensee which was amended and restated by a licensing scheme made by the Secretary of State for Trade and Industry pursuant to paragraph 19 of Schedule 7 to the Utilities Act 2000 on 28 September 2001 in respect of the [xxx];
2. For the purposes of paragraphs 5 and 7 of Standard Condition 7 of the licence (but without prejudice to paragraph 10 of Standard Condition 7), the supplier concerned shall be presumed to have used its reasonable endeavours if it has acted in a manner laid down in a UNC Related Document "Uniform Network Code – Reasonable Endeavours Document For Gas Illegally Taken (v.1)".

Appendix 5 – The Authority's Powers and Duties

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority ("the Authority"), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.⁴⁹

1.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly⁵⁰.

1.4. The Authority's principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of existing and future consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

1.5. The Authority must when carrying out those functions have regard to:

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them⁵¹;
- the need to contribute to the achievement of sustainable development; and
- the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.⁵²

1.6. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

⁴⁹ Entitled "Gas Supply" and "Electricity Supply" respectively.

⁵⁰ However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

⁵¹ under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.

⁵² The Authority may have regard to other descriptions of consumers.

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- promote efficiency and economy on the part of those licensed⁵³ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity; and
- secure a diverse and viable long-term energy supply.

1.7. In carrying out the functions referred to, the Authority must also have regard, to:

- the effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- certain statutory guidance on social and environmental matters issued by the Secretary of State.

1.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation⁵⁴ and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

⁵³ or persons authorised by exemptions to carry on any activity.

⁵⁴ Council Regulation (EC) 1/2003

Appendix 6 - Glossary

A

AQ

Annual Quantity

C

CLM

Collective Licence Modification process

D

DN

Distribution Network.

E

ENA

Energy Networks Association

ERA

Energy Retail Association

F

FMR

Final Modification Report

I

IGT

Independent Gas Transporter

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N

NPRS

National Revenue Protection Service

R

REAS

Reasonable Endeavours Allowance Scheme

RES

Reasonable Endeavours Scheme

S

SETS

Supplier Energy Theft Scheme

SGN

Scotia Gas Networks

SLC

Standard Licence Condition

SOQ

Standard Off-Take Quantities

SSP

Smaller Supply Point

U

UNC

Uniform Network Code

Appendix 7 - Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following 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?
6. Please add any further comments?

1.2. Please send your comments to:

Andrew MacFaul
Consultation Co-ordinator
Ofgem
9 Millbank
London
SW1P 3GE
andrew.macfaul@ofgem.gov.uk