

Modification proposal:	<b>Supply Point Administration Agreement (SPAA) Change Proposal (CP) 12/218: 'Introduce MAMCoP Audit Appeals Process in Schedule 32' and 12/219: 'New definitions required for MAMCoP Appeals Process'.</b>		
Decision:	The Authority's <sup>1</sup> decision is that these change proposals be made. <sup>2</sup>		
Target audience:	SPAA Parties and other interested parties		
Date of publication:	12 October 2012	Date of Implementation:	15 October 2012

## Background to the modification proposal

Gas Suppliers and Transporters are required by their licenses<sup>3</sup> to use only an approved Meter Asset Manager (MAM). With effect from 28 August 2012, the licenses were modified to transfer the role of approving MAMs from the Authority to become a function of the Supply Point Administration Agreement (SPAA).<sup>4</sup> Among other things, an approved MAM should meet the requirements set out in the Code of Practice for MAMs (known as MAMCoP).

Subsequent to the licence modifications coming into effect, the MAMCoP became a SPAA 'product' and therefore subject to the governance of the SPAA. A new Schedule 32 was also introduced in order to allow MAMs, who are not currently SPAA Parties, to participate in the development and operation of the MAMCoP. Schedule 32 sets out the process by which MAMs must demonstrate compliance with the MAMCoP in order to gain and maintain accreditation under the scheme. This includes the application process, initial inspection/audit and ongoing programme of surveillance visits. Failure of the MAM to comply or maintain compliance with the MAMCoP could result in their accreditation under the scheme being withheld or withdrawn, as the case may be.

## The change proposals

CP12/218 seeks to introduce into Schedule 32 a process by which MAMs can appeal against their accreditation being withheld or withdrawn. The proposed process can be summarised as follows:

1. If the MAMCoP Registration Agent (currently Lloyds Register) identifies a major deficiency or significant series of minor deficiencies, that MAM will be given one month to rectify them, at which time a further inspection would be carried out.
2. If the MAM has failed to rectify the deficiencies, the MAMCoP Registration Agent will report in writing to the SPAA Executive Committee (SPAA EC) recommending suspension of the MAM's approval.

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

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

<sup>3</sup> Standard licence condition (SLC) 12.19 of the Gas Supply Licence; SLC 8.1A and Standard Special Condition A10.1A of the Gas Transporters Licence.

<sup>4</sup> See: [www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=148&refer=Markets/sm/metering/crf](http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=148&refer=Markets/sm/metering/crf)

3. The SPAA EC shall review the report and if in agreement with the MAMCoP Registration Agent's recommendation, shall issue the MAM with 15 working days notice of withdrawal of approval.
4. Before the expiry of the withdrawal notice the MAM may raise an appeal to the SPAA EC, clearly setting out their grounds for appeal and any supporting evidence.
5. The SPAA will consider the appeal and either:
  - a. Uphold the appeal and quash the withdrawal notice, or
  - b. Confirm its decision to withdraw approval
6. Where a MAM's approval is withdrawn, it may within 15 working days appeal that decision to the Authority.
7. If the Authority upholds such appeal, the Meter Asset Manager's approval shall be re-instated subject to any conditions determined by the Authority.

CP12/219 is complementary to CP12/218 and seeks to include definitions into Clause 1.1 of the SPAA for:

- 'MAMCoP Registration Agent';
- 'MAMCoP Approval Appeal'; and,
- 'MAMCoP Approval Withdrawal Notice'.

### **Respondents' views**

Both CP12/218 and CP12/219 were considered at the SPAA Change Board on 16 August 2012.

All voting members, six of whom represented Domestic and Industrial and Commercial (I&C) Suppliers and one who represented Gas Transporters, were in favour of both CP12/218 and CP12/219 being implemented. This equated to 100 per cent of the weighted votes cast by relevant parties. The threshold for a change proposal being accepted by relevant SPAA parties is 65%.<sup>5</sup>

### **The Authority's decision**

After considering these views and the Change Report issued to Ofgem on 7 September 2012 we have concluded that:

- implementation of the change proposal will better facilitate the achievement of the relevant objectives of the SPAA<sup>6</sup>, and
- consenting to the modification being made is consistent with the Authority's principal objectives and statutory duties.

### **Reasons for the Authority's decision**

We have considered the change proposal and taken into account the unanimous vote of the SPAA Change Board. We also note the unanimous support from respondents to the SPAA consultation, though we were disappointed that there were no substantiating comments. We have also taken into account the views of MAMs expressed during working

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

<sup>6</sup> As set out in Standard Licence Condition 30.5 of the Gas Suppliers Licence

groups leading up to the transfer of the MAMCoP to the SPAA, which were also in favour of an appeals mechanism.

As CP12/219 merely introduces definitions that are used within the legal text for CP12/218 we have considered these changes together rather than seeking to assess the benefits of each separately; we consider that CP12/219 would be entirely redundant were CP12/218 not to be implemented.

We agree with the Proposer and the Change Board that the implementation of these proposals would particularly facilitate relevant objectives d) and e) of the SPAA, the latter of which was introduced as part of the MAMCoP transition and took effect on 28 August 2012. We have also considered this against relevant objective c), as below.

*(c) the promotion of efficiency in the implementation and administration of the supply point administration arrangements;*

Whilst the introduction of an appeal mechanism may place an additional administrative burden upon the SPAA EC and potentially the MAMCoP expert group, we consider that any potential appeals should reasonably be expected to be infrequent. It is worth noting that in the 7 years that that MAMCoP scheme has been in operation, there have been no deficiencies that have not been subsequently remedied by the relevant MAM.

Until such an appeal has taken place it is difficult to provide an objective assessment of whether it is an efficient process. At this time we therefore consider these proposals to be neutral against this objective.

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

Whilst the modifications to the Gas Suppliers and Transporters licenses did not specifically require the creation of an appeals mechanism, we agree with the proposer that its inclusion facilitates the effective operation of the MAMCoP scheme and to that extent should better enable the licensees to discharge the obligations placed upon them.

*(e) the establishment, maintenance and operation of the Meter Asset Manager arrangements.*

As mentioned under objective (d), to the extent that an appeals mechanism forms an integral part of the revised MAMCoP arrangements we consider that the implementation of these change proposals will better facilitate this objective.

We are conscious that the removal of accreditation would effect the ability of MAMs to operate. Whilst we consider it entirely appropriate for Gas Suppliers (who make up the majority of the SPAA EC) to have a role in the accreditation of their agents, it is important that the process contains safeguards to prevent the operation of the scheme acting as a barrier to entry or otherwise harming the interests of particular parties. Whilst any accreditation scheme can only be meaningful if there is a credible threat to withhold or withdraw the accreditation if standards are not met, it is appropriate that there be some checks and balances to ensure that such actions are not used inappropriately.

Therefore, whilst we consider that it is appropriate for the recommendation of the MAMCoP Registrar to require the approval of the SPAA EC to have effect it is also in keeping with the existing provisions of the SPAA that decisions of the SPAA EC may be appealed, ultimately to the Authority. Should such an appeal be raised, this would allow us to consider whether the decision of the SPAA EC was appropriate.

For the avoidance of doubt, we expect SPAA parties and MAMs to exhaust all other potential alternative routes for resolving matters in relation to accreditation before seeking to use the SPAA appeal process.

### **Decision notice**

For the reasons set out above, and in accordance with Standard Condition 30 of the Gas Suppliers Licence, the Authority consents that change proposals CP12/218: 'Introduce MAMCoP Audit Appeals Process in Schedule 32' and CP12/219: 'New definitions required for MAMCoP Appeals Process' be made.

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