

Licence Drafting	E.ON Comments
<p>Condition 12B. Matters related to Theft of Gas</p> <p>Objective</p> <p>12B.1 The objective of this licence condition (the “Objective”) is to ensure that:</p> <p>(a) the licensee and any Representative individually and/or in cooperation with other licence holders where necessary:</p> <p>(i) detect Theft of Gas;</p> <p>(ii) investigate suspected Theft of Gas;</p> <p>(iii) prevent Theft of Gas once detected;</p> <p>(iv) prevent Theft of Gas by other means such as deterrence and the security of the supply in respect of any premises to which the licensee is registered for the purposes of the Network Code; and</p> <p>(b) when taking the steps mentioned in sub-paragraph 12B.1(a), the licensee and any Representative:</p> <p>(i) behaves and acts towards Customers in a manner which is fair, transparent, not misleading, appropriate and professional; and</p> <p>(ii) takes into account whether the Domestic Customer and/or the occupants of the relevant premises is of Pensionable Age, disabled or chronically sick and/or the Domestic Customer at the relevant premises will have difficulty in paying all or part of the Charges for the Supply of Gas resulting from Theft of Gas.</p>	<p>12B.1 (a) (i) – This clause is drafted too broadly – The licensee cannot absolutely detect gas theft.</p> <p>The requirement to detect theft is entirely subjective. There are no absolute determinations on the level of gas theft in the market, merely assumptions extrapolated from some subsets of industry data. The obligation therefore can only be on a reasonable endeavours basis.</p> <p>Furthermore, how would a licensee demonstrate compliance that all theft has been detected, unless there is absolute certainty about where theft of gas is taking place?</p> <p>12B.1 (a) (iv) Again this is too broadly drafted. The ability to prevent the theft of gas is determined by the ability to identify where it is occurring.</p> <p>12B.1(b) (ii) The requirements in respect of the treatment of vulnerable customers and those with payment difficulties are already covered elsewhere in the Supply Licence conditions: in Conditions 26 and 27, this is a duplication of those requirements. Equally Suppliers already have adequate provisions with the “Energy Safety Net”</p>

<p>12B.2 The licensee must take (and ensure that any Representative takes) all reasonable steps:</p> <p>(a) to secure the achievement of the Objective; and</p> <p>(b) to avoid doing anything which jeopardises its ability to achieve the Objective.</p>	<p>12B.2(b) “avoid doing anything....”</p> <p>This drafting appears to be very vague and it’s not clear how we could demonstrate that we hadn’t done anything. Is 12B2 (b) really required? If so, it needs to be clearer</p> <p>Given that 12B.13 requires us to keep records of our compliance, what records would be required to provide evidence of compliance with this requirement.</p>
<p>12B.3 The steps which the licensee must take (and ensure that any Representative takes) to secure the achievement of the Objective include, without limitation, the steps which are detailed at paragraphs 12B.5 to 12B.16 of this condition, the obligations set out in paragraphs 3 and 4 of standard condition 17 and paragraph 6(e) of standard condition 30.</p>	<p>The wording here seems to confer some unlimited liability to deliver the objective as set out in the licence. Since its not possible to determine the exact level of theft (as per previous comments), then it’s not possible for the licensee to determine by reference to the drafting exactly what obligations are being placed on the licensees.</p>
<p>12B.4 For the avoidance of doubt, where the licensee is not registered at a premises for the purposes of the Network Code, its obligations under paragraphs 12B.1 and 12B.2 in respect of that premises are limited to the provision of notification to the Relevant Gas Transporter under paragraphs 3 and/or 4 of standard condition 17.</p>	
<p>Requirement to detect, prevent and investigate Theft of Gas</p> <p>12B.5 In respect of any premises to which the licensee is registered for the purposes of the Network Code, the licensee must take (and ensure that any Representative takes) all reasonable steps to detect and prevent Theft of Gas.</p>	
<p>12B.6 Where, in respect of any premises to which the licensee is registered for the purposes of the Network Code, the licensee has reasonable grounds to suspect Theft of Gas, it must take (and ensure that any Representative takes) all reasonable steps to investigate that suspected Theft of Gas.</p>	

<p>12B.7 Paragraph 12B.6 does not apply if the Relevant Gas Transporter is required to investigate whether the supply of gas is/was illegally taken under paragraphs 1 and 2 of standard condition 7 of the Gas Transporters Licence.</p>	
<p>The Theft Arrangement</p> <p>12B.8 The licensee must be a party to, comply with, and maintain such arrangement to give effect to the Objective, as the Authority may direct (the “Theft Arrangement”).</p>	
<p>12B.9 The licensee:</p> <p style="padding-left: 40px;">(a) must take such steps as are necessary and within its reasonable control; and</p> <p style="padding-left: 40px;">(b) must not take any unreasonable steps to prevent or delay, to ensure that the Theft Arrangement is implemented by such a date as the Authority may direct.</p>	
<p>12B.10 The licensee must take all reasonable steps to secure and implement changes to the Theft Arrangement and its systems, procedures and processes which are necessary to give full, timely and practical effect to the Theft Arrangement.</p>	
<p>12B.11 The licensee must take all reasonable steps to cooperate with other licence holders where necessary, to facilitate the achievement of the Theft Arrangement.</p>	

Standards for Theft of Gas investigations

12.B12 The licensee must ensure (and ensure that any Representative ensures) that the following standards are met when it is taking any of the steps referred to in paragraphs 12B.1, 12B.2, 12B.3 and 12B.4 of this Condition:

(a) The licensee must take (and ensure that any Representative takes) all reasonable steps to identify whether the Domestic Customer and/or the occupants of the Domestic Premises (in this condition “the relevant premises”) is of Pensionable Age, disabled or chronically sick;

(b) The licensee must take (and ensure that any Representative takes) all reasonable steps to identify whether a Domestic Customer at the relevant premises will have difficulty in paying all or part of the Charges for the Supply of Gas resulting from Theft of Gas;

(c) Where the licensee or any Representative has identified that a Domestic Customer and/or the occupants of the relevant premises is reasonably suspected to be of Pensionable Age, disabled or chronically sick and/or the Domestic Customer at the relevant premises will have difficulty in paying all or part of the Charges for the Supply of Gas resulting from Theft of Gas, the licensee or any Representative must before seeking to Disconnect the relevant premises, as a minimum offer the Domestic Customer to pay those Charges for the Supply of Gas by using a Prepayment Meter, where it is safe and reasonably practicable in all the circumstances of the case for the Domestic Customer to do so;

(d) Where the licensee or any Representative knows or has reason to believe that a Domestic Customer and/or the occupants of the relevant premises is of

The obligation to consider certain categories of domestic customer are already provided for in the Supply Licence and the Energy Safety Net, therefore this merely duplicates those existing requirements.

This is already an existing requirement elsewhere in the licence.

12B.12 (c) difficulty in paying “all or part” of the charges resulting from gas theft is not sufficiently clear. There must be a reasonableness attached to this requirement – for example, what level of debt remaining unpaid would lead to this requirement.

This requirement could contradict or delivery of the Objectives of this condition – by removing one of the mechanisms that would prevent the theft of gas.

A prepayment meter may not also be the most suitable method of paying for the unpaid energy for every customer. It takes away licensee discretion to offer workable alternative that may be more suitable for the customer’s circumstances. Furthermore, by placing a requirement to offer a Prepayment meter instead of

12B.12(d)The Gas Act is sufficiently clear already on the circumstances where disconnection is permitted and other Supply

<p>Pensionable Age, disabled or chronically sick, the licensee or any Representatives must take all reasonable steps not to Disconnect the supply of gas to the relevant premises in Winter;</p> <p>(e) The licensee must have (and ensure that any Representative has) sufficient evidence to establish (on the balance of probabilities) the Statutory Disconnection Power before stopping the supply of gas to a premises on grounds of Theft of Gas;</p> <p>(f) The licensee must have (and ensure that any Representative has) sufficient evidence to establish (on the balance of probabilities) that Theft of Gas has occurred as a result of that Customer’s intentional act or by culpable negligence before requiring payment of all or part of the Charges for the Supply of Gas relating to that Theft of Gas; and</p> <p>(g) The licensee must provide (and ensure that any Representative provides) in plain and intelligible language, clear, timely and accurate information and advice to the Customer about:</p> <ul style="list-style-type: none"> (i) the basis of any assessment made by the licensee (or its Representative) that Theft of Gas has been committed; (ii) the basis for the calculation of any Charges for the Supply of Gas associated with the Theft of Gas made to the Customer; (iii) what steps the Customer should take if they wish to dispute that a Theft of Gas had occurred; and (iv) the steps a Customer may take to reinstate supply if the licensee (or its Representative) has exercised the Statutory Disconnection Power. 	<p>Licence Conditions already protect the vulnerable customer from disconnection during the Winter period, and therefore this is unnecessary duplication.</p> <p>12.B12(f) having to provide sufficient evidence to establish intention or culpability (even on the balance of probabilities) could potentially be difficult in practice -particularly showing intention. What would such evidence look like? Particularly again when read in line with 12B.13.</p>
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<p>12B.13 The licensee must keep (and ensure that any Representative keeps) a record of its compliance with its obligation under this licence condition.</p>	<p>12B.13 There are no details provided of how this requirement would be fulfilled. What records must be kept and for what period of time must they be retained. Who would bear the costs of the retention of the records? This would be an onerous requirement for every investigation, irrespective of whether theft was detected or not.</p> <p>Would Ofgem envisage that this cost would be passed through to the customers who have stolen?</p>
<p>12B.14 The licensee must take all reasonable steps to establish management arrangements that facilitate the licensee's compliance with its obligations under this condition, including, as appropriate, steps to ensure that any Representative, agent and subcontractor of the licensee establish equivalent arrangements.</p>	
<p>12B.15 The licensee must provide to the Authority, in such manner and at such times as the Authority may reasonably require, such Information as the Authority may require or deem necessary or appropriate to enable the Authority to monitor the licensee's compliance with this condition.</p>	<p>Given the ambiguity we see in some of the drafting it is difficult to assess what might be required under this condition.</p>
<p>12B.16 The licensee is not required to comply with paragraph 12B.15 if it could not be compelled to produce or give the Information in evidence in civil proceedings before a court.</p>	