

Harpal Bansal
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Ofgem
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30 April 2012

Dear Harpal,

TACKLING GAS THEFT: THE WAY FORWARD – STATUTORY CONSULTATION

Thank you for the opportunity to respond to Ofgem's statutory consultation on proposed licence conditions to address theft of gas.

The consultation document also contained a proposed Direction under the licence condition (which is now for response by 31 May) and Ofgem's views on an incentive scheme to be set up under industry code procedures. This response substantively addresses only the licence condition changes, as the other items have their own timescales or procedures for response. At this stage, we do however note that we have some concerns about both TRAS and the proposed incentive scheme.

As to the licence changes, we would ask you to consider just a few comments as set out below. Given that Ofgem is awaiting the 31 May consultation results before moving to the next stage, you should have time to revise the drafting if necessary:

- (a) The retention of a broad objective open to a wide range of interpretation, raises again the appropriateness of the current enforcement regime. We do not have a problem with broad-principles based regulation, providing licensees have adequate notice prior to enforcement of any divergence of view as to what the principles mean, and access to appeal rights on the merits;
- (b) In 12B.8, it would be good practice to refer to consultation by The Authority prior to directing the Scheme or any modification thereof;
- (c) In 12B.9 the language "necessary and within its reasonable control" could be interpreted as including an obligation to incur disproportionate cost. For example, this could occur in relation to an over-tight IT deadline, It would be preferable for the obligation to be to "take all reasonable steps";

- (d) We think that the stated policy on winter disconnections of vulnerable people at the end of paragraph 2.26 of your consultation document is a reasonable balance between the need to have a proper sanction for theft and the need to consider such persons' welfare. However, the wording in the condition 12B.12(d) "must take all reasonable steps not to Disconnect the supply of gas to the relevant premises in Winter" seems difficult to fit to that policy. Could you consider adding some such words as " , so far as is compatible with the Objective," after "must"?
- (e) The provision at 12B.12(c) requiring the offer of a prepayment meter is presumably intended to be subject to a broadly similar caveat (that a PPM doesn't need to be fitted for a repeat offender). We would be grateful for Ofgem's confirmation that an offer to fit a PPM needs to be made only once in relation to a particular customer and that, if the PPM itself is subsequently interfered with, no further obligation to offer a PPM arises. Again, the wording could usefully be clarified to pave the way for this interpretation, for example by replacing "where it is safe and reasonably practicable" with some such words as "where it is safe, reasonably practicable and likely to be effective". A further alternative might be to say "consistent with the Objective" instead of "likely to be effective".

I hope you find these comments useful and would be happy to discuss them further with you and your colleagues.

Yours sincerely,

A handwritten signature in blue ink that reads "Rupert Steele". The signature is written in a cursive style and is positioned above a horizontal line.

Rupert Steele
Director of Regulation