



Promoting choice and value

for all gas and electricity customers

Tackling Gas Theft: New requirements for gas suppliers

Decision

Reference: 137/12
Publication date: 31 October 2012

Contact: Andrew Wallace
Team: Smarter Markets
Tel: 020 7901 7067
Email: andrew.wallace@ofgem.gov.uk

Overview:

The existing regulatory framework does not adequately encourage suppliers to be proactive in detecting, investigating and preventing theft of gas. This is important because theft of gas has a material impact on consumers in terms of cost and safety.

In the light of responses to consultation, the Authority has decided to introduce new licence obligations in relation to theft of gas. This document responds to representations received in response to our "Tackling gas theft: the way forward" consultation document and sets out the rationale for this decision. It also sets out the rationale for our minded-to decision to introduce, pursuant to the new licence obligations, a Direction to require gas suppliers to introduce a central service to profile the risk of theft of gas at consumer premises.

Context

This document reflects our commitment, set out in Ofgem's Corporate Strategy and Plan 2010-15, to support industry initiatives to introduce revised theft arrangements and consider whether further action is required.

Our proposals support several key themes outlined in our Corporate Strategy. These include promoting value for customers, protecting the interests of vulnerable customers and helping to maintain security of supply.

The focus of this document is on the gas market. In September 2012, we published proposals for reform in the electricity market as part of a consultation on our strategy for the next electricity distribution price control (RIIO-ED1).

Associated documents

[Modification and Notice of reasons for the decision to modify the Standard Conditions of the Gas supply licence – 12A, 27 and 30, October 2012](#)

[Strategy consultation for RIIO-ED1: Outputs, incentives and innovation - Consultation, September 2012, Ofgem \(Ref: 122/12\)](#)

[Tackling gas theft: the way forward - Consultation, March 2012, Ofgem \(Ref: 35/12\)](#)

[Tackling gas theft: Final Impact Assessment, March 2012, Ofgem \(Ref: 35A/12\)](#)

[Tackling gas theft – Consultation, August 2011. Ofgem \(Ref: 112/11\)](#)

[Tackling gas theft – Draft Impact Assessment, August 2011. Ofgem \(Ref: 112A/11\)](#)

[Theft of Gas and Electricity - Next Steps, January 2005. Ofgem \(Ref: 06/05\)](#)

[Theft of Gas and Electricity - Discussion Document, April 2004. Ofgem \(Ref: 85/04\)](#)

Contents

Executive Summary	1
1. Introduction	2
Structure of this document	3
2. New gas supply licence obligations	4
Licence condition on gas suppliers to tackle gas theft	4
Objective of the licence condition	5
Detect, prevent and investigate theft of gas	6
The Theft Arrangement	7
Standards for theft of gas investigations	8
Definitions and SPAA objective	13
Consequential amendment to SLC27 of the gas supply licence	13
3. Improving theft detection	14
Direction to implement the TRAS	14
Services provided by the TRAS	15
Theft Target	16
Governance of the TRAS	17
The appointment and operation arrangements of the TRAS	18
The reporting requirements for the TRAS	20
TRAS implementation date	21
4. Next steps	22
Implementation and review	22
Other developments	23
Electricity theft	24
Appendices	25
Appendix 1 – Summary of responses	26
Appendix 2 – Draft Direction to implement Theft Arrangement	35
Appendix 3 – Glossary	44
Appendix 4 – Feedback questionnaire	46

Executive Summary

Theft of gas increases the costs paid by consumers and can have serious safety consequences. It also leads to a misallocation of costs among suppliers, which can distort competition and hamper the efficient functioning of the market.

Existing regulatory arrangements do not sufficiently encourage gas suppliers to detect, prevent and investigate theft of gas. In March 2012, we set out reform proposals to help ensure that the regulatory arrangements for tackling gas theft – and the actions taken by participants within that framework – act in the best interests of consumers.

This document sets out our decision to implement new licence obligations on gas suppliers to detect, prevent and investigate theft. Pursuant to this condition, we are also minded to issue a Direction to gas suppliers to implement, by 31 March 2014, a central service to assess the risk of theft of gas at consumer premises and so help target theft investigations.

The changes to the gas supply licence will have effect on and from 7 January 2013. Once the licence condition comes into effect the Authority intends to issue the Theft Risk Assessment Service (TRAS) Direction, a draft of which is set out in Appendix 2.

We have taken into account respondents' views and continue to consider that these measures are a proportionate response to the impact of theft on consumers. We have made some minor changes to the drafting of the licence condition and TRAS Direction since our March proposals but we consider that these are consistent with our overall policy intention.

In our March 2012 document, we also set out a number of other proposals to add impetus to the parallel process of industry-led reform in this area. In particular, we set out principles for an incentive scheme for gas suppliers and support for other complementary measures to improve the arrangements for tackling gas theft (such as an industry code of practice on conducting theft investigations). We invited the industry to develop these proposals further. Progress is now being made in these areas and we welcome this positive engagement. We urge parties to move quickly to implement these measures to deliver benefits for consumers.

Theft of electricity also represents a significant issue. We are currently consulting on applying a similar package of measures in the electricity industry to that identified for gas. This work is incorporated within the broader consultation on the strategy for the next electricity distribution price control arrangements (RIIO-ED1). Responses on our electricity theft consultation are requested by 23 November 2012.

1. Introduction

1.1. In March 2012, we set out our proposals on measures to improve the arrangements for tackling gas theft.¹ This followed consultation with the industry in August 2011.

1.2. Our March proposals, supported by an Impact Assessment², included:

- A statutory notice to modify the standard conditions of the gas supply licence
- A draft Direction to require gas suppliers to implement a Theft Risk Assessment Service (TRAS)
- Principles for an incentive scheme that we considered should be introduced through industry code governance
- Our encouragement of a range of other supporting measures that the industry should consider implementing through industry code governance, for example, a code of practice on theft investigations.

1.3. We received 15 responses to the consultation on the statutory notice and 16 responses on the draft Direction. Respondents were broadly supportive of these proposals and provided comments on the proposed content. A summary of responses is set out in Appendix 1. We have taken respondents' views into account in further developing our measures.

1.4. We have today published a Modification Direction for changes to the gas supply licence.³ These new obligations are due to take effect on and from 7 January 2013.

1.5. We are also minded to issue a Direction to gas suppliers to implement a Theft Arrangement known as the TRAS. A draft of this Direction is set out in Appendix 2 (the TRAS Direction) and we would not expect to make any changes to this direction subject to any new, material issues coming to light. It is currently the Authority's intention to issue the TRAS Direction as soon as the changes to the gas supply licence are in place so that it comes into effect on 8 January 2013.

¹ In this document, and in the new licence condition, theft of gas includes but is not limited to (a) circumstances described in paragraphs 10(1)(a) and 11(2) of Schedule 2B to the Gas Act 1986 (which relate to damage to gas fittings and restoration of supply without consent) in so far as they relate to a gas supplier; and (b) circumstances described in paragraphs 10(1)(b) and 10(1)(c) of Schedule 2B to the Gas Act 1986 (which relate to meter interference and otherwise preventing a meter from duly registering the quantity of gas consumed).

² [Tackling gas theft: Final impact assessment: Supporting document, March 2012, Ofgem \(Ref: 35A/12\)](#). This was our Final Impact Assessment and we do not consider that it requires modification to support the proposals set out in this document.

³ The Modification Direction is published as an associated document to this decision document.

Structure of this document

1.6. This document is structured as follows:

- Chapter 2 sets out our decision to introduce new gas supply licence obligations (SLC 12A and consequential amendments) to deliver improvements to gas theft arrangements
- Chapter 3 sets out our minded-to decision to issue a Direction to require suppliers to implement the TRAS
- Chapter 4 sets out next steps in terms of the implementation of our decision to improve the arrangements for tackling gas theft. It also provides an update on our proposals for reform in this respect in electricity.

2. New gas supply licence obligations

Chapter Summary

This chapter sets out our response to representations on the March proposals and our decision in relation to changes to the gas supply licence on tackling gas theft. The Modification Direction to implement modifications to the gas supply licence, including the licence drafting and changes made since our March proposals, is set out in an associated document.

2.1. The majority of respondents to the March 2012 consultation were supportive of our aim to introduce new licence obligations for gas suppliers. Several respondents commented on the detailed policy proposals and provided drafting suggestions. We have included these, where relevant, in our discussion below. A more detailed summary of responses is set out in Appendix 1.

Licence condition on gas suppliers to tackle gas theft

2.2. The new licence obligations for gas suppliers include the following components. These are discussed in turn below:

- An overarching objective
- Detailed requirements to detect, prevent and investigate theft
- A requirement to introduce a 'Theft Arrangement' as directed by the Authority
- Specific measures on the standards for theft investigations
- New definitions
- Changes to the Supply Point Administration Agreement (SPAA)⁴ objectives
- Consequential amendments to SLC27.

2.3. In the light of consultation responses, we have made some minor amendments to the drafting of the changes to the gas supply licence set out in our March consultation. These include presentational changes and changes to the numbering and sub-titles used in the new licence condition to ensure consistency with other conditions.⁵ These do not materially affect the policy intent of the modification.

⁴ An agreement to which all domestic gas suppliers and all transporters are required to accede. It sets out the inter-operational arrangements between gas suppliers and transporters in the GB retail market.

⁵ In particular, the new licence condition will be numbered SLC12A rather than SLC12B.

Objective of the licence condition

Respondents' views

2.4. There was some support for our proposal to introduce an objective-based licence condition for gas theft. Most respondents did not express views for or against this proposal. Several respondents continued to consider that an objective-based licence obligation was unnecessary and duplicated the requirements set out later in the proposed new licence condition.

2.5. One respondent considered that the obligation was too broad and the requirements to detect and prevent theft were unachievable. Others requested guidance on how Ofgem would seek to enforce an objective-based licence requirement. One respondent suggested that Ofgem should first discuss its concerns with the supplier before undertaking steps to enforce the objective.

Decision

2.6. We continue to consider that gas suppliers should have an overarching objective to detect, prevent and investigate theft individually and by working together where appropriate. In seeking to achieve this, we consider that gas suppliers should deal with consumers in a fair, transparent, not misleading, appropriate and professional manner. We also consider that suppliers should take into account whether a domestic customer is of pensionable age, chronically sick or disabled, or will have genuine difficulty in paying charges associated with theft of gas.

2.7. An overarching objective⁶ allows us to take a less prescriptive approach as to how suppliers should comply with these requirements, while protecting consumers' interests.⁷ To complement this, we continue to consider that there is merit in setting out, on the face of the licence, detailed measures that will contribute towards the achievement of this objective. We do not agree that the objective is too broadly drafted and therefore unachievable. In particular, we note that suppliers are required to take all reasonable steps to secure achievement of the objective. Implicit in this is the understanding that suppliers are not required to take all possible steps to secure the objective in every instance, only all such steps as are reasonable in the circumstances. Any alleged breach, leading to an investigation by Ofgem, will be assessed on a case-by-case basis. Suppliers would be expected to provide clear evidence of the steps taken and demonstrate that it would have been unreasonable to have taken any additional steps.

2.8. We note the request from some respondents for further information on how Ofgem would seek to enforce an objective-based licence condition. Ofgem takes a proportionate approach to enforcement and we prioritise our work accordingly. A

⁶ We would note that Ofgem has also introduced objective-based licence conditions in other contexts, for example in gas and electricity supply licence SLC25: Marketing Gas to Domestic Customers.

⁷ In particular, we note that matters such as theft detection methods may evolve over time.

decision on whether or not to open an investigation would be taken in accordance with our enforcement guidelines on complaints and investigations which are applicable at that time. In particular, we note that our current enforcement guidelines⁸ state: "*When Ofgem has received or is assessing a complaint, it may contact the company that is the subject of the complaint to ask them to clarify details of the complaint or allegation or to provide information in order that Ofgem might consider whether there is a case to answer*".

2.9. We have made some minor amendments to this part of the new licence condition. In particular:

- In SLC12A.1(b)(ii) we have removed the reference to the term "relevant premises" to prevent confusion with that term as defined and used later in the new licence condition. Our drafting now at the start of 12A.12 refers to the supplier taking steps at a "particular premises" in order for the drafting to be clear and the definition of "relevant premises" in 12A.12(a)(i) to convey the appropriate meaning. We would note for the avoidance of doubt that Ofgem would ordinarily only consider taking licence enforcement action in relation to compliance at an individual premises in very exceptional circumstances.
- SLC12A.4 previously referred to the supplier's obligations under paragraphs 1 and 2 of that condition. We have removed the reference to paragraph 1 as this does not contain an explicit obligation.

Detect, prevent and investigate theft of gas

Respondents' views

2.10. There was some support for our proposal to require gas suppliers to detect, prevent and investigate suspected theft. However, many respondents did not express views for or against this proposal. Two respondents considered that our proposals duplicated the requirements to detect, prevent and investigate theft of gas established by the proposed objective section in the licence.

2.11. One respondent disagreed with our proposal in the March 2012 document to remove the word "fully" when referring to investigating theft and suggested that the requirement to undertake a thorough investigation should be reinforced through the proposed new Gas Theft Code of Practice.

Decision

2.12. As stated earlier, the explicit obligations set out in this section seek to provide clarity for suppliers on the key requirements that they must undertake. In particular, when they are required to take action and when this is the responsibility of another

⁸ [Enforcement guidelines on complaints and investigations: Guidelines, June 2012, Ofgem \(Ref: 82/12\)](#)

party, such as the gas transporter. We therefore consider that these obligations should be retained.

2.13. We do not agree that we should reinstate the word “fully” when referring to investigating theft. We continue to consider that it is implicit that suppliers will be required to investigate fully any incidences of gas theft and is therefore unnecessary. This is also supported by the requirement to secure the achievement of the objective in relation to theft investigations.

2.14. We welcome the view that additional detail on conducting thorough investigations should be set out in the proposed new Gas Theft Code of Practice.⁹ We support this view and have been working with the industry and Consumer Focus with this aim.

The Theft Arrangement

Respondents’ views

2.15. There was support for our proposal to include the ability for the Authority to direct suppliers to be a party to, comply with and maintain an arrangement that would give effect to the overarching objective of SLC12A. We discuss respondents’ views on the content of our proposed TRAS Direction in the next chapter.

2.16. Several respondents suggested changes to improve the process for amending any Direction issued by the Authority. Other respondents suggested changes to ensure that any arrangement in place did not place a disproportionately high burden on gas suppliers.

Decision

2.17. We have reviewed the role of a direction as the mechanism to bring into effect the Theft Arrangement. We remain of the view that this approach is fit for purpose. In particular, the flexibility to amend the TRAS Direction will be helpful if, in the development of the TRAS, it is identified that changes should be made to allow the TRAS to develop in a more effective and efficient manner.

2.18. It is our intention, however, that the obligations set out in the TRAS Direction should be maintained in the short term only, until suitable arrangements are put in place by industry. With this in mind, we have introduced a sunset clause so that the direction will fall away on 7 January 2016, three years after it is intended to come into effect. We may consider revoking the TRAS Direction in advance of this date to avoid dual governance if, for example, the rules set out in the direction are incorporated in an industry code (to which all gas suppliers are required to comply)

⁹ A Gas Theft Code of Practice is being developed under SPAA. The code is currently proposed to go live from February 2013.

to our satisfaction. If these conditions were not met then we would expect to consult on amending the TRAS Direction so that it continued to have effect after 7 January 2016. This places the onus on industry to develop appropriate arrangements and the Authority cannot fetter its discretion as to the action it would take in this respect at this stage.

2.19. Nonetheless, we recognise the concerns raised by respondents on the change control arrangements for the TRAS Direction. We note that SLC2 of the gas supply licence already sets out a requirement on Ofgem to consult in respect of amendments or revocation of directions.¹⁰ While not explicitly stated, we would also expect to consult on issuing any new direction under the licence, as we have done in this instance.

2.20. The rights of suppliers to appeal to the Competition Commission decisions taken by the Authority to proceed with the modification of licence conditions are set out in section 23B of the Gas Act 1986. We do not consider that, as suggested by one respondent, these rights extend to directions. We have sought, however, to clarify the manner in which we would seek to amend the TRAS Direction through additional provisions set out on the face of the TRAS Direction.

2.21. We have reviewed a proposal from one respondent to amend SLC12A.9. This party was concerned that the requirement may otherwise place a disproportionately high cost on gas suppliers. It suggested that suppliers should undertake “reasonable steps” rather than “such steps as are necessary and within its reasonable control” to ensure that the Theft Arrangement is implemented by such a date as the Authority may direct. We consider that the proposed change provides a lower threshold for suppliers. Our decision is to retain the existing drafting. Parties may seek to approach Ofgem if they consider that the proposed implementation date of 31 March 2014 is no longer achievable or realistic (for example if it was not economic or efficient). If compelling evidence is provided then we may seek to amend the date in the TRAS Direction. We consider that this sends a strong signal to suppliers on the actions that they must undertake to deliver the TRAS within a reasonable timescale.

Standards for theft of gas investigations

2.22. There was some overall support for our approach on standards for theft investigations. However, this was the area of the licence condition that received the most comments from respondents. For ease of navigation, we have divided our assessment into the following sections:

- Debt and disconnection
- Evidential standards and information to consumers
- Monitoring and reporting

¹⁰ See paragraph 2.7 in SLC 2: Interpretation of standard conditions.

Debt and disconnection

Respondents' views

2.23. Two respondents requested guidance on the level of debt required for a supplier to consider that a domestic customer would have difficulty paying. One respondent requested clarification on a supplier's ability to consider the funds available to other occupants of the premises when determining a domestic customer's ability to pay.

2.24. Three respondents requested further guidance on when it would be reasonable to disconnect a domestic customer during the winter months when that customer, or the occupants of the premises, was of pensionable age, disabled or chronically sick. One supplier considered that the proposed restrictions on disconnecting these domestic customers during winter were an unnecessary duplication of similar provisions elsewhere in the gas supply licence.

2.25. One respondent proposed an amendment to clarify that a consumer should not be able to claim the protections from disconnection if they refused to cooperate with the supplier's reasonable attempts to identify if they were of pensionable age, disabled or chronically sick.

2.26. One respondent suggested that the licence should require suppliers to set manageable repayment rates that would deter consumers from reoffending.

2.27. One supplier suggested that several of the consumer protections set out in this proposed section of the licence were already covered by the Energy UK Safety Net¹¹ and should therefore be removed.

Decision

2.28. We have considered the request for guidance on when a domestic customer would have difficulty repaying charges.¹² We are sympathetic to suppliers' concerns that such customers may present a greater level of risk of being able to recover charges. We therefore consider that a supplier could reasonably seek to recover charges at a faster rate than may be the case for other debt. However, it would be sensible to set such charges at a level that can be reasonably met by the domestic customer without having an undue impact on their overall health and personal welfare. We would be happy to work with suppliers and Consumer Focus to help refine this issue further in the proposed new Gas Theft Code of Practice.

2.29. We support the view that suppliers should not be unduly restricted to only consider the direct income of the named domestic customer when assessing ability to

¹¹ Also known as the ERA Safety Net (see www.energy-uk.org.uk).

¹² This would trigger the requirement to offer to recover the debt through a prepayment meter and take into account the customer's ability to pay when setting repayment rates.

pay. We agree that this could lead some customers to make certain choices about the named party on supply contracts. The licence obligations as drafted would not prohibit a supplier from taking into account all sources of income reasonably available to the domestic customer. This may include, for example, the income of spouses living at the premises and other occupants depending on the circumstances. We understand that this is the approach adopted by suppliers in their consideration of ability to pay under SLC27.¹³ We do not consider there to be any reason to depart from this practice under the theft provisions. We note that suppliers may also wish to clarify this further in the proposed new Gas Theft Code of Practice.

2.30. We agree that it would not be appropriate to prohibit disconnection if a consumer was deliberately obstructing a supplier's reasonable attempts to identify whether the consumer was vulnerable or would have difficulty paying. The licence condition therefore establishes a requirement for the supplier to take "all reasonable steps" to identify consumers falling within these categories. We consider that in some circumstances a supplier may make all reasonable attempts to obtain information as to the status of the consumer but not be able to obtain it. We consider that this issue is therefore appropriately dealt with in the licence condition. In investigations into alleged breach, we would consider, on a case-by-case basis, the steps taken by the supplier to determine the consumer's status and why it may not have been possible for the supplier to obtain relevant information. We are however willing to work with suppliers and Consumer Focus to add any further detail that might be considered helpful through the proposed new Gas Theft Code of Practice.

2.31. We do not agree with the respondent who considered that the protections identified for domestic customers are an unnecessary duplication of provisions in the rest of the licence. As set out in our August 2011 consultation, we consider that the current restrictions on disconnection set out in SLC27 only apply where there is a debt. In the context of gas theft, a supplier may choose to disconnect prior to making a request for charges. In this case, where there was no pre-existing debt, the prohibitions on disconnection under SLC27 would not apply. We consider that SLC12A sets out appropriate protections that are specifically drafted with theft of gas in mind and are not dependent on whether the domestic customer has an outstanding debt.¹⁴

2.32. SLC12A.12(d) places a requirement on suppliers to take all reasonable steps not to disconnect domestic customers that are of pensionable age, disabled or chronically sick during winter. In response to the request for guidance, we continue to consider that it may be reasonable to consider disconnection where the customer is a repeat offender and all reasonable steps have been taken to prevent the theft from reoccurring or where there is a material safety issue. As set out in our March 2012 document, we would expect suppliers to notify the relevant authorities (eg Social Services) in that case. We are willing to work with Consumer Focus and

¹³ Gas Supply Licence SLC27: Payments, Security Deposits and Disconnections and final Bills.

¹⁴ Our amendments seek to address the perverse outcome that some customers with outstanding debt were afforded greater protection than others that did not have a debt with their supplier.

suppliers to further develop any detail required on these rules in the proposed new Gas Theft Code of Practice.

2.33. As noted earlier, we agree with the view that the repayment rates set by suppliers should be set at an appropriate level. In our March 2012 proposals, we therefore retained the requirements of SLC27.8 that had this effect. For clarity, and for consistency, we have instead amended the drafting to include this provision explicitly within SLC12A.

2.34. We do not agree that we should remove certain protections in the light of the commitments made by some suppliers under the Energy UK Safety Net. Our intention is to set out consumer protections to be adopted by all suppliers.¹⁵ In addition, Energy UK has confirmed that the Safety Net does not cover consumers that have taken an illegal gas supply.

Evidential standards and information to customers

Respondents' views

2.35. One respondent argued for the removal of requirements relating to consumer communications and the evidential standards that a supplier must adhere to before disconnecting or making charges. They argued that these requirements would replicate provisions already in either the Gas Act 1986 or other consumer protection legislation.

2.36. One respondent suggested an amendment to require the supplier to provide the consumer with the basis for the calculation of any charges "resulting from" as opposed to "associated with" a theft of gas.

Decision

2.37. We consider that the evidential standards set out in SLC12A.12(e) and (f) should be retained. The Gas Act 1986 makes damage to, and interference with, meters a criminal offence. However, it does not refer explicitly to the evidence that a supplier would be required to produce prior to disconnection. As noted in our guidance on best practice with disconnection powers¹⁶, relevant case law states that before disconnection powers are exercised, the evidence available must be sufficient to establish that it was more likely than not that a relevant offence has been committed. While the Gas Act 1986 operates to give a power to the supplier, the proposed licence condition places a restriction on carrying out such a power which is consistent with case law and our guidance and gives Ofgem powers to enforce in this respect in the interests of consumers.

¹⁵ Not all domestic suppliers have signed up to the Energy UK Safety Net.

¹⁶ [Open letter on theft disconnections, October 2010, Ofgem.](#)

2.38. While we have borrowed wording from consumer protection legislation in relation to consumer contracts for the purposes of our licence condition, we do not think that the provisions on consumer communications in SLC12A.12(g) duplicate provisions under the Gas Act 1986 and consumer protection legislation. They have therefore been retained.

2.39. We do not agree with the proposal to amend SLC12A.12(g)(ii) to limit the provision of information to the consumer to the basis of any charges made resulting from the theft of gas. We consider that this may unnecessarily constrain the information provided to the consumer and not include, for example, any associated costs linked to meter replacement or investigation costs. Without such information, a consumer may not be able to make an informed judgement on whether such charges are fair.

Monitoring and reporting

Respondents' views

2.40. Three respondents argued that the obligations in relation to the recording and provision of information to the Authority should be removed as they duplicated provisions already set out in SLC5 of the gas supply licence.¹⁷ One of these respondents considered that it was unclear what information would be collected.

Decision

2.41. Our proposals in SLC12A.13 to 16 seek to ensure that suppliers keep a record of their actions to allow us to monitor and assess any concerns or complaints in respect of their actions on theft of gas. We do not agree with the views that these duplicate the information collection and reporting provisions set out elsewhere in the gas supply licence. Our proposals are intended to complement SLC5. They are very specific to the actions of gas suppliers in meeting their gas theft obligations under SLC12A and provide additional clarity on our monitoring requirements for this part of the licence. We have also worked with the industry to help define reporting requirements under the proposed new Gas Theft Code of Practice. The information specified in this proposed code of practice is expected to be reported to Ofgem on an annual basis.

Minor amendments

2.42. We have made some further minor amendments to the drafting of this part of the licence. In particular:

- The description of the consumer groups for whom specific protections would apply are repeated throughout SLC12A.12. We have therefore defined these

¹⁷ SLC 5: Provision of Information to Authority and data retention.

terms upfront in SLC12A.12(a) and then referred back to these clauses as appropriate in the rest of this paragraph

- In SLC12A.12(d) we have removed the reference to “the supply of gas to” in relation to the disconnection of relevant premises in winter. This is already included within the term “Disconnect”, which is used in this sub-paragraph
- We have amended the reference to where theft of gas “has been committed” to where it has “occurred” in SLC12A.12(g)(i). This is a minor change to improve consistency with the language used in the rest of this sub-paragraph.

Definitions and SPAA objective

2.43. No substantive comments were received on our proposal to introduce new definitions in the gas supply licence to support the draft new licence condition. Similarly, no substantive comments were received on our proposed new objective for the SPAA industry code to secure compliance with the gas supply licence condition on tackling gas theft.

Consequential amendment to SLC27 of the gas supply licence

2.44. Our licence modification proposals sought to clarify that certain provisions of SLC27 (Payments, Security Deposits, Disconnections and final Bills) would not apply in relation to gas theft. We continue to hold this view. However, in the light of our proposal to replicate the provisions of SLC27.8 within SLC12A.12, we have made a minor amendment to the way in which this carve out is described.

3. Improving theft detection

Chapter Summary

This chapter sets out our minded-to decision to direct suppliers, pursuant to SLC 12A.8 once it enters into force, to implement the TRAS. A draft of the TRAS Direction is set out in Appendix 2. It is our intention to issue the TRAS Direction once SLC 12A.8 enters into force and for it to have effect from 8 January 2013.

3.1. In this chapter, we assess respondents' views on our March 2012 draft Direction to require suppliers to implement the TRAS. We also set out our minded to decision on the TRAS Direction.

3.2. Respondents were generally supportive of our proposals. Several commented on the detailed policy proposals and provided drafting suggestions. We have included these, where relevant, in our discussion below. A more detailed summary of responses is set out in Appendix 1.

3.3. For the reasons set out in the March 2012 consultation, we continue to consider that there are consumer benefits in introducing a central service to profile the risk of theft, and potentially other sources of unrecorded gas. These benefits are likely to arise from pooling data from all suppliers and other sources to target physical investigation of suspected gas theft more efficiently. We also consider that there are benefits from the TRAS identifying the level of theft investigation activity that the industry should undertake in the best interests of consumers.

3.4. The TRAS Direction sets out the high-level regulatory framework for the operation of the TRAS. Suppliers will then need to implement the TRAS through appropriate industry governance mechanisms, for example under the SPAA.

Direction to implement the TRAS

3.5. We have made a number of general improvements to the TRAS Direction. For example, we have:

- Removed the previous drafting in Part A on terms used in the TRAS Direction. These terms are now set out in the recitals
- Clarified that any requirement on the TRAS is a requirement on a licensed supplier to take all reasonable steps to ensure that the TRAS complies with that requirement. This is consistent with SLC 12A.8, which places the obligation on the licensee to be a party to, comply with and maintain the Theft Arrangement.

3.6. Where our drafting changes are more minor, we have not described them in this chapter.

Services provided by the TRAS

Respondents' views

3.7. Several respondents were concerned that the TRAS may make onerous data requests on suppliers to fulfil their service requirements. One supplier requested that the services provided by the TRAS be extended to cover the entire role of theft detection, prevention and investigation. A further respondent suggested that the TRAS should be required to provide a 24-hour hotline service for third parties to report suspected theft.

3.8. One respondent considered that there may be duplication between the requirements of the TRAS to identify, collect, scrutinise and evaluate information¹⁸ and the activities of the AUGÉ.¹⁹

Decision

3.9. We recognise the concerns raised on the potential consequences of the TRAS making onerous data requests. We note that the TRAS should carry out its assessment of the risk of theft at premises in an efficient and economical manner²⁰ and we would expect this to include an assessment of the proportionality of any request that it made for data from suppliers. In addition, the requirement on a supplier to provide information to the TRAS is a requirement to provide the information that the TRAS may reasonably require to profile the risk of theft of gas.²¹ Where a request is unduly onerous, it may therefore not be reasonable for a supplier to be required to provide data. In deciding whether to request or provide data, we would expect the TRAS and suppliers to consider what was reasonable in terms of the potential benefits for consumers.

3.10. We do not agree that the scope of the TRAS should be extended to cover all aspects of gas theft prevention, detection and investigation. As set out in our March 2012 assessment of the NRPS proposal²², we are concerned that such an approach may unnecessarily impact on competition in the provision of revenue protection services.²³

¹⁸ See sub-paragraph 7(a) in the TRAS Direction in Appendix 2

¹⁹ The Allocation of Unidentified Gas Expert (AUGE) is an independent expert appointed to determine a methodology for the allocation of unaccounted for gas.

²⁰ See sub-paragraph 5(a) in the TRAS Direction in Appendix 2.

²¹ See paragraph 20 in the TRAS Direction in Appendix 2.

²² The NRPS (or National Revenue Protection Scheme) is a proposal developed by some gas suppliers. It aimed to increase theft detection by establishing a central database to profile theft risk at each supply point and provide services, such as debt recovery and theft investigation, for use by suppliers in tackling theft.

²³ In paragraph 3.10 of the March 2012 document we also noted that "At this stage, we do not consider that it has been sufficiently demonstrated that intervening in the market for these services (other than data analysis) is necessary, although we recognise that it may be a concern for certain parties in the market, for example small suppliers."

3.11. We agree that the TRAS may be able to provide services to help identify suspected theft of gas such as operating a 24-hour telephone tip-off service. We do not consider that the TRAS Direction would prevent the TRAS from providing this service. As set out in the March 2012 document, we support the addition of such services to help theft detection. However, we consider that industry is best placed to determine the appropriate route for their development and governance.

3.12. The AUGE undertakes analysis on existing theft data to allow it to make a judgement on the amount of gas theft in each market sector. We do not consider that it replicates the TRAS' functions to profile risk of theft at specific premises and to provide information to suppliers to target and support theft investigations. Nonetheless, we would encourage suppliers to explore any potential synergies on the provision of data between, or to, the AUGE and TRAS that may help improve the efficiency of their respective functions.

Theft Target

Respondents' views

3.13. One respondent argued that the true level of theft should be reliably identified before introducing the Theft Target. Another respondent suggested that the Theft Target should be sufficiently flexible so that it could respond to changes in how theft occurs and new methods of theft identification. One respondent argued that suppliers with less than 250,000 customers should be exempted from any requirements linked to the Theft Target.

Decision

3.14. The purpose of the Theft Target is to identify the amount of theft that the industry, when taken as a whole, should seek to detect in the best interests of consumers.²⁴ Our expectation is that, at some point, it will no longer be of overall benefit to consumers to conduct additional physical investigations. We consider that this is the point at which the Theft Target should be set.²⁵ This is a 'bottom up' approach, which does not require a full understanding of the total amount of theft in the market. In our view, potential disagreements on an approach based on the total amount of theft could delay the implementation of any Theft Target.

3.15. We are not intending for the TRAS to provide a separate Theft Target calculated for each supplier. The purpose of the target is to identify, across the industry, what level of theft it is in consumers' interests to seek to detect. Once the

²⁴ We continue to consider that, as set out in our March 2012 document, the target could initially be set by reference to the best performing suppliers in the market. Based on our analysis we consider that a Theft Target in the order of 6,000 theft detections per year would meet this aim.

²⁵ The calculation of the Theft Target should take into account factors such as the impacts of theft on consumers, the cost of investigations and the expected success rate in identifying theft and recovering charges. We consider that the Theft Target should evolve over time, as more information becomes available and represent the best outcome for consumers at that time based on the evidence available.

Theft Target has been identified, the TRAS, using its risk profiling of premises, can provide information to suppliers on which sites should be investigated to best meet this target.

3.16. If theft is unevenly distributed, some suppliers may be expected to investigate proportionally more sites than others to reflect their portfolio characteristics. This approach is likely to better target resources across the industry with more effort being made where there is a higher chance of theft detection. We consider that this would be more efficient than asking suppliers to find the same proportion of theft on their potentially diverse portfolios.²⁶

3.17. We do not agree that smaller suppliers should be excluded from the calculation of the Theft Target and any associated requirements. We consider that it is important for theft detection to be a shared requirement. Our aim is to prevent weaknesses in the industry's approach that could potentially be exploited by those consumers that intend to take an illegal gas supply. By establishing the TRAS, we aim to improve the efficiency and ability of all parties (including small suppliers who may be less able to benefit from economies of scale in their revenue protection activities) to access data to help target theft investigations.

Governance of the TRAS

Respondents' views

3.18. Many respondents expressed concerns about using SPAA as the governance mechanism for TRAS.²⁷ This was because non-domestic suppliers are not currently required to sign and comply with this industry code.

3.19. One respondent argued that governance and quality assurance activities should be independent from the daily management of the TRAS.

Decision

3.20. We share respondents' concerns on the current structure of the SPAA governance arrangements. We are aware of two modification proposals which seek to amend the voting rights of parties under the SPAA. These proposals seek to amend the weighting of non-domestic suppliers' voting rights in relation to changes to the SPAA. We are separately also requesting views on whether non-domestic suppliers should be required, as a condition of their licences, to become parties to and comply with the SPAA.²⁸

²⁶ Suppliers will be able to request further information from the TRAS to support additional investigations if they wish.

²⁷ Note that we are not requiring suppliers to use the SPAA as the governance mechanism for the TRAS. This is one option that suppliers may consider.

²⁸ [Code Governance Review \(Phase 2\) Proposals: Consultation, September 2012, Ofgem \(Ref: 123/12\)](#)

3.21. We welcome the offer by the SPAA Exec to establish a workgroup to take forward the development of the TRAS and that an invitation to participate in this group will be extended to include all non-domestic suppliers. This is a welcome step and we would encourage all suppliers to participate in this group while the issues on SPAA governance are being resolved. We would encourage this group to establish, at an early stage, the mechanisms for developing the TRAS in advance of non-domestic suppliers having a formal role in SPAA governance.²⁹

3.22. We agree that any change control arrangements and assurance of the performance of the TRAS should be undertaken independently from its ownership and operation. While it has always been our intention³⁰, we have amended the TRAS Direction to make clear that all reporting and quality assurance is to be provided by a third party.³¹

3.23. We have deleted the paragraph of the TRAS Direction consulted on in March which set a requirement to take all reasonable steps to develop, maintain and operate the TRAS in accordance with the TRAS Direction. On reflection, we consider that this requirement is already established in the TRAS Direction.³²

3.24. We have also deleted the paragraph of the Proposed Direction which prohibited a supplier from impairing the ability of the TRAS undertake its services. We consider that this is already covered in the Direction.³³

The appointment and operation arrangements of the TRAS

Respondents' views

3.25. One respondent suggested that the proposed requirement for the party appointed as the TRAS to be independent of any gas supplier or transporter was unduly restrictive. Another respondent questioned what would happen if theft of gas reduced to such an extent that it was no longer economical to support the operation of the TRAS.

²⁹ We recognise the risk that changes to the SPAA governance arrangements and compliance requirements may not be made soon, or at all. While we have not required that the TRAS be developed through SPAA, we welcome the efforts now being made under that agreement to develop the TRAS proposal. We would expect to maintain the TRAS Direction until the SPAA governance and compliance arrangements (or equivalent arrangements under a different industry code) were in place and all suppliers are required to comply. In the meantime and going forwards we would expect the industry, under SPAA, or any alternative industry code, to ensure that the views of all gas suppliers were taken into account in the development of the TRAS. This principle is supported by SLC12A.11 which requires suppliers to cooperate to facilitate the achievement of the TRAS. It is also supported by paragraph 17 in the TRAS Direction which requires suppliers to ensure that there are effective change control arrangements in place for suppliers to seek amendment to the rules for the operation of the TRAS.

³⁰ See paragraph 35 in the TRAS Direction in Appendix 2, which has not been amended.

³¹ In paragraphs 31 and 34 in the TRAS Direction in Appendix 2, we have clarified that the TRAS must arrange for the preparation and publication of reports so that this can be undertaken by a different party.

³² See paragraph 2 in the TRAS Direction in Appendix 2.

³³ See paragraphs 2 and 6 in the TRAS Direction in Appendix 2.

3.26. One respondent requested further guidance on the proposed requirement for the contract with the TRAS to be capable of termination where it is inappropriate for the TRAS provider to continue to provide certain defined services.

Decision

3.27. The restrictions on the ownership and interests between the TRAS and suppliers and transporters are asymmetric as drafted. They currently restrict the TRAS from having interests in suppliers and transporters. They do not restrict suppliers and transporters from having interests in the TRAS.

3.28. We do not intend to amend the drafting at this stage. As an existing provider of central data services to the gas industry, we can see benefits in Xoserve being permitted to bid to provide the TRAS services. This is subject to any concerns on their current governance and ownership structure being resolved.³⁴ Were we to have concerns that suppliers or transporters may be able to exert undue influence over the activities of the TRAS, such that the independence of the TRAS is compromised, then we may consider whether the TRAS Direction remains appropriate in this respect.

3.29. If evidence was present to Ofgem that the TRAS was no longer operating in consumers' interests then we would expect to consult on the options for revocation of the TRAS Direction and/or an alternative Theft Arrangement. We consider that the Theft Target would be a helpful barometer of the benefits that could be achieved through the TRAS. For example, where the Theft Target was at, or close to zero, then this may indicate that its added value is low.

3.30. The TRAS Direction³⁵ seeks to ensure that suppliers are able to take appropriate action against the provider of the TRAS services if its performance was inadequate. In doing so, we aim to protect consumers' interests by allowing an alternative service provider to be appointed. As noted above, the intention behind the TRAS Direction is to provide a high level framework; we consider that the precise contractual terms should be developed by suppliers as part of their work to implement the TRAS.

3.31. We have made some minor changes to this part of the TRAS Direction. In particular:

- In paragraph 28(a) of the version of the TRAS Direction consulted on in March³⁶ we have removed the reference to an ongoing management standard for the TRAS. In doing so we have clarified that the intent of the obligation is to establish

³⁴ Xoserve is jointly owned by the five major gas distribution Network companies and National Grid's gas transmission business. Xoserve's ownership and governance is current the subject of an Ofgem review. See [Open letter: Review of Xoserve - Ofgem conclusions, published Jan 2012](#).

³⁵ See sub-paragraph 26(b) in the TRAS Direction in Appendix 2.

³⁶ Now paragraph 23 (a) in the TRAS Direction in Appendix 2.

standards for the procurement of the TRAS. We consider that management standards are implicit within the other requirements of the TRAS.

- We have amended paragraph 29 of the version of the TRAS Direction consulted on in March³⁷ to clarify the intent behind the provision which is that the licensee should not favour one party over another in appointing the TRAS. A similar provision in relation to the operation of the TRAS is already set out elsewhere in the TRAS Direction.³⁸

The reporting requirements for the TRAS

Respondents' views

3.32. Several respondents considered it important for there to be regular, independent audits to provide performance assurance on the activities of suppliers and the TRAS. Another respondent argued that supplier performance should be assessed and published where appropriate. A further respondent noted that regular reporting would enable benchmarking of performance.

Decision

3.33. We support the requirement for independent audits. We have noted earlier a change to the Direction to make clear that the TRAS is to appoint a third party to conduct performance assurance.

3.34. At this stage, we are not proposing to require the performance of individual suppliers to be published by the TRAS. While we support measures to improve supplier performance, it is not clear at this stage whether publication of individual supplier performance is the correct approach or may have any unintended consequences. We suggest that this issue be considered further during the development of the TRAS.

3.35. We support the need for summary performance information to be published. We propose to retain a requirement on the TRAS to prepare management information reports³⁹ and for these to be published at least once a year.⁴⁰ We do not propose to require this information to be published more frequently at this stage although we suggest that this is also considered further during the development and initial stages of the TRAS.

³⁷ Now paragraph 24 in the TRAS Direction in Appendix 2.

³⁸ See paragraph 29 in the TRAS Direction in Appendix 2.

³⁹ See sub-paragraph 31 (a) in the TRAS Direction in Appendix 2.

⁴⁰ See paragraph 34 in the TRAS Direction in Appendix 2.

TRAS implementation date

Respondents' views

3.36. There was some support for our proposed TRAS implementation date of 31 December 2013. Others respondents considered that this date was too challenging.

Decision

3.37. We recognise that it will take time to implement the TRAS. In recognition of the expected time taken to implement the TRAS of 18 months, the expected date for entry into force of the TRAS Direction and the limited work undertaken by the industry to progress the TRAS since March 2012, we have amended the proposed implementation date to 31 March 2014.

3.38. If during the development of the TRAS, we receive evidence that this date is no longer achievable for reasons outside of the reasonable control of gas suppliers, then we will consider whether to amend this date. For the avoidance of doubt, we do not consider that inaction, or inadequate planning and resource provided by suppliers, would be a justifiable reason for such delay.

4. Next steps

Chapter Summary

This chapter summarises the implementation timetable for our gas supply licence modifications and sets out when we would expect to issue the TRAS Direction. We also summarise progress on the other industry measures and highlight our progress in consulting on improvements to the arrangements for tackling electricity theft.

Implementation and review

4.1. The Modification Direction amending the standard conditions of the gas supply licence has been published (and provided to supply licensees) together with this decision document on 31 October 2012.

4.2. Pursuant to section 23(9) Gas Act 1986, the date on which the licence modifications may take effect may not be less than 56 days from the publication of our decision to proceed with the making of the modifications. Accordingly, subject to any direction from the Competition Commission pursuant to paragraph 2 of Schedule 4A of the Gas Act 1986, the supply licence modifications will come into effect on 7 January 2013.⁴¹

4.3. The Authority does not have the vires to issue the TRAS Direction until SLC 12A, and more specifically paragraph 8 of that condition, has taken effect. Accordingly, the TRAS Direction set out in Appendix 2 necessarily remains in draft. We do not expect to make any changes to the direction subject to any new, material issues coming to light. The Authority intends to issue this TRAS Direction as soon as SLC 12A is in place so that it would have effect from 8 January 2013.

4.4. Parties affected by the licence modification have the right to seek permission to appeal the changes to the Competition Commission. Any application for permission to appeal is not to be made after the end of 20 working days beginning with the first working day after the day on which the decision is published. Parties should seek their own external advice if they are considering this course of action.

4.5. As part of our ongoing monitoring work, we will evaluate the impact of the new licence conditions. To do this, we may need to collect specific information from suppliers on an ad hoc basis. In addition, as noted earlier, we are working with gas suppliers under the proposed new Gas Theft Code of Practice to establish annual reporting requirements.

⁴¹ We have chosen a longer period than the statutory minimum given the close proximity to the Christmas and New Year holiday period.

Other developments

4.6. In our March 2012 document, we set out our views on a number of other areas related to gas theft. We continue to consider that these measures should be developed to improve further the arrangements for tackling gas theft. An update is provided below:

- British Gas has indicated that it will bring forward proposals to incentivise gas suppliers to detect theft in line with the principles set out by Ofgem. It aims to introduce these arrangements through a modification to the UNC. To help facilitate this development we will publish shortly a version of the model that we used to support our analysis on the commercial impacts of gas theft.
- To complement any new incentive scheme, we propose to consult on options for removing the effect of the current Reasonable Endeavours Scheme for gas suppliers. We would expect this consultation to be published in Q1 2013.
- A Gas Theft Code of Practice has been developed under SPAA. This code sets out obligations and best practice for gas suppliers and transporters on theft investigation procedures. It is expected that, by the end of this year, the Code of Practice will be sent to Ofgem for a decision. The ambition of the development group is that the code would be implemented in February 2013.
- To help facilitate the development of the TRAS, the SPAA Executive Committee has agreed to establish a new working group. All non-domestic suppliers that are not currently parties to the SPAA will be invited to attend this group.

4.7. In our March 2012 document, we noted that we were not yet prepared to amend the current compensation arrangements for transporter activities in seeking to address gas taken in the course of conveyance. While we recognised that transporters might be required to undertake greater activity in investigating suspected theft upstream of the Emergency Control Valve, we were concerned about the lack of action to address unregistered sites.⁴² We considered that one consequence of allowing transporters to recover all of their costs linked to investigating suspected unregistered sites would be to reduce the commercial incentive to tackle the root cause. We indicated that we would revisit this issue if transporters undertook actions in this area. If no action was taken, we said that we would consider amending the licence obligations of transporters.

4.8. Since March 2012, several proposals have been made to improve the arrangements for tackling unregistered sites. UNC410 aims to introduce financial incentives on parties to prevent unregistered sites and resolve them once identified. UNC410A would introduce a process for resolving unregistered sites once identified. Transporters have also drafted new arrangements to better control the creation of the unique Meter Point Reference Number at a new site. If these proposals to tackle the root causes were implemented, we would then expect GDNs to present us with full costs and benefits of investigating and dealing with the existing unregistered sites. If these proposals are satisfactorily progressed, we propose to consult on

⁴² New sites where a meter has been fitted and a supply of gas is being taken without a shipper and supplier being registered against the site in central systems.

revisions to the transporter compensation arrangements in our Q1 2013 consultation on the Reasonable Endeavours Scheme noted earlier.

Electricity theft

4.9. In September 2012, we consulted on high-level proposals to improve the arrangements for tackling electricity theft.⁴³ This was included as part of the RIIO-ED1 Strategy consultation document as there are links between our proposals and those to amend the incentives arrangements for DNOs to reduce losses (including theft) on their networks.

4.10. Our consultation requests views on the applicability to the electricity market of our proposals relating to gas theft. We are in particular requesting views on whether there are specific aspects of the electricity market and its regulatory regime that would warrant a departure from a consistent approach with the proposed new gas arrangements.

4.11. Responses to the RIIO-ED1 strategy consultation (including our electricity theft proposals) are due on 23 November 2012. We aim to provide an update on our approach to theft in the RIIO-ED1 Strategy decision in February 2013. We then aim to consult on our electricity theft reform proposals in April 2013.

⁴³ In this document we use the expression “theft of electricity” to refer to the offences in relation to where a supply is restored without appropriate consent under Schedule 6 paragraph 5 of the Electricity Act 1989, the meter is intentionally or by culpable negligence damaged set out in Schedule 6 paragraph 6 of the Electricity Act 1989 and where the meter is interfered with or otherwise prevented from correctly recording the amount of electricity supplied set out under Schedule 7 paragraph 11 of the Electricity Act 1989.

Appendices

Index

Appendix	Name of Appendix	Page Number
1	Summary of responses	26
2	Draft Direction to implement Theft Arrangement	35
3	Glossary	44
4	Feedback questionnaire	46

Appendix 1 – Summary of responses

1.1. Our March 2012 consultation sought views from interested parties on our proposal to introduce new licence obligations for gas suppliers and to direct suppliers to implement the Theft Risk Assessment Service (TRAS). A total of 21 responses were received. The following table shows the list of parties who responded to our consultation.

List of respondents

	Name
1	British Gas
2	Consumer Focus
3	Corona Energy
4	DONG Energy
5	E.ON
6	Ecotricity
7	EDF
8	Energy UK
9	Gas Forum
10	Gazprom
11	Gemserv
12	HSE
13	National Grid
14	Northern Gas Networks
15	RWE nPower
16	Scottish Power
17	SSE
18	UKRPA
19	Wales & West Utilities
20	Wingas
21	Xoserve

1.2. Responses received by Ofgem which were not marked as being confidential have been published on Ofgem’s website (www.ofgem.gov.uk). Copies of non-confidential responses are also available from Ofgem’s library.

1.3. In Chapter 2, we set out updated proposals to introduce new gas supply licence obligations to deliver improvements to the gas theft arrangements. In Chapter 4, we set out our proposals to improve theft detection.

1.4. Comments were received from 15 respondents on the questions in Chapter 2 related to the gas supply licence proposals. 16 respondents made comments related to the questions in Chapter 4 on the proposed TRAS Direction.

1.5. Parties also commented on other aspects of our proposals. Comments that were not related to the proposed licence conditions and the TRAS are not captured in this summary. In this case, please refer to the responses on our website.

Chapter 2: Enhancing supplier obligations

Objective for tackling gas theft

1.6. Respondents were generally supportive of the proposed licence conditions and agreed that the potential vulnerability of certain consumer groups should be taken into consideration.

1.7. One Big Six supplier noted that, notwithstanding the commercial incentives that are already in place to detect, investigate and prevent theft of gas, the proposed licence conditions will help to ensure a consistent approach across all suppliers in undertaking this activity.

1.8. One respondent said that the overarching objective should be less prescriptive, and allow room for the industry to determine the optimum way to meet that objective.

1.9. Three Big Six suppliers raised concerns over the broad nature of the overarching objective. One of them reasoned that the flexibility afforded to suppliers might introduce additional regulatory risk and uncertainty in terms of managing compliance.

1.10. One small supplier argued that all detection, investigation and prevention activities should be performed by a central body to ensure expertise and avoid problems that may occur when suppliers investigate their own customers.

Requirement to detect, prevent and investigate theft of gas

1.11. Most respondents supported the inclusion of supplier obligations to take all reasonable steps to detect, prevent and investigate theft of gas at premises that they supplied.

1.12. One Big Six supplier suggested the removal of paragraph 12B.5 on theft detection and prevention as it appeared to duplicate the requirements set out in the overarching objective section of the proposed SLC12B.

1.13. One small supplier commented that paragraph 12B.2 was too open and will impose an unknown financial burden on suppliers in trying to fulfil the requirements set out in that paragraph. This respondent also considered that there may be

repetition between the requirements of 12B.5 and 12B.6, and that of 12B.2, in which suppliers are required to take “reasonable steps” in respect of detection, prevention and investigation.

1.14. One respondent expressed disappointment that the requirement to “fully” investigate theft had been removed, and highlighted the importance for the Theft Code of Practice to be explicit on the detail of the need to “fully investigate.”

1.15. One respondent noted the importance of the industry recording the outcome of an investigation. They considered that there was a reputational risk to the industry if suppliers did not maintain accurate records and consumers, who had been cleared of theft following an investigation, were investigated again when there was no new evidence.

The Theft Arrangement

1.16. Respondents were generally supportive of the proposed ability of the Authority to direct a Theft Arrangement in support of the objective set out in the proposed SLC12B. Support was also given for the Theft Arrangement to be developed and implemented via SPAA. One of these respondents also agreed with the inclusion of an implementation date within the terms of the TRAS Direction rather than in the licence.

1.17. One Big Six supplier held the view that the phrase “necessary and within its reasonable control” in paragraph 12B.9 could be interpreted as including an obligation to incur disproportionate costs, and requested amendment to “take all reasonable steps.”

1.18. In relation to paragraph 3a of the proposed licence condition, one Big Six supplier questioned how a supplier could individually maintain and operate the Theft Arrangement as it contradicted the need for suppliers to work collectively with each other.

1.19. One small supplier felt that independent suppliers’ views might be sidelined during the course of drawing up the Theft Arrangement, as they do not have the resources to ensure that their representatives are present at every meeting. This respondent also felt that the relative cost of complying with the proposed Theft Arrangement would be substantially higher for small suppliers.

Standards for theft of gas investigations

1.20. Respondents were broadly supportive of our proposed new standards for theft of gas investigations. However, there were mixed views in respect of our proposal to prohibit disconnection during winter and the requirement to offer prepayment metering to certain groups of domestic customers and those that would have difficulty paying.

1.21. Some respondents said that disconnection should be used as a last resort, but argued that it should remain a viable option if there are safety concerns or repeated cases of theft. One of these respondents commented that this should be explicitly stated on the face of the licence. Another respondent noted that it was essential to ensure that decisions can be made without fear of regulatory challenge.

1.22. One Big Six supplier noted that under Schedule 2B paragraph 10(1) of the Gas Act 1986, actions were allowed to be taken against the premises of an occupier who has interfered with a meter. This respondent argued that a requirement for suppliers to obtain evidence that the named customer is responsible for theft would contradict this statutory power. This respondent also added that it is possible for a supplier to show that an occupier of premises has interfered with a meter without being able to identify that it was the named customer.

1.23. Some respondents questioned whether the same level of protection should be afforded to a repeated offender as to a consumer who has genuine difficulty in paying but has not resorted to theft.

1.24. One Big Six supplier expressed concern that the proposed licence conditions appear to offer enhanced levels of protection to offenders who are classified under a certain consumer grouping, for example “vulnerable consumers,” without considering the context in which the theft occurs.

1.25. One Big Six supplier highlighted that they did not consider all consumers who are of pensionable age to be vulnerable.

1.26. Two respondents considered that it might be difficult to assess if a consumer is having difficulty in paying the charges owed resulting from theft of gas. For instance, consumers who were found to have stolen gas may be less likely to fully engage with suppliers or disclose accurate information. This may hamper an accurate assessment.

1.27. One respondent suggested that the proposed new gas Theft Code of Practice should include additional detail on how consumers can be determined to be having difficulty in paying.

1.28. Two Big Six suppliers were concerned that the level of protection afforded to consumers who steal gas could increase the costs borne by all consumers. One of these respondent added that it could also increase the risk of consumers undertaking theft of gas.

1.29. Two respondents supported the clarification that suppliers should use the “balance of probabilities” as the evidential test to determine if consumers had committed an offence or if they were culpably negligent.

1.30. Some respondents did not consider that installing a prepayment meter would be the best way of recovering debt and suppliers should have the flexibility to use a wide range of repayment plans at their discretion. One of these respondents

reasoned that it is important to set affordable and appropriate repayment rates for consumers and allow access to a wide range of tariffs to avoid self-disconnection.

1.31. One Big Six supplier argued that the requirement to allow consumers to repay through a prepayment meter after undertaking theft of gas would conflict with rights that would apply if the supplier has successfully prosecuted the occupier for theft.

1.32. One Big Six supplier was concerned that suppliers would be exposed to the “moral hazard” that low-income consumers may be encouraged to undertake theft of gas as they understand that they will be offered a prepayment meter prior to disconnection.

1.33. One Big Six supplier expressed concerns that the drafting of paragraphs 12B.1(b), 12B.12(c), SLC 27.8A and SLC 27.11C, collectively appear to be an extension of a supplier’s obligation under SLC 27.8.

1.34. One Big Six supplier made reference to paragraph 12B.12(c) and sought clarity about whether an offer to install a prepayment meter needed to be made only once. It asked whether the obligations would fall away if the subsequent prepayment meter was interfered with.

1.35. Two respondents made drafting suggestions: One Big Six supplier suggested that the drafting of paragraph 12B.12(c) could avoid repeating the content in paragraphs 12B.12(a) and 12B.12(b) by making use of the paragraph references. One Big Six supplier suggested that the wording in paragraph 12B.12(d) “must take all reasonable steps not to disconnect the supply of gas to the relevant premises in Winter” should add words such as, “so far as is compatible with the Objective,” after the word “must.”

New relevant objective for the SPAA

1.36. A range of views was presented on the inclusion of a new relevant objective in SPAA linked to securing compliance with proposed SLC12B.

1.37. One Big Six supplier agreed that the Theft Code of Practice should apply to both domestic and non-domestic suppliers. However, they highlighted the need for a modification to the gas supply licence to require non-domestic suppliers to become SPAA parties in order to facilitate their participation.

1.38. One respondent noted that there was a proposal underway to amend the SPAA constitution to change the voting arrangements. The aim of this was to give adequate protection to the interests of non-domestic suppliers. However, it remains unclear if this arrangement will be acceptable to current SPAA parties and the non-domestic suppliers.

1.39. One respondent commented that a new relevant objective for the SPAA on tackling gas theft would not be necessary if the Theft Code of Practice was

introduced, as it may simply duplicate what parties would be prepared to sign up to through the Theft Code of Practice.

Chapter 4: Ofgem proposals to improve theft detection

Implementation of the TRAS

1.40. There was broad support for our proposal to require suppliers to implement the TRAS through a Direction. However, there were comments on the detail and there were differing views on our proposals to establish the Theft Target.

1.41. One Big Six supplier stated its support for the implementation of the TRAS to be directed through a Supply Licence condition as it would help to ensure a co-ordinated and structured approach to its development.

1.42. One Big Six supplier supported the underlying principle that there should be arrangements in place to increase the detection of, and reduce the number of, gas theft cases, but was concerned that:

- There was no evidence that the costs of administering the TRAS would be offset by the benefits of detecting additional cases of theft.
- The use of industry data may become an expensive way for suppliers to receive back their own information.
- There was no feasibility study for implementing the TRAS and impact assessment of potential issues related to data protection and competition.

1.43. Some respondents maintained their preference for the National Revenue Protection Service (NRPS) proposal. Two of these respondents noted that considerable efforts had been made on the development of NPRS, and questioned why it was put aside in favour of the TRAS.

1.44. Two Big Six suppliers felt that the proposal to implement the TRAS had not been sufficiently considered. One of these suppliers commented that the details of the proposal should undergo further development to allow the industry to attain a full understanding of what is being proposed and how it can be implemented.

1.45. Three Big Six suppliers highlighted that any solution must be commensurate with the scale of the issue. One of these suppliers was concerned that the costs of procuring and providing the service could outweigh the charges recovered from offenders, and that these costs would be passed on to honest consumers.

Service provision of the TRAS

1.46. Respondents were broadly supportive of the intended services to be provided by the TRAS and recognised that the TRAS would help to enhance suppliers' ability to detect, investigate and prevent the theft of gas.

1.47. One respondent argued that it was more efficient to have a single body, such as the TRAS, to provide a theft reporting service. This respondent added that it could actually help to create a competitive market for the provision of ancillary services, such as onsite theft investigation, if more cases of theft are investigated.

1.48. One Big Six supplier expressed concern that the TRAS may make onerous data requests that would provide no benefits to the industry if the data was aggregated.

1.49. Three suppliers were concerned that the TRAS may duplicate the work undertaken by the AUGE. One respondent pointed to the AUGE's role in profiling the risk of unrecorded gas and, in particular, theft of gas in the market.

1.50. Some respondents voiced support for additional measures to be added to the TRAS' requirements. These included a tip-off hotline, stolen meters register and best practice forum. Several respondents argued that an online reporting service would be more cost effective than a telephone service.

1.51. One small supplier suggested that the entire role of detection, prevention and investigation of gas theft should be performed by the TRAS, and that a suppliers' role should be limited to providing information to assist the TRAS.

1.52. One Big Six supplier made reference to paragraph 6b of the proposed TRAS Direction and questioned if it was necessary for the TRAS to conduct its activities in a manner that would be most likely to facilitate "effective competition between Gas Suppliers." In relation to paragraph 8a, this respondent was concerned that the TRAS might be reliant on information that was not filtered or interrogated correctly. They have also suggested a new paragraph 8b(iii), to require the TRAS to "provide all Relevant Information in respect of a premises that the Relevant Supplier may reasonably require to fulfil the requirements of its Licence."

Theft target

1.53. Some respondents agreed that the Theft Target should be incorporated as part of the TRAS service, albeit with some reservations.

1.54. Two respondents argued that in setting the Theft Target, the TRAS should be subject to some form of assurance and monitoring framework.

1.55. One respondent supported the principle of a target, but was concerned that there might be insufficient flexibility, which may lead parties not to meet it. This respondent considered that the proposed approach to prevent theft of gas should be reviewed by the Authority and the licensees if an increase in the number of investigations did not bring about a decrease in the number of thefts.

1.56. One Big Six supplier thought that it was too early to establish the Theft Target one year after the introduction of the TRAS. It suggested that the true level of theft should be reliably known first.

1.57. Four respondents said that small suppliers should be exempted from taking part in the Theft Target (and any supplier incentive scheme) on the basis that larger suppliers were likely to have more cases of theft among their consumers.

1.58. One Big Six supplier questioned whether paragraph 5 of the proposed Direction was achievable given that certain theft patterns may not be easily identified. This paragraph required that “any Customer that undertakes Theft of Gas will have a reasonable chance of being detected”. This respondent also suggested that the TRAS should be sufficiently flexible to accommodate changes in the way in which theft occurs and new methods of theft identification.

1.59. Another Big Six supplier referred to paragraph 13 of the Direction on reviewing and updating the Theft Target. They questioned if it would always be possible to “ensure that any revised Theft Target will achieve additional overall benefits for Customers when compared to the existing Theft Target.”

Governance of the TRAS

1.60. Most respondents agreed that the TRAS should be implemented using an appropriate industry governance mechanism. However, there were concerns raised in choosing SPAA as the governance mechanism given that non-domestic suppliers are non-signatories to the SPAA.

1.61. Two respondents support the principle that the TRAS should be managed separately from any quality assurance activity to maintain its independence.

Appointment and operation arrangements of the TRAS

1.62. Some respondents welcomed the proposal for the TRAS to be appointed through a robust and competitive tender process, and that it would be retendered on a regular basis.

1.63. Some respondents agreed that any TRAS service provider should be independent of gas suppliers or transporters. However, one respondent expressed concerns that this may hamper the industry’s ability to attract potential providers of the highest calibre.

1.64. One Big Six supplier considered that it may not be feasible to maintain the TRAS if an “appropriate” target could not be set, for example, if the costs of administering the Theft Target outweigh the benefits, or if the level of theft is reduced to an extent where it is no longer economical to do so.

1.65. One Big Six supplier referred to paragraph 31(b) of the Direction. They asked for guidance on when the contract with the TRAS provider should be terminated on the basis that it was “inappropriate” for the provider to continue providing the services.

1.66. One Big Six supplier considered that a significant amount of lower-level details needed to be considered in order to construct a full set of requirements that could be issued for tender.

Reporting requirements for the TRAS

1.67. Most respondents agreed with the proposed reporting requirements set out in the Direction.

1.68. Two respondents argued that it was essential for regular independent audits to provide performance assurance for the TRAS in providing the reporting service.

1.69. One respondent suggested that the TRAS could also provide quarterly sets of data to help suppliers in benchmarking their performance against the overall industry performance.

1.70. One respondent noted that the exact requirements for the type and frequency of reporting would need to be developed as part of the tender process. This respondent also stated that the requirements should cover both operational and performance reports.

1.71. One Big Six supplier made reference to paragraph 40, which appeared to restrict the ability of the TRAS to appoint an independent third party to undertake performance monitoring.

Implementation date of the TRAS

1.72. One Big Six supplier agreed with the proposed implementation date but commented that it should still be subject to review under certain circumstances. Another Big Six supplier also stated its support but preferred the date to be aligned with any new electricity arrangements to minimise costs and disruption to the industry.

1.73. Some respondents considered that the proposed date was too challenging. One Big Six supplier argued that it was essential to implement the best solution in an orderly manner rather than a poorly developed one against a fixed deadline. One respondent suggested that the first quarter of 2014 could be a better option.

Appendix 2 – Draft Direction to implement Theft Arrangement

Note that wording below indicates in ~~strikethrough~~ any deletions in the drafting since the version consulted on in the notice of 26 March 2012 and any additions are indicated by underlining.

**~~The Company Secretary~~
~~Name and registered address of licence holder~~**

**~~GAS SUPPLY LICENCE~~
~~STANDARD CONDITION 12B. Matters related to Theft of Gas~~**

~~Notice of direction issued by the Gas and Electricity Markets Authority pursuant to Standard Condition 12B~~

To: All holders of a gas supply licence

DIRECTION ISSUED BY THE GAS AND ELECTRICITY MARKETS AUTHORITY PURSUANT TO PARAGRAPH 8 OF CONDITION 12A OF THE STANDARD CONDITIONS OF THE GAS SUPPLY LICENCE TO ALL HOLDERS OF A GAS SUPPLY LICENCE GRANTED OR TREATED AS GRANTED UNDER SECTION 7A(1) OF THE GAS ACT 1986

WHEREAS :

1. Each ~~of the companies~~ to whom this Direction Notice is addressed ('the licensee') holds a gas supply licence granted, or treated as granted, pursuant to section 7A(1) of the Gas Act 1986 in which Standard Condition 12A (Matters relating to Theft of Gas) ('SLC 12A') has effect ('the licence').
2. The Gas and Electricity Markets Authority ('the Authority') has the power pursuant to ~~Standard Condition 12B ('SLC 12B')~~ paragraph 8 of SLC 12A of the licence to issue a direction in respect of requirements relating to the Theft of Gas to the licensee to be a party to, comply with and maintain an arrangement to give effect to the objective set out in paragraph 1 of SLC 12A (the 'Theft Arrangement').
3. On 26 March 2012, In accordance with SLC 12B of the licence, on [date] the Authority consulted with the licensee on the contents of the Direction and has carefully considered the responses to that consultation.

NOW THEREFORE ↔

4. The Authority hereby directs that the licensee must comply with the requirements specified in the Schedule of this Direction.

5. This ~~Direction~~ shall take effect on ~~and from the date specified below~~ 8 January 2013 and shall continue until:

- a) revoked or amended by the Authority following a period of consultation with the licensee in accordance with SLC 12B for not less than 28 days from the date of notice of the revocation or amendment, or such other period as may be agreed in writing by the Authority and the licensee, during which representations with respect to the proposed revocation or amendment may be made; or
- b) 7 January 2016, on which date the Direction shall cease to have effect,

whichever is the earlier.

6. The following documents constitute notice pursuant to section 38A (Reasons for decisions) of the Gas Act 1986:

- (a) This Direction;
- (b) Ofgem. (October 2012) "Tackling Gas Theft: New requirements for gas suppliers", Ref 317/12;
- (c) Ofgem. (March 2012) "Tackling gas theft: the way forward", Ref 35/12;
- (d) Ofgem. (March 2012) "Tackling gas theft – Final impact assessment", Ref 35A/12;
- (e) Ofgem. (August 2011) "Tackling gas theft", Ref 112/11; and
- (f) Ofgem. (August 2011) "Tackling gas theft – Draft Impact Assessment", Ref 112A/11.

These documents are available on the Ofgem website: www.ofgem.gov.uk

Dated: []

Signed on behalf of the Authority by[]
Duly authorised for that purpose by the Authority

**DIRECTION UNDER PARAGRAPH 12B.8 OF STANDARD CONDITION 12B
(MATTERS RELATED TO THEFT OF GAS) OF THE SUPPLY LICENCE**

SCHEDULE

PART A: TERMS IN RESPECT OF DIRECTION PURPOSE OF THIS THEFT ARRANGEMENT

~~Under section 7A of the Gas Act 1986 (the "Act") and standard licence condition (SLC) 12B, paragraph 12B.8 of the Gas Supply Licence, the Gas and Electricity Market Authority (the "Authority") may from time to time direct a party to, comply with, and maintain such arrangement to give effect to the objectives set out in SLC 12B (the "Theft Arrangement")~~

~~The Authority hereby makes the following Direction:~~

1. The purpose of the ~~is~~ Theft Arrangement (the "Purpose") is to ensure that:
 - a. the licensee and any Representative individually and/or in cooperation, where necessary with other Gas Suppliers ~~licence holders~~ develop, maintain and operate a service (the Theft Risk Assessment Service ("TRAS")) in accordance with this Direction to support:
 - (i) detection of Theft of Gas;
 - (ii) investigation of suspected Theft of Gas; and
 - (iii) prevention of Theft of Gas.
2. The licensee must take (and ensure that any Representative takes) all reasonable steps to:
 - a. ~~to~~ secure the achievement of the Purpose; and
 - b. ~~to~~ avoid doing anything which jeopardises its ability to achieve the Purpose.

PART B: THE THEFT RISK ASSESSMENT SERVICE (TRAS)

3. The objective of the TRAS is to develop, maintain and operate ~~an arrangement~~ service in a consistent manner across all Gas Suppliers, such that any Customer that undertakes Theft of Gas will have a reasonable chance of being detected, regardless of which Gas Supplier supplies them.
4. The licensee must take all reasonable steps to meet the requirements set out below.
5. The licensee must ensure that the TRAS ~~is to~~ carries on its activities in a manner that is most likely to facilitate:
 - a. the development, operation and maintenance of an efficient, economical and coordinated Theft Arrangement;
 - b. effective competition between Gas Suppliers;
 - c. protection of information and security of information and systems; and
 - d. efficient and transparent administration and implementation of the TRAS.
6. The licensee must ensure that the TRAS ~~must~~ takes all reasonable steps to:
 - a. secure the achievement of the objectives under paragraph ~~53~~ and

Tackling Gas Theft: New requirements for gas suppliers

- b. avoid doing anything which jeopardises its ability to achieve the objectives under paragraph 53.
7. The licensee must ensure that the TRAS must:
 - a. identifyies, collects, scrutinises and evaluates Relevant Information to profile the risk of Unrecorded Gas, and in particular Theft of Gas, at all individual premises where gas is conveyed though pipes by a Gas Transporter;
 - b. provides all Relevant Information in respect of a premises that the Relevant Supplier may reasonably require to:
 - i. determine which premises to investigate for suspected Theft of Gas, and
 - ii. ~~to~~ facilitate that investigation of Theft of Gas;
 - c. on notice from the Relevant Gas Supplier that a person has, or may have, taken a supply of gas in the course of conveyance, provides all Relevant Information to the Relevant Gas Transporter that the Relevant Gas Transporter may reasonably require to facilitate the Relevant Gas Transporter in fulfilling its obligations under standard licence condition 7 of the Gas Transporters Licence;
 - d. at the reasonable request of the Relevant Gas Transporter, provides such Relevant Information and services that the Relevant Gas Transporter may reasonably require to support the reduction of gas taken in the course of conveyance; and
 - e. at the reasonable request of the Relevant Supplier and/or Relevant Gas Transporter, provides such Relevant Information that the Relevant Supplier and/or Relevant Gas Transporter may reasonably require to support criminal prosecution.
8. The ~~TRAS~~ licensee must ensure that the TRAS provides the Relevant Information ~~defined~~ described in paragraph 67(b) in a manner that is most likely to facilitate the achievement of the Theft Target;

Theft Target

9. The ~~TRAS~~ licensee must ensure that the TRAS establishes and maintains an appropriate target amount of Theft of Gas to be detected per year (the “Theft Target”).

The Theft Target is ; a. a target for the detection of Theft of Gas by all Gas Suppliers ; and
b. ~~if detected each year it is likely to achieve an overall benefit to Customers.~~
10. The licensee must ensure that the TRAS must establishes the Theft Target within one year of the commencement of provision of services set out ~~defined~~ in paragraph 87.
11. The licensee must ensure that the TRAS must reviews the Theft Target at least once every two years- ~~and that~~ ~~When~~ when reviewing the Theft Target, the TRAS ~~must~~ takes all reasonable steps to ensure that any revised Theft Target will achieve additional overall benefits for Customers when compared to the existing Theft Target.
12. The licensee must ensure that the TRAS must develops and maintains a methodology, having regard to all the information available, to establish the Theft Target (the “Theft Target Methodology”).

Tackling Gas Theft: New requirements for gas suppliers

13. Before establishing the Theft Target Methodology, the licensee must ensure that the TRAS must consults:
 - a. the Authority;
 - b. the Consumer Council;
 - c. all Gas Suppliers;
 - d. all Gas Transporters; and
 - e. such other person as ~~the TRAS considers~~ may be appropriate.
14. The licensee must ensure that the TRAS must duly considers any representations which are made and not withdrawn.

~~The Theft Target Methodology is required to be a complete and documented explanation, presented in a coherent and consistent manner, of the methods, principles, and assumptions that apply for the purpose of determining the Theft Target.~~

15. The licensees must ensure that a report setting out the Theft Target Methodology is:
 - a. provided by the TRAS to the Authority;
 - b. provided by the TRAS to any person who asks for it; and
 - c. published by the TRAS on a website.
16. In complying with the requirements of paragraph 175, the ~~Licensees~~ must have due regard to the need for excluding from the report, so far as is practicable, any matter that relates to the affairs of a person if the publication of that matter would or might seriously and prejudicially affect his interests.

Governance of TRAS

~~The Licensee must take all reasonable steps to develop, maintain and operate a TRAS, in accordance with this Direction.~~

~~The Licensee must not carry on any activity, or any combination of activities in a manner that prejudices or impairs, or would be likely to prejudice or impair, the TRAS in carrying out its activities at all times in accordance with the objective under paragraph 5 of this Direction.~~

17. The ~~Licensee~~ must ensure that effective change control arrangements are in place for Gas Suppliers to seek amendment to the rules for the operation of the TRAS.

Access and use of data

18. The licensee must ensure that the TRAS must:
 - a. ensures the protection of information and the security of the information and systems in the operation of the TRAS;
 - b. maintains, prepares and publishes a Compliance Statement stating how the TRAS will comply with the requirements in paragraph 2318a; and
 - c. maintains, prepares and publishes a Privacy Impact Assessment for the purpose of assessing compliance with the Data Protection Act 1998. The Privacy Impact Assessment must be consistent with the best industry practice as recommended from time to time by the Information Commissioner's Office (or a successor body).

19. For the avoidance of doubt, the Licensee is not required to undertake any activity required by this Direction, where within the Licensee's reasonable view, it would cause the licensee to act in a manner that is not in compliance with the Data Protection Act 1998.

Specific requirements to provide information

20. The Licensee must take (and ensure that any Representative takes) all reasonable steps to provide all Relevant Information to the TRAS that the TRAS may reasonably require to profile the risk of Unrecorded Gas, and in particular Theft of Gas, at all premises where gas is conveyed through pipes by a Gas Transporter.
21. The Licensee must inform the TRAS within a reasonable timeframe of the outcome of any investigation that it undertakes for Theft of Gas.

Appointment and Operation of TRAS

22. The licensee must ensure that the TRAS ~~shall commence~~ the provision of the services ~~defined~~ described in paragraph 87 in accordance with this Direction by 31 ~~December 2013~~ March 2014, or such other date as the Authority may direct.
23. The licensee must ensure that the TRAS ~~must:~~
- a. ~~be is~~ appointed on a competitive basis ~~and be that is~~ consistent with best industry practice relating to the procurement ~~and management~~ of a service;
 - b. ~~be is~~ appointed for a maximum term of five years;
 - c. ~~be is~~ appointed from suitable organisations in a manner that:
 - i. secures value for money in terms of the combination of quality and cost over the lifetime of the contract;
 - ii. delivers the required goods, services or works to appropriate standards according to the needs of service users; and
 - iii. incorporates (at a cost that is not disproportionate to any associated benefit) sufficient flexibility to adapt to Gas Supplier requirements over the duration of the contract.
 - d. does not at any time hold or acquire investments by way of shares, securities, or associated rights of any kind in any ~~licensed~~ Gas Supplier (or any Affiliates or Related Undertaking of such person) and/or ~~licensed~~ Gas Transporter (or any Affiliates or Related Undertaking of such person).
24. The Licensee must not discriminate between any person or class or classes of person when appointing the TRAS. ~~take all reasonable steps to ensure that it does not derive a competitive advantage when:~~
- a. ~~when appointing the TRAS; and~~
 - b. ~~in the operation of the TRAS.~~
25. The Licensee must ensure that the contractual arrangement with the TRAS enables the ~~Licensee~~ Gas Suppliers to implement such practices and procedures in respect of contract

Tackling Gas Theft: New requirements for gas suppliers

management and contract performance as are necessary to ensure that the Licensee Gas Suppliers can at all times fulfil the requirements of this Direction and its the Licence.

26. In particular, without limiting the general effect of paragraph 2530, the contractual arrangement with the TRAS:
- a. must provide for the Licensee:
 - i. to obtain any information that it may require from the TRAS, in such format and at such time as may be specified, for the purpose of enabling the Licensee to fulfil the requirements of this Direction and its License; and
 - ii. to disclose such information to any third party where it considers that doing so is necessary to promote that purpose;
 - b. must provide for the termination of the contractual arrangement with the TRAS provider where it is inappropriate for the TRAS provider to continue to provide the services defined in paragraph 87, 98 and 109;
 - c. must set out the agreed Quality of Service Information; and
 - d. must provide for the services defined in paragraph 87, 98 and 109.

No abuse of the TRAS' position

27. The Licensee must take all reasonable steps to ensure that the TRAS at all times manages and operates its services in a way that is calculated to ensure that it does not restrict, prevent, or distort competition in ~~the provision of, or in~~ any of the markets for the provision of services ~~defined~~ described in paragraph 87.
28. The Licensee must take all reasonable steps to ensure that the TRAS at all times carries on its activities in a manner that does not give any cross-subsidy to, or receive any cross-subsidy from, any Affiliate or Related Undertaking of the TRAS.
29. The Licensee must take all reasonable steps to ensure that the TRAS does not:
- a. unduly prefer a Gas Supplier ~~itself~~ or any Affiliate or Related Undertaking of a Gas Supplier over any person or any class or description of persons; or
 - b. unduly discriminate between any person or any class or description of persons.

Clearly document rules of operation

30. The rules for the operation of the TRAS must be clearly documented and available to Gas Suppliers.

Reporting

31. The licensee must ensure that the TRAS ~~must~~ arranges for the preparation of:
- a. ~~prepare~~ management information reports. The management information reports must include information and evaluation in respect of improvements to the arrangements for detecting Theft of Gas such as trend data, levels and causes of Theft of Gas and other relevant information on sources of Unrecorded Gas; and
 - b. ~~prepare~~ performance assurance reports.

Tackling Gas Theft: New requirements for gas suppliers

32. The performance assurance reports referred to in paragraph 361 must:
 - a. include a complete statement of how the TRAS is meeting the objective under paragraph 53 and the requirements of this Direction;
 - b. include a complete statement of the performance (both generally and in detail) of the TRAS in providing the services defined in paragraphs 8, 7 and 97 and 8 during the year; and
 - c. set out in appropriate detail appropriate performance measures with respect to compliance of the TRAS with the Quality of Service Information.
33. The licensee must develop and maintain Quality of Service Information in such manner as will enable the Licensee Gas Suppliers to monitor on a continuing basis the quality and efficiency with which the TRAS services are provided.
34. The ~~licensee~~TRAS must ~~produce~~ ensure that the TRAS arranges for the production of the reports required in paragraph 361 at least once a year.
35. The reports required in paragraph 361, must be prepared by a person who is fully independent of the interests of the TRAS, the Gas Suppliers and the Gas Transporters.
36. A copy of the reports referred to in paragraph 361 must be provided to the Authority.

PART CF: Implementation and Interpretation

~~This Direction shall have effect on and from XX.~~

37. Unless a contrary intention appears, any reference to terms in this Direction is to be read to have the same meaning given in the Gas Supply Licence.
38. In this Direction:

Affiliate	means, in relation to the Licensee <u>a Gas Supplier or Gas Transporter</u> , any Holding Company of the Licensee , any Subsidiary of the Licensee , or any Subsidiary of a Holding Company of the licensee <u>the Gas Supplier or Gas Transporter respectively.</u>
Compliance Statement	means a statement that sets out the practices, procedures, and systems by means of which the TRAS complies with its duties in relation to protection of information, the security of the information, and systems in the operation of TRAS.
Holding Company	means a holding company as defined in section 1159 of the Companies Act 2006.
Privacy Impact Assessment	means an assessment that sets out a process for evaluating the potential effects on privacy.

Tackling Gas Theft: New requirements for gas suppliers

Relevant Information	means information in any form or medium, however conveyed or stored, and of any description, and includes any documents, accounts, estimates, returns, records, certificates, or reports, and data of any kind.
Related Undertaking	in relation to a <u>Gas Supplier or Gas Transporter</u> the Licensee , means any undertaking in which <u>the Gas Supplier or Gas Transporter respectively</u> the Licensee has a participating interest within the meaning of section 421A of the Financial Services and Markets Act 2000.
Subsidiary	means a subsidiary as defined in section 1159 of the Companies Act 2006.
<u>Theft Target</u>	<u>means a target for the detection of Theft of Gas by all Gas Suppliers and if met each year it is likely to achieve an overall benefit to Customers.</u>
<u>Theft Target Methodology</u>	<u>means a complete and documented explanation, presented in a coherent and consistent manner, of the methods, principles, and assumptions that apply for the purpose of determining the Theft Target.</u>
Quality of Service Information	means such specified information relating to quality and efficiency with which services are provided.
Unrecorded Gas	means gas that is not attributed directly to a Relevant Gas Shipper as a result of Customer's consumption.

~~This Direction constitutes notice pursuant to section 34 of the Act.~~

Appendix 3 – Glossary

A

Allocation of Unidentified Gas Expert (AUGE)

An independent expert to determine a methodology for the allocation of unaccounted for gas, appointed under the terms of UNC Modification Proposal 229.

C

Customers

Parties who have a contract with a supplier to take gas at a Supply Point.

E

Emergency Control Valve (ECV)

A valve that limits the supply of gas to an individual Supply Point.

G

Gas Transporters (GTs)

Holders of a licence to operate a system to convey gas granted under section 7 paragraph 4 of the Gas Act 1986 as amended.

N

National Revenue Protection Service (NRPS)


A proposal to increase theft detection by establishing a central database to profile theft risk at each supply point and provide services, such as debt recovery and theft investigation, for use by suppliers.

S

Supply Point Administration Agreement (SPAA)

A multi-party agreement to which all domestic gas suppliers and all gas transporters are required by their licences to accede. It sets out the inter-operational arrangements between gas suppliers and transporters in the GB retail market.

Shipper



Tackling Gas Theft: New requirements for gas suppliers

An agent who arranges for the conveyance of gas over the distribution network to final consumers. Shippers pay transportation charges to the relevant gas transporter and are holders of a licence given under Section 7A (2) of the Gas Act 1986 as amended.

Supplier

Holders of a licence to supply gas given under Section 7A (1) of the Gas Act 1986 as amended or a person excepted from the requirement to hold a licence by virtue of paragraph 5 of schedule 2A of the Act.

T

Theft of gas

Describes a number of offences under schedule 2B of the Gas Act 1986 where a consumer prevents a meter from correctly registering the amount of gas supplied, has damaged equipment or reconnects the supply without the relevant permission.

U

Unaccounted for Gas

Gas that is offtaken from a gas transporter's network without being charged to any one shipper.

Uniform Network Code (UNC)

The contractual framework for the NTS, GDNs and shipper.

X

Xoserve

A joint venture delivering transportation transactional services, owned by the five large gas transporters and the transmission operator.

Appendix 4 – 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. Do you have 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