



Making a positive difference
for energy consumers

Gas and electricity suppliers,
consumer groups and other
interested parties

Date: 23 July 2014

Open letter – Guidance on suppliers’ rights and obligations in the case of gas or electricity theft

This open letter provides guidance on: (i) the rights, obligations and relevant considerations for suppliers who are considering disconnecting premises following the detection of energy theft; and (ii) the ways in which suppliers may offer new contractual terms to customers suspected of energy theft, such as a requirement to pay by prepayment meter or to provide a security deposit, in order to mitigate the additional credit risk posed by such customers.

Background

In the context of compliance with the Retail Market Review rules, we understand that some domestic suppliers are unclear on their rights and obligations in relation to disconnection and continuing supply following the detection of energy theft. In particular, this relates to their ability to secure payment via a prepayment meter or require a security deposit. We are concerned that this may result in suppliers fitting prepayment meters at a customer’s premises without the customer’s consent. In this context, we want to ensure that suppliers are only fitting prepayment meters when there is customer’s consent.

Our principal objective is to protect the interests of existing and future consumers. In particular, we have a duty to consider the interests of vulnerable consumers, such as individuals who are significantly less able than a typical consumer to protect or represent their interests in the energy market, or significantly more likely than the typical consumer to suffer detriment, or for whom detriment is likely to be more substantial. With this in mind, we have decided that it is appropriate to issue this guidance.

Guidance

Below we set out our views on suppliers’ rights and obligations to disconnect premises following the detection of energy theft and on agreeing new terms to continue supply. We provide guidance on how new payment terms requiring a security deposit or payment via a prepayment meter may be offered to customers suspected of theft, in order to mitigate credit risk posed by such customers. We also reiterate the requirements for suppliers to ensure that their Revenue Protection Officers comply with relevant marketing rules, particularly when conducting face-to-face sales.

Disconnection and meter removal

Where energy theft has been detected, a supplier may have the right to disconnect, and remove the meter from, the relevant premises pursuant to powers conferred in the Gas Act 1986 and Electricity Act 1989.¹ In order to gain entry to the property, the supplier must either have obtained a warrant to exercise its right of entry, or have obtained the

¹ Rights of disconnection and meter removal are set out in Schedule 2B to the Gas Act 1986 and Schedules 6 and 7 to the Electricity Act 1989.

customer's consent. In the case of theft, it is usually necessary for practical reasons for the supplier to obtain a warrant of entry.

Discontinuing supply and interaction with the duty to supply

Before stopping the supply of gas or electricity on the grounds of theft, suppliers must have sufficient evidence to establish that such statutory powers have arisen.² Suppliers are also required to take their general duty to supply into account.³ This duty will continue unless an exception applies.⁴

In the case of energy theft, a safety issue may arise preventing supply due to customer interference with gas pipes, electrical wires, or in certain circumstances, meter tampering. In these circumstances, a supplier may consider disconnecting the customer on safety grounds. Where energy theft does not give rise to a safety issue, it may be reasonable for a supplier to request a security deposit⁵ from the customer or offer to install a prepayment meter in order to mitigate its credit risk from supplying such customer. If the customer agrees to be supplied via a prepayment meter, then a security deposit would not be required.⁶

In the absence of any safety issue, we consider that a supplier would only be able to discontinue supply in the case of energy theft if:

- 1) the customer refuses a request to provide a security deposit which complies with the relevant licence conditions or to have a prepayment meter installed; or
- 2) it is not reasonable in all circumstances for the supplier to continue the supply. In this case, the supplier must give at least seven working days' notice before stopping the supply.

We would like to emphasise that consent from the customer is required before a prepayment meter can be installed. Neither the Gas Act 1986 nor the Electricity Act 1989 gives suppliers the right to fit a prepayment meter without the customer's consent on the grounds of energy theft.

Continuing supply by offering new terms

Where supply is to be continued, new payment terms may be offered to customers suspected of energy theft either by a variation to their existing supply contract or under a new supply contract. We discuss both options below, including relevant considerations for suppliers.

(i) Variation of existing contract

It may be possible for a supplier to offer new payment terms requiring prepayment or a security deposit by agreeing a variation to the existing contract (mutual variation) or by effecting a unilateral variation where the supplier has the contractual right to do so. The rules on effecting a unilateral or mutual variation to vary a customer's payment method, including notice periods, are set out in:

- SLC 23 (*Notification of Domestic Supply Contract terms*), in particular, paragraphs 23.1, 23.4, 23.8A and 23.8B; and
- SLC 23A (*Mutual variations*), in particular, paragraph 23A.2;
- SLC 22C (*Fixed Term Supply Contracts*), in particular, paragraphs 22C.9 and 22C.11B.

Suppliers are required to give advance notice before effecting a unilateral or mutual variation if there is an increase in the charges for supply or the variation is

² See SLC 12A

³ SLC 22

⁴ See in SLC 22.6 (gas) or 22.7 (electricity) for exceptions to the duty to supply.

⁵ The security deposit needs to be compliant with paragraphs 3 and 4 of SLC 27. In order to comply with these provisions, the security deposit must be reasonable in the circumstances and not exceed a reasonable amount.

⁶ SLC 27.3 prohibits the use of security deposits where the customer agrees to have a prepayment meter.

disadvantageous to the customer. We recognise that providing notice in advance of disconnection and/or meter removal may not be practical in the case of meter tampering or energy theft. Consequently, a customer could be left without gas or electricity supply during the required notice period for effecting a contractual variation. It may therefore be appropriate to consider entering into a new contract with the customer, which would not require advance notice, as described below.

(ii) *Entry into a new contract*

There is no requirement to provide notice in advance where a supplier offers a customer a new contract and terminates the existing contract. However, where a new contract is offered, suppliers with 50,000 or more domestic customers are required to offer the customer a wide choice of payment methods.⁷ Offering a wide choice of payment methods is essential for consumers and aligns with our principal objective.⁸

We wish to highlight that the obligation to offer a wide choice of payment methods must be considered in conjunction with the duty to supply. However, as noted above, a supplier may be able to discontinue supply in the case of theft if the customer refuses to pay a security deposit which complies with the relevant licence conditions or to have a prepayment meter installed. We therefore consider that it would be acceptable for a supplier to offer to supply the customer both:

- 1) on the basis of payment via a prepayment meter, without requiring a security deposit; and
- 2) on the basis of other payment methods, with the requirement of a reasonable security deposit.

Marketing gas/electricity to domestic customers

Finally, we would like to remind suppliers that SLC 25 (*Marketing gas/electricity to Domestic Customers*) applies in all situations where a customer is offered a supply contract as part of communications made via the telephone or face-to-face. Therefore suppliers should ensure that their Revenue Protection Officers comply with SLC 25 in their dealings with domestic customers, including any doorstep sales activities in circumstances of suspected meter tampering. For completeness, we would also highlight that the SLC 25C standards of conduct apply to all activities of a supplier or representative in their dealings with a domestic customer.

If you would like to discuss any aspects raised in this letter, please contact Jibirila Leinyuy on 0207 901 7000 or email Jibirila.Leinyuy@ofgem.gov.uk.

Yours sincerely

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⁷ See SLC 27.1

⁸ See: "[Open letter](#) – guidance on SLC 27.1: payment methods under Domestic Supply Contract" published on 26 June 2014.