

Holders of Electricity Supply
licences, licence exempt
suppliers, Law Enforcement
Organisations, Prosecutors,
consumers and their
representatives and other
interested parties

*Promoting choice and value for
all gas and electricity customers*

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Date: 8 March 2011

Dear Colleagues,

Draft criteria for authorising the disposal of electricity meters under Schedule 6, Paragraph 6 and Schedule 7, Paragraph 11 of the Electricity Act 1989.

Ofgem and the National Measurement Office (NMO) are proposing to issue a general authorisation under which electricity meters retained by suppliers under Schedule 6, Paragraph 6 and Schedule 7, Paragraph 11 of the Electricity Act 1989 (the 'Act') may be disposed of or destroyed. Electricity suppliers will be allowed to dispose of or destroy these meters under the proposed general authorisation provided certain conditions are met. This authorisation aims to alleviate the regulatory burden associated with applying for and granting authorisation for disposal on a case-by-case basis.

Background

Under the Act, electricity suppliers have statutory powers¹ to disconnect premises and remove an electricity meter where there is sufficient evidence (on the balance of probabilities) that a person has committed a specific offence under the Act by damaging or interfering with an electricity meter.

In addition, the Act requires authorisation to be given before a meter which has been removed under these powers (a 'relevant meter') is disposed of or destroyed. Paragraph 6 of Schedule 6 to the Act gives Ofgem the function of authorising the disposal of damaged meters. Paragraph 11 of Schedule 7 to the Act gives the NMO, as an Executive Agency of the Department of Business, Innovation and Skills (BIS), the function of authorising the disposal of meters that have been interfered with. Further details of the relevant provisions of the Act are set out in Annex 2.

Proposal to Issue a General Authorisation

Given the potential overlap in responsibilities, Ofgem and the NMO have decided to consult jointly on a proposed general authorisation for suppliers to dispose of or destroy relevant meters. The general authorisation would mean that, provided certain conditions are met, suppliers would be able to dispose of relevant meters without seeking individual approval from Ofgem or the NMO. Suppliers would still be able to seek approval in individual cases should they wish to do so.

¹ For further information of these powers, please see Ofgem's guidance on the use of disconnection powers in cases of meter tampering:
[http://www.ofgem.gov.uk/Markets/RetMkts/Compl/Theft/Documents1/Open%20Letter%20on%20Theft%20Disconnections%20\(Final\).pdf](http://www.ofgem.gov.uk/Markets/RetMkts/Compl/Theft/Documents1/Open%20Letter%20on%20Theft%20Disconnections%20(Final).pdf)

Question 1: Do you have any comments on the proposal to issue a general authorisation?

Conditions of Proposed General Authorisation

Under the Act, when exercising the functions relating to authorisation of the disposal of relevant meters, the principal objective of Ofgem and the NMO is to protect the interests of existing and future consumers. Ofgem and the NMO also have a range of general duties under the Act which include:

- carrying out our respective functions in a manner considered to be best calculated to protect the public from dangers arising from the supply of electricity; and
- having regard to better regulation principles², including the principles under which regulatory activities should be proportionate.

In light of our principal objective and general duties, we have developed the proposed criteria for the circumstances in which a meter can be disposed of or destroyed under the general authorisation. These are set out in Annex 1. In developing these, we have been mindful that meters may need to be appropriately retained as evidence of criminal offences. However, we also recognise that there will be a cost and operational burden on suppliers associated with storing large volumes of meters. This cost will ultimately be borne by consumers. Our proposals seek to strike a balance between these needs. In developing the criteria, we have corresponded with bodies that have evidence retention knowledge such as the Health and Safety Executive.

We continue to welcome views on the proposals set out in this letter from all relevant stakeholders, including those listed above.

Question 2: Do you have any comments on the specific criteria for the proposed general authorisation set out in Annex 1? Please provide any evidence that you have to support your comments if possible.

Question 3: Do you have any other comments on the proposals set out in this letter?

Next Steps

We welcome responses to this consultation. These should be sent (preferably in electronic form) by no later than 5.00pm on 3rd May 2012 to:

Paul Fuller

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We will take into account the responses received to this consultation with the aim of making a final decision by summer 2012. If you have any questions on the issues raised by this consultation, please contact Paul Fuller on 020 7901 7242 or Rachel Zammett on 020 7901 1896.

Unless marked confidential, all responses will be published in full on our website at www.ofgem.gov.uk. You may request for your response, or part of it, to be kept confidential. We will try to respect this request in so far as this is compatible with our statutory functions and any obligations to disclose information, for example, under the

² Ofgem also has relevant duties under the Regulatory Enforcement and Sanctions Act 2008.

Freedom of Information Act 2000. Respondents who wish to have their responses remain confidential should clearly mark their document(s) to that effect and include the reasons for confidentiality.

Yours faithfully,

Colin Sausman
Partner, Smarter Markets
Ofgem

David Moorhouse
Metering Manager
National Measurement Office

Annex 1 – DRAFT General Authorisation and Conditions

DRAFT General authorisation by the Gas and Electricity Markets Authority and the Secretary of State³ for the purposes of sub-paragraph 6(4) of Schedule 6 and sub-paragraph 11(4) of Schedule 7 to the Electricity Act 1989

Whereas:

1. The Gas and Electricity Markets Authority ('the Authority') has the function under sub-paragraph 6(4) of Schedule 6 to the Electricity Act 1989 of authorising the destruction or disposal of a Relevant Meter removed by an Electricity Supplier.
2. By virtue of section 95 of the Energy Act 2008, the Secretary of State has the function under sub-paragraph 11(4) of Schedule 7 to the Electricity Act 1989 of authorising the destruction or disposal of a Relevant Meter removed by an Authorised Supplier.
3. *[Following consultation, in the event that the Authority and the Secretary of State jointly decided to implement the proposed general authorisation, text will be inserted here to explain and summarise the consultation process].*

Now therefore:

4. The Authority and the Secretary of State hereby issue a general authorisation in respect of the destruction or disposal of Relevant Meters in accordance with the conditions set out in the Schedule.
5. The general authorisation shall take effect on and from the date specified below and shall continue until revoked or amended by the Authority and the Secretary of State following consultation with suppliers and other relevant persons.

Dated the -----2012

Signed on behalf of the Authority by

Signed on behalf of the Secretary of State by

³ "As the NMO is an Executive Agency of BIS, throughout this document the "Secretary of State" denotes the Secretary of State for Business, Innovation and Skills"

SCHEDULE

Conditions for general authorisation

[We consider that all situations will be covered by either condition 1 or condition 2.]

A Relevant Supplier may destroy or otherwise dispose of a Relevant Meter if:

- (a) where condition 1 applies, all of the requirements of condition 1 have been complied with; or
- (b) where condition 2 applies, all of the requirements of condition 2 have been complied with.

Condition 1

Condition 1 applies where:

1. the Relevant Supplier has removed a Relevant Meter and notified the relevant police force and (where applicable) any other Relevant Authorities of why the Relevant Meter was removed (the 'Notification'); and
2. after 6 months of the date of the Notification a police force or (where applicable) another Relevant Authority has not taken possession of that meter as evidence, or otherwise indicated that they intend to do so or are still considering the issue.

Requirements of Condition 1

1. The Relevant Supplier takes and permanently retains all appropriate records of when the Relevant Meter was removed, the identity of that meter, and the steps taken to comply with the other requirements of Condition 1.
2. The Relevant Supplier has photographic evidence and other appropriate records to justify the removal of the Relevant Meter.
3. The Relevant Supplier has notified the relevant police force and (where applicable) any other Relevant Authorities of why the Relevant Meter was removed.
4. The Relevant Supplier has retained the Relevant Meter for 6 months from the date it notified the relevant police force and (where applicable) any other Relevant Authorities in accordance with requirement 3.
5. After 6 months from the date the Relevant Supplier notified the relevant police force and (where applicable) any other Relevant Authorities in accordance with requirement 3, the police force or (where applicable) another Relevant Authority has not taken possession of that meter as evidence or otherwise indicated that they intend to do so.
6. Following a request in writing from Ofgem and/or the National Measurement Office, the Relevant Supplier has provided Ofgem and/or the National Measurement Office with the following information within the timeframe set out in that request:
 - (a) details of the total number of Relevant Meters that have been disposed of including:
 - (i) the date each Relevant Meter was disposed of;

(ii) the identity of each Relevant Meter; and

(iii) the date each Relevant Meter was originally removed; and

(b) details of the steps taken to comply with the requirements 1 to 5 of condition 1.

7. Immediately after the end of each calendar year the Relevant Supplier provides Ofgem and the National Measurement Office with a signed written statement, by a person authorised to act on behalf of the Relevant Supplier, to the effect that condition 1 applied during that year and that the Relevant Supplier has complied with requirements 1 to 6.

Condition 2

Condition 2 applies where:

(a) the Relevant Supplier has removed a Relevant Meter and notified the relevant police force and (where applicable) any other Relevant Authorities of why the Relevant Meter was removed (the 'Notification'); and

(b) within 6 months of the date of the Notification a police force or (where applicable) another Relevant Authority has taken possession of that meter as evidence or otherwise indicated that they intend to do so or are still considering the issue.

Requirements of Condition 2

1. The Relevant Supplier takes and permanently retains all appropriate records of when the Relevant Meter was removed, the identity of that meter, and the steps taken to comply with the other requirements of Condition 2.
2. The Relevant Supplier has photographic evidence and other appropriate records to justify the removal of the Relevant Meter.
3. The Relevant Supplier has notified the relevant police force and (where applicable) any other Relevant Authorities of why the Relevant Meter was removed.
4. Within 6 months of that date the police force or (where applicable) another Relevant Authority has taken possession of that meter as evidence or otherwise indicated that they intend to do so.
5. The Relevant Supplier has retained the Relevant Meter until the police force or (where applicable) another Relevant Authority has confirmed that the meter is no longer required as evidence.
6. Following a request in writing from Ofgem and/or the National Measurement Office, the Relevant Supplier has provided Ofgem and/or the National Measurement Office with the following information within the timeframe set out in that request:

(a) details of the total number of Relevant Meter that have been disposed of including:

(i) the date each Relevant Meter was disposed of;

(ii) the identity of each Relevant Meter; and

(iii) the date each Relevant Meter was originally removed;

(b) details of the steps taken to comply with the requirements 1 to 5 of condition 2.

7. Immediately after the end of each calendar year the Relevant Supplier provides Ofgem and the National Measurement Office with a signed written statement, by a person authorised to act on behalf of the Relevant Supplier, to the effect that condition 2 applied during that year and that the Relevant Supplier has complied with requirements 1 to 6.

Definitions

"Electricity Supplier"	has the meaning given in section 64(1) of the Electricity Act 1989;
"Authorised Supplier"	has the meaning given in section 64(1) of the Electricity Act 1989;
"Relevant Authority" / "Relevant Authorities"	includes (but is not limited to), where applicable, in Scotland, the Crown Office and Procurator Fiscal Service and in England and Wales, the Crown Prosecution Service;
"Relevant Supplier"	means in respect of Paragraph 6 of Schedule 6 to the Electricity Act 1989 the Electricity Supplier which removed a Relevant Meter pursuant to Paragraph 6 of Schedule 6 to the Electricity Act 1989 or in respect of Paragraph 11 of Schedule 7 to the Electricity Act 1989 the Authorised Supplier which removed the Relevant Electricity Meter pursuant to Paragraph 11 of Schedule 7 to the Electricity Act 1989;
"Relevant Meter(s)"	means an electricity meter removed by an Electricity Supplier pursuant to Paragraph 6 of Schedule 6 to the Electricity Act 1989 or an electricity meter removed by an Authorised Supplier pursuant to Paragraph 11 of Schedule 7 to the Electricity Act 1989.

Annex 2 – relevant provisions of the Act

Paragraph 6 of Schedule 6 to the Electricity Act 1989 (damage to meters etc):

(1) A person who intentionally or by culpable negligence damages or allows to be damaged—

(a) any electric line or electrical plant provided by an electricity distributor; or

(b) any electricity meter provided by an electricity supplier,

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where an offence has been committed under sub-paragraph (1) by the occupier of any premises (or by the owner of the premises if they are unoccupied when the offence is committed) in relation to any electric line or electrical plant provided by an electricity distributor for making or maintaining a connection to the premises, the distributor may disconnect the premises.

(3) Where an offence has been committed under sub-paragraph (1) in relation to an electricity meter provided by an electricity supplier which is situated on any premises, by the occupier (or by the owner of the premises if they are unoccupied when the offence is committed), the supplier may disconnect the premises and may remove the meter.

(4) A meter removed under sub-paragraph (3) shall be kept safely by the supplier until the Authority authorises its destruction or disposal.

(5) The distributor or supplier shall not be under any obligation to reconnect (and in the case of a supplier to restore the supply to) any premises disconnected under sub-paragraph (2) or (3) until—

(a) the offender is no longer the occupier or, as the case may be, the owner of the premises; or

(b) the matter in consequence of which the premises were disconnected has been remedied.

Paragraph 11 of Schedule 7 to the Electricity Act 1989 (interference with meters):

(1) If any person intentionally or by culpable negligence—

(a) alters the register of any meter used for measuring the quantity of electricity supplied to any premises by an authorised supplier; or

(b) prevents any such meter from duly registering the quantity of electricity supplied,

he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where any person is prosecuted for an offence under sub-paragraph (1) above, the possession by him of artificial means for causing an alteration of the register of the meter or, as the case may be, the prevention of the meter from duly registering shall, if the meter was in his custody or under his control, be prima facie evidence (or in

Scotland sufficient evidence) that the alteration or prevention was intentionally caused by him.

(3) Where an offence under sub-paragraph (1) above has been committed, the supplier may discontinue the supply of electricity to the premises until the matter has been remedied and remove the meter in respect of which the offence was committed.

(4) Where an authorised supplier removes a meter under sub-paragraph (3) above, he shall keep it safely until the Authority⁴ authorises him to destroy or otherwise dispose of it.

⁴ The effect of section 95 of the Energy Act 2008 is that this function has been transferred to the Secretary of State and this reference to the Authority is to be treated as a reference to the Secretary of State. The relevant Secretary of State is the Secretary of State for Business, Innovation and Skills and, in practice, this function has been delegated to the National Measurement Office (an Executive Agency of the Department for Business, Innovation and Skills)