



Making a positive difference
for energy consumers

Holders of Gas and Electricity
Supply Licences, consumers and
their representatives, and other
interested parties

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Dear Colleagues

**Authority's decision to Modify the Safe and Reasonably Practicable Guidance,
pursuant to Standard Licence Condition 28.1B of the Electricity Supply Licence
and the Gas Supply Licence**

Further to our document "Smart prepayment for a smarter market", we are issuing modified guidance on the interpretation of licence condition 28.1B which states:

"The licensee must have regard to guidance on the interpretation of "safe and reasonably practicable in all the circumstances of the case" which, following consultation, the Authority may issue, and may from time to time revise."

In our consultation document titled "Smart prepayment for a smarter market: our proposals", we proposed to clarify and update the Safe and Reasonably Practicable Guidance to stay abreast of technological developments and ensure consumers are protected in a smart prepayment market¹.

The consultation document recognised that smart prepayment can enable a number of alternative non-cash top-up methods for consumers. The potential for new ways of topping up, for example over the phone, online or via a smart phone app, constitutes an important benefit of smart prepayment. This can increase the attractiveness and convenience of prepayment to consumers. However, we signalled that there may be risks associated with consumers who rely on these non-cash top-up methods only.

The modifications to the guidance identify examples of the relevant factors that we would expect suppliers to consider when applying the safe and reasonably practicable test to a customer's request to pay by non-cash top-up methods.

NOW THEREFORE

The Authority modifies the Safe and Reasonably Practicable Guidance. The modified Safe and Reasonably Practicable Guidance is attached to this decision. All modifications have been highlighted in red text for ease of reference. These modifications will take effect on and from 00:00 hours on 1st October 2016.

¹ Ofgem, September 2015. Smart prepayment for a smarter market: our proposals.
https://www.ofgem.gov.uk/sites/default/files/docs/2015/09/ofgem_smart_prepayment_proposals_0.pdf

Amending the guidance, along with the other actions described in the smart prepayment decision document, will help achieve the right consumer outcomes for smart prepayment. Ofgem will continue to monitor developments in the coming months to ensure consumers remain protected as the smart prepayment market evolves.

Yours faithfully

Neil Barnes
Associate Partner
Consumers and Competition

Guidance on the interpretation of Safe and Reasonably Practicable for the purposes of Standard Licence Condition 28 of the Gas Supply Licence and the Electricity Supply Licence

Prepayment only where safe and reasonably practicable

The intention is that this guidance would apply in circumstances where the supplier offers a Prepayment Meter to a customer. It also applies where the supplier becomes aware that it is no longer safe and reasonably practicable for the customer to use a Prepayment Meter. Suppliers are reminded that, in addition to having regard to this guidance, they should comply with other obligations under their licences and in other legislation and guidance. For example, suppliers are reminded of the need to ensure that communications materials are appropriate to the needs of customers², referring where applicable to relevant legislation such as the Equality Act 2010. Suppliers are reminded to act properly and proactively when considering a customer's ability to pay by taking into account the "Key principles for ability to pay"³. Suppliers are also reminded that they cannot install a Prepayment Meter for any unpaid charges which are genuinely in dispute.

This guidance is not intended to be exhaustive, nor does it imply that these steps must be taken in each and every case, and it is ultimately for suppliers to determine the steps they need to take to meet their supply licence conditions. Suppliers should assess each individual case on its merit. These steps provide important protections, particularly for vulnerable consumers. Ofgem will take compliance with these very seriously and is likely to consider enforcement action to be a proportionate response to a single case of breach. What is safe and reasonably practicable should be considered from the Domestic Customer's perspective. Relevant factors are likely to include:

- whether the customer is able to understand and operate the Prepayment Meter and visit top-up points (**where needed**) to add more credit. (For example whether the customer has a physical or mental disability that prevents them from being able to appropriately use a Prepayment Meter.)
- whether the customer lives quite a distance from any top-up outlets (**This would not apply if a customer does not want or need to top up by cash, and has actively asked to pay by alternative top-up methods**). What constitutes 'quite a distance' is likely to vary depending on the customer's circumstances. For example it may not be reasonably practicable to provide a Prepayment Meter if a Domestic Customer needs to travel over two miles to top up the credit and does not have a car.)
- whether the customer requires a continuous supply for health reasons, such as dependency on medical equipment requiring an electricity supply
- whether the Prepayment Meter is situated in a position (such as high on a wall) that means the customer could not operate the Prepayment Meter
- whether the Prepayment Meter would have to be situated outside or in a room to which the household does not have continuous access
- any advice/guidance received from the Health and Safety Executive (HSE).

Many of these circumstances may be addressed by technological innovations, particularly where a smart meter is installed, or some other form of initiative. Technical innovations addressing the issue of what is safe and reasonably practicable should only be adopted where suppliers are confident that the solution will enable them to provide a supply to the customer at all times. It is also possible that adults, other than the customer living in the premises, may be in a position to understand and operate the Prepayment Meter.

² Debt and Disconnection Review January 2008, chapter 4 „Suppliers“ debt and disconnection correspondence“. <http://www.ofgem.gov.uk/Sustainability/SocAction/Publications/Documents1/Debt%20and%20disconnection%20est%20practice%20review.pdf>

³ Debt Review report: key Principles for taking ability to pay into account, June 2010 <http://www.ofgem.gov.uk/Sustainability/SocAction/Publications/Documents1/Open%20letter.pdf>

Smart meters allow alternative ways of topping up for prepayment customers that do not require a visit to a top-up outlet. Customers can actively ask for alternative top-up methods so as not to require cash as a payment option. We expect suppliers to ensure that consumers are able to make their choice based on relevant information, including on advantages or disadvantages associated with such a request. We also expect suppliers to give due consideration to a range of factors when applying the safe and reasonably practicable test to a consumer's request to pay by non-cash top-up methods only. These factors may include:

- Whether the customer has access to a bank account and whether such access is needed to make use of alternative top-up methods
- The reliability with which the customer can access alternative top-up methods, including the extent to which reliable access to their top-up device is not under threat from their inability to pay. For example, a customer who intends to pay by their mobile phone will be reliant on having reliable access to this service, and needs to be able to afford any charges associated with accessing the top-up service; or a customer who pays online via a desktop may be dependent on having continued access to electricity
- Whether the customer seems to need more than one alternative, non-cash way of topping up to ensure they are able to do so.

An example where it may be considered safe and reasonably practicable to switch the customer to prepayment mode even if the meter is inaccessible to the customer would be if the In Home Display unit or some additional device is accessible and allows all the necessary features of a Prepayment Meter to be easily accessed by the customer, including the ability to re-enable supply.

Suppliers should also consider their obligation not to disconnect unless they have first taken all reasonable steps to recover charges through a Prepayment Meter. Given this requirement, in some circumstances it may be reasonable for measures to be taken which ensure it is safe and reasonably practicable for the customer to use the Prepayment Meter where the alternative is disconnection.

What is safe and reasonably practicable can also be considered from the supplier's perspective. However, there are likely to be limited circumstances where we considered it was not safe and reasonably practicable from the supplier's perspective, particularly where the alternative for the customer is disconnection. An example of such a circumstance may be where the customer has had a history of theft of gas or electricity or meter tampering.

Identification of customers' circumstances

The sort of proactive steps that we would generally expect suppliers to consider in order to identify whether it is safe and reasonably practicable in all the circumstances of the case to offer a Prepayment Meter to a customer include:

- recording the location of the meter when installed or inspected
- reviewing appropriate notes on the customer's accounts to ascertain whether any vulnerability which would mean it was not safe and reasonably practicable for the customer to have a Prepayment Meter is recorded
- making multiple attempts to contact the customer by various means and at various times of day to discuss the option of paying through a Prepayment Meter
- where a discussion with the customer had not been possible or, if following discussion, there was still uncertainty about whether it would be safe and reasonably practicable for the customer to pay through a Prepayment Meter, the supplier should take reasonable steps to visit the customer at their premises, which could include making visits at various times of day
- checking whether there has been a change of occupancy

- attempting to check with any appropriate advice or other agency such as local authority or housing association
- obtaining authorisation of an appropriate seniority prior to moving a customer to a Prepayment Meter.

Post installation of a Prepayment Meter

The sort of proactive steps that we would generally expect suppliers to follow after putting a customer on a Prepayment Meter in order to ensure it is safe and reasonably practicable for the customer include:

- where technically feasible, monitoring whether the customer is self-disconnecting
- where it is identified that the customer is self-disconnecting, making multiple attempts to contact the customer by various means and at various times of day to understand the reasons for this.

Where it becomes apparent that the reason for self-disconnection is that it is not safe and reasonably practicable for the customer to use a Prepayment Meter, then the supplier should make alternative arrangements.