

## **Notice of intention to impose a financial penalty pursuant to section 27A(3) of the Electricity Act 1989**

### **Proposal of the Gas and Electricity Markets Authority to impose a financial penalty, following an investigation into compliance by British Gas with Standard Licence Condition 12 of the Electricity Supply Licence**

**7 December 2016**

#### **1 Summary**

- 1.1 The Gas and Electricity Markets Authority ("the Authority") proposes to impose a financial penalty on British Gas Trading Limited (referred to as "British Gas") following an investigation by Ofgem into its failure to comply with Standard Licence Condition 12 of the Electricity Supply Licence (SLC 12), specifically SLC 12.18 and SLC 12.21, in relation to advanced meters for non-domestic premises.
- 1.2 SLC 12.18 provides that on and after 6 April 2009, where a licensee installs or arranges for the installation of an Electricity Meter<sup>1</sup> at relevant premises<sup>2</sup> the Electricity Meter installed must be an advanced meter<sup>3</sup>. Under SLC 12.21 licensees must not, from 6 April 2014, supply electricity to any relevant premises other than through an advanced meter. SLC 12.22 states that this prohibition does not apply where the licensee is unable to install or arrange for the installation of any advanced meter at the relevant premises in question despite taking *all reasonable steps* to do so. For the purposes of this notice we refer to these obligations as "the Advanced Meter Obligations".
- 1.3 The Authority finds that British Gas installed Electricity Meters at a small number of relevant premises after the regulatory deadline that were not advanced meters, in contravention of SLC 12.18. This practice affected a small number of customers, with over half of those customers remaining without an advanced meter at 6 April 2014. British Gas' contravention of SLC 12.18 is a breach of its licence conditions.
- 1.4 The Authority also finds that British Gas was in breach of SLC 12.21 as at 6 April 2014. The Authority has concluded that British Gas failed to take all reasonable steps to install or arrange for the installation of advanced meters at all relevant premises as at 6 April 2014. The Authority is of the view that around 10,000

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<sup>1</sup> "Electricity Meter" means a meter which conforms to the requirements of paragraph 2 of Schedule 7 to the Electricity Act 1989.

<sup>2</sup> "Relevant Premises" are defined by SLC 12.17, which provides: "This paragraph has effect on and after 6 April 2009 and applies where the licensee installs or arranges for the installation of an Electricity Meter at Non-Domestic Premises where the metering point falls within profile class 5, 6, 7 or 8 as defined in the Balancing and Settlement Code (for this condition only, "relevant premises")".

<sup>3</sup> "Advanced meter" is defined by SLC 12.19 which provides: "For the purposes of this condition, an advanced meter is an Electricity Meter that, either on its own or with an ancillary device, and in compliance with the requirements of any relevant Industry Code:

- (a) provides measured electricity consumption data for multiple time periods, and is able to provide such data for at least half-hourly time periods; and
- (b) is able to provide the licensee with remote access to such data.

additional meter points at relevant premises would have been supplied through an advanced meter had British Gas taken all reasonable steps to install or arrange for the installation of advanced meters at those premises.

- 1.5 The Authority considers it appropriate to impose a penalty for these contraventions. The proposed penalty takes into account that British Gas breached SLC 12.18, and 12.21 to a significant extent. The proposed penalty also takes into account the fact that since 6 April 2014 British Gas has increased the number of advanced meters installed at relevant premises and has made undertakings to the Authority to make further improvements. In the circumstances, the Authority hereby gives notice under section 27A(3) of the Electricity Act 1989 (“the Electricity Act”) of its proposal to impose a penalty of £1 on British Gas in respect of the contravention set out above provided that within 30 days of the publication of the Notice of the Decision to impose a financial penalty, issued pursuant to section 27A(5) of the Electricity Act, British Gas has paid £4.5 million (minus the £1 financial penalty) by way of consumer redress as set out below. Further, British Gas has agreed to increased levels of monitoring of the outstanding relevant premises.
- 1.6 The Authority has taken into account that British Gas has offered to settle this investigation and to make a payment as set out above in consumer redress. This payment will be made to the Carbon Trust to help small and medium-sized enterprise (SME) commercial energy consumers across Great Britain save energy through energy saving audits, advice and energy efficiency measures.
- 1.7 Having considered all the circumstances of the case, the Authority considers this redress payment will be of greater benefit to business consumers than if a significant financial penalty were to be imposed.
- 1.8 The Authority considers the penalty to be reasonable in all the circumstances of the case. If British Gas had not agreed to settle this investigation on the terms set out above, the Authority would have considered it appropriate to impose a much larger penalty in view of the seriousness of the contraventions.
- 1.9 Any written representations on the proposed penalty must be received by Steve McBurney at Ofgem, 9 Millbank, London, SW1P 3GE or [steve.mcburney@ofgem.gov.uk](mailto:steve.mcburney@ofgem.gov.uk), by 5.00pm on 11 January 2017.
- 1.10 Any representations received that are not marked as confidential may be published on the Ofgem website. Should you wish your response or part of your response to remain confidential, please indicate this clearly. Any such requests will be considered by Ofgem on a case by case basis.

## 2. Background

### *Advanced Meters for Non-Domestic Premises – SLC 12.17 to SLC 12.22*

- 2.1 In April 2009, the Government modified SLC 12<sup>4</sup> of both the Gas and Electricity Supply Licences, requiring licensees not to supply gas and electricity to their larger non-domestic consumers other than through advanced meters from 6 April 2014, i.e. suppliers had five years to prepare for this obligation. For the purpose of this notice, this five year period is referred to as the 'Roll-Out Period'. From 6 April 2014, the prohibition against supplying electricity other than through an advanced meter did not apply if the licensee was unable to install or arrange for the installation of an advanced meter at the relevant premises in question despite taking all reasonable steps to do so.
- 2.2 On 24 May 2012 (about 60% of the way through the Roll-Out Period) Ofgem issued an Information Request (IR) to all licensed non-domestic suppliers asking them to provide an update on progress with the Advanced Meter Obligations. Responses indicated that, in aggregate, 63% of electricity meters had been made advanced at relevant premises.
- 2.3 On 28 February 2013, Ofgem wrote an 'open letter'<sup>5</sup> informing all licensed non-domestic suppliers, and others, of the (aggregate) progress that had been made, based on the data provided. The letter reminded licensees of the importance of ensuring that licence obligations are complied with and set out a non-exhaustive list of factors<sup>6</sup> that might be considered when deciding whether a licensee had complied with its obligation to take all reasonable steps under SLC 12.22. It also stated that Ofgem considered 'all reasonable steps' to be a high threshold for compliance. From May 2012 through to 6 April 2014 Ofgem also encouraged compliance through regular monitoring, bilateral correspondence and meetings with licensees, including British Gas.

### *The Investigation*

- 2.4 At the end of the Roll-Out Period the licensees with the highest numbers and lowest rates of non-advanced meters in the electricity market were identified. On 14 October 2014 an investigation was opened into British Gas' suspected breach of SLC 12.21 of the Electricity Supply Licence<sup>7</sup>.
- 2.5 The investigation assessed whether British Gas was unable to install or arrange for the installation of advanced meters despite taking all reasonable steps to do so. The investigation assessed a number of aspects of British Gas' behaviour during the Roll-Out Period and focussed particularly on whether British Gas<sup>8</sup>:

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<sup>4</sup> Using powers under section 88 of the Energy Act 2008.

<sup>5</sup> <https://www.ofgem.gov.uk/ofgem-publications/41832/20130228the-roll-out-advanced-meters-larger-non-domestic-consumers.pdf>

<sup>6</sup> i) The licensee's strategy for engaging with the consumer to attempt to gain access to the relevant premises; ii) the technical solution(s) the licensee utilised in order to ensure a high probability of success when installing advanced meters; iii) the information and options presented to the consumer when seeking their agreement to install an advanced meter.

<sup>7</sup> Investigations were also opened into E.ON and npower.

<sup>8</sup> The factors listed below are not an exhaustive list. The obligation requires "all reasonable steps" to be taken to install or arrange for the installation of advanced meters and, as stated in Ofgem's 'open' letter of February 2013, Ofgem considers "all reasonable steps" to be a high threshold for compliance.

- had an effective customer engagement strategy in place that would allow it to install an advanced meter at relevant premises;
- dealt sufficiently with issues affecting the operational functionality of meters, particularly whether it took all reasonable steps to resolve communications issues;
- had effective planning, governance, and processes in place to ensure compliance with the Advanced Meter Obligations by 6 April 2014.

### *The Contraventions*

2.6 After considering the relevant information of the case, the Authority finds British Gas in breach of SLC 12.18 and 12.21.

#### SLC 12.18 prohibition against installation of Electricity Meters that are not advanced meters

2.7 SLC 12.18 provides that on and after 6 April 2009 where a licensee installs or arranges for the installation of an Electricity Meter at relevant premises the Electricity Meter installed must be an advanced meter.

2.8 The Authority finds that British Gas acted in contravention of SLC 12.18 by installing around 600 Electricity Meters at relevant premises that were not advanced meters. This practice affected a small number of customers, with over half of these customers remaining without an advanced meter at 6 April 2014. British Gas' contravention of SLC 12.18 is a breach of its licence conditions. The Authority also notes that British Gas did not self-report the breach of SLC 12.18.

#### SLC 12.21 prohibition against supply of electricity other than through an advanced meter

2.9 SLC 12.21 provides: *'As from 6 April 2014, the licensee must not supply electricity to any relevant premises other than through an advanced meter<sup>9</sup>. However, SLC 12.22 provides: 'The prohibition imposed by paragraph 12.21 does not apply where the licensee is unable to install or arrange for the installation of any advanced meter at the relevant premises in question despite taking all reasonable steps to do so'.*

2.10 The Authority finds that British Gas was in breach of SLC 12.21 as at 6 April 2014. The Authority has concluded that British Gas failed to take all reasonable steps to install or arrange for the installation of advanced meters at all relevant premises by 6 April 2014. The Authority is of the view that around 10,000 additional meter points at relevant premises would have been supplied through an advanced meter had British Gas taken all reasonable steps to install or arrange for the installation of advanced meters at those premises.

The evidence suggests to the Authority that the majority of cases where advanced meters were not in place resulted from British Gas' failure to meet its regulatory obligations. However, the Authority acknowledges the possibility that

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<sup>9</sup> The meaning of an "advanced meter" is set out in SLC 12.19, which provides: *'For the purposes of this condition, an advanced meter is an Electricity Meter that, either on its own or with an ancillary device, and in compliance with the requirements of any relevant Industry Code: (a) provides measured electricity consumption data for multiple time periods, and is able to provide such data for at least half-hourly time periods; and (b) is able to provide the licensee with remote access to such data'.*

there may have been a proportion of meter points at relevant premises in respect of which, despite taking all reasonable steps, British Gas could not have installed an advanced meter.

2.11 The Authority's assessment of whether British Gas took all reasonable steps in relation to those relevant premises to which it was supplying electricity other than through an advanced meter as at 6 April 2014 found failings in specific areas, which are set out below. Whilst the areas examined below do not represent an exhaustive list of the "all reasonable steps" which a licensee may take in order to successfully discharge its Advanced Meter Obligations, the Authority found that British Gas failed to take all reasonable steps in relation to its:

- strategy and procedures for engaging customers at relevant premises;
- specific monitoring of and remedying of advanced meters that failed to deliver required "advanced" operational functionality; and
- planning, governance, and processes of the roll out of advanced meters at relevant premises.

#### *Customer engagement*

2.12 British Gas' customer engagement process was not as effective as it could have been, especially in the early stages of the Roll-Out Period. Although British Gas introduced some steps that focussed on the SLC 12.21 obligation in the latter stages of the Roll-Out Period, the Authority considers these steps (some of which are highlighted in the paragraph below) were taken too late to have the full beneficial effect they could have had by the end of the Roll-Out Period had they been introduced earlier.

2.13 British Gas reviewed and amended its customer engagement process in 2013 to include a number of steps aimed at installing advanced meters at relevant premises. These steps included the re-engagement of customers with aborted appointments for advanced meter installations, the introduction of outbound calling at different times of day, the proactive offering of out of hours (OOH) appointments, and the introduction of visits by pedestrian meter readers to sites where no contact with customers could be established. The Authority considers these steps were introduced too late in the Roll-Out Period for British Gas to have been compliant with SLC 12.21 on 6 April 2014.

#### *Non-communicative advanced meters*

2.14 During the Roll-Out Period, British Gas did not take certain reasonable steps to remedy meters that were not delivering the required "advanced" operational functionality i.e. meters that were suffering communication issues. These steps (not taken) included appropriate and efficient contract arrangements for resolving technical issues, the use of high gain aerials, contracting with alternative meter operating providers (MOPs) and more proactive meter exchanges as a last resort, when all other options had been exhausted. The Authority considers British Gas did not have effective processes in place throughout the Roll-Out Period for monitoring and resolving these communication failures.

2.15 Contractual arrangements made by British Gas did not always allow for an efficient resolution of some technical issues. As a result, a number of "hard to do" meter installations were not prioritised for resolution by the end of the Roll-Out Period.

- 2.16 British Gas did not effectively address all communication issues with meters it installed. The Authority considers British Gas failed to effectively consider and implement appropriate technical solutions, and ultimately meter exchanges, to address these issues.
- 2.17 The Authority also considers British Gas did not effectively address communication issues with inherited meters, largely as a result of British Gas not contracting with alternative MOPs and proactively exchanging meters as a last resort, when all other options had been exhausted. The Authority considers that had British Gas engaged with more MOPs, this could have lowered the number of meter exchanges required; alternatively the Authority would have expected British Gas to exchange more meters as a last resort.

#### *Planning, governance, and processes for the Advanced Meter Obligations*

- 2.18 The Authority finds that the planning, governance and processes that British Gas applied to achieve compliance with the Advanced Meter Obligations fell short of the standard required of a licensee to take all reasonable steps to install or arrange for the installation of advanced meters.
- 2.19 British Gas began to implement a smart meter roll-out for its business customers in 2006, and in 2009, with the introduction of SLC 12, incorporated the Advanced Meter Obligations into this roll-out. Whilst British Gas took some steps to monitor its roll-out progress against the mandated portfolio, it did not prioritise effectively the installation of advanced meters at relevant premises within this wider programme of work internally, with its third party meter installers or with its customers, until 2013. The Authority considers this was too late in the Roll-Out Period for British Gas to have been compliant with SLC 12.21 on 6 April 2014. Although the Authority recognises that British Gas had some governance structures, planning and processes related to its wider smart meter roll-out, the Authority considers these were not sufficiently specific to the Advanced Meter Obligations to have been effective in achieving compliance.

### **3. The Authority's decision on whether to impose a financial penalty**

#### *General background to the Authority's decision to impose a financial penalty*

- 3.1 The Authority has considered whether a financial penalty is appropriate in accordance with the requirements of the Electricity Act, and its published Statement of Policy with respect to Financial Penalties (October 2003) ("the 2003 Penalty Statement")<sup>10</sup>.
- 3.2 In deciding whether to impose a penalty, and in determining the amount of any penalty, the Authority is to have regard to its statement of policy most recently published at the time when the contravention or failure occurred<sup>11</sup>. The 2003 Penalty Statement was introduced in October 2003. In November 2014, the Authority introduced a new policy ("the 2014 Penalty Statement") which the Authority must have regard to when deciding whether to impose a financial penalty, and determining the amount of any such penalty, in respect of any contravention which occurred on or after 6 November 2014. In such cases, the 2014 Penalty Statement applies instead of the 2003 Penalty Statement.

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<sup>10</sup> <https://www.ofgem.gov.uk/ofgem-publications/74207/utilities-act-statement-policy-respect-financial-penalties.pdf>

<sup>11</sup> Section 27B(2) of the Electricity Act 1989.

- 3.3 In this case the Authority has investigated and made a determination on British Gas' compliance with SLC 12.18 on and after 6 April 2009 and with SLC 12.21 as at 6 April 2014. The scope of this investigation concerns British Gas' conduct before 6 November 2014 and the Authority has therefore applied the penalty regime which applies to contraventions which occurred prior to 6 November 2014 – the 2003 Penalty Statement.
- 3.4 In deciding whether it is appropriate to impose a financial penalty, the Authority has considered all the circumstances of the case including the following specific matters set out in the 2003 Penalty Statement.

*General Criteria for the imposition of a penalty*

- 3.6 The Authority is required to take into consideration the particular facts and circumstances of the contravention that were outside the control of the licensee. Having considered whether such factors were present, the Authority finds that British Gas breached SLC 12.18 by installing non-advanced types of meters at relevant premises after 6 April 2009. The Authority also finds that British Gas failed to take all reasonable steps to install or arrange for the installation of an advanced meter at the relevant premises and therefore was not compliant with SLC 12.21. The Authority is of the view that around 10,000 additional meter points at relevant premises would have been supplied through an advanced meter had British Gas taken all reasonable steps to install or arrange for the installation of advanced meters at those premises. However, the Authority acknowledges the possibility that there may have been a small proportion of meter points at relevant premises in respect of which, despite taking all reasonable steps, British Gas could not have installed an advanced meter. Further, it is the Authority's view that British Gas has increased its advanced meter installation rate since 6 April 2014, although a number of British Gas customers at relevant premises still do not have an advanced meter.

*Factors tending to make the imposition of a financial penalty more likely than not*

Whether the contravention or the failure has damaged the interests of consumers or other market participants

- 3.7 The Authority considers that there are immediate benefits arising from an advanced meter which include access to up to date information on consumption, more accurate billing and time saving (associated with reducing time spent on queries and having meters read remotely). Furthermore, advanced meters can provide businesses with control over their energy forecasting and budgeting. In addition, these businesses would have the opportunity through the information provided by an advanced meter to plan the implementation of any reductions in their consumption. The Authority recognises there are also likely future benefits, such as time of use tariffs<sup>12</sup> enabled through half hourly settlement, which require an advanced meter. By not installing advanced meters at relevant premises by 6 April 2014 and installing non-advanced types of meters at a number of those premises after April 2009, British Gas did not provide those businesses with the enabling technology to take advantage of these benefits.
- 3.8 DECC<sup>13</sup>'s Advanced Metering Impact Assessment<sup>14</sup> (IA) assumes a 2.5% per annum decrease in energy consumption post installation of an advanced

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<sup>12</sup> Where consumers are charged different prices according to when the electricity is used.

<sup>13</sup> During 2016 DECC became BEIS (Department for Business, Energy and Industrial Strategy)

electricity meter (2008) modelled over a 15-year timespan. The Authority recognises that advanced meters are an important enabling technology which can provide businesses with the opportunity to plan for consumption reduction. The Authority considers that by contravening the obligation in SLC 12.18 and by not meeting the obligation in SLC 12.21, British Gas is likely to have caused harm to some businesses and the environment because of the lost opportunity to plan for consumption reduction.

- 3.9 The Authority considers that the interests of future customers may also be affected due to network and generation benefits that are enabled by advanced meters<sup>15</sup>. These include reduced losses, avoided investment from demand side flexibility (network and generation) and short run marginal costs savings from demand side flexibility.
- 3.10 Finally the Authority considers that there is likely to be harm due to environmental benefits not being realised. These include reducing carbon emissions; improving air quality; and a reduction in EU Emissions Trading System (ETS) credits purchased.

Whether imposing a financial penalty is likely to create an incentive to compliance and deter future breaches

- 3.11 The Authority considers compliance with mandatory deadlines to be very important and to that end, the Authority considers that imposing a financial penalty is likely to create an incentive for compliance and deter future breaches generally. Imposing a penalty in this case would create the right incentives around the need for regulated parties to comply with deadlines, which are particularly important for future mandatory programmes such as, for example, the smart meter roll-out.

*Factors tending to make the imposition of a financial penalty less likely than not*

If the contravention is trivial in nature

- 3.12 The Authority considers that British Gas' breaches of SLC 12.18 and SLC 12.21 are not trivial due to the importance of complying with mandatory deadlines. Furthermore, SLC 12.18 and SLC 12.21 are important obligations that benefit business consumers and the environment.

That the principal objective and duties of the Authority preclude the imposition of a penalty

- 3.13 The Authority considers that its principal objective and duties, as set out in section 3A of the Electricity Act, do not preclude the imposition of a financial penalty in this case.

That the breach or possibility of a breach would not have been apparent to a diligent licensee

- 3.14 The Authority considers that the possibility of a breach would have been apparent to a diligent licensee.

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<sup>14</sup><http://webarchive.nationalarchives.gov.uk/20100216092443/http://www.berr.gov.uk/files/file47192.pdf>

<sup>15</sup> Some of these benefits are due to half hourly settlement which will be implemented in April 2017 via P 272 (a mandatory industry-wide change instigated by Ofgem for the half-hourly (HH) settlement of profile class 5-8 meters that have capable metering in place). An advanced meter is therefore required for this.



- 3.15 SLC 12.18 prohibits the installation of non-advanced types of meters at relevant premises on and after 6 April 2009 in express and unequivocal terms.
- 3.16 Licensees were given five years to prepare for compliance with the SLC 12.21 obligation. Furthermore, on several occasions, Ofgem communicated with licensees about the requirements of the Advanced Meter Obligations by way of open letters and direct requests for information.

#### *Conclusion*

- 3.17 After consideration of the above factors, the Authority considers that it is appropriate to impose a financial penalty in this case.

#### **4. Criteria relevant to the level of financial penalty**

- 4.1 The amount of any penalty must be reasonable in all the circumstances of the case. In accordance with section 270 of the Electricity Act, the Authority may impose a financial penalty of up to 10 per cent of the turnover of the relevant licence holder. Turnover is defined in an Order made by the Secretary of State.<sup>16</sup> The Authority is satisfied that the proposed penalty does not exceed 10 per cent of the turnover of British Gas.
- 4.2 In deciding the appropriate level of financial penalty, the Authority has considered all the circumstances of the case, including the following specific matters set out in the 2003 Penalty Statement.

#### *Factors which are first considered when determining the level of penalty*

##### The seriousness of the contravention and failure

- 4.3 The roll-out of advanced meters is part of a national infrastructure project to modernise the energy sector and provide a better service to customers, it is therefore very important that these meters are installed on time and that non-advanced meters were not installed at the relevant premises after April 2009.
- 4.4 The Authority considers that British Gas' failure to comply with SLC 12.18 and SLC 12.21 is serious and this has been taken into account in deciding the level of penalty. The Authority considers compliance with regulatory prohibitions and mandatory deadlines, such as those relating to the prohibition on installing non-advanced types of meter after April 2009 (SLC 12.18) and the obligation not to supply electricity other than through advanced meters under SLC 12.21, to be very important. Licensees had five years to prepare for compliance with SLC 12.21. Licensees were encouraged to consider a variety of technical solutions in order to ensure a high probability of success when installing advanced meters. British Gas' failure to deliver its regulatory obligations within the legally required timescales is a serious matter.
- 4.5 British Gas' failure to deliver this obligation may impede the positive change that advanced meters can facilitate, as advanced meters are a key enabling technology that underpins important government policies. This includes, amongst other things, the delivery of Ofgem's Smarter Markets Programme – the goal of which is to make energy markets more dynamic and competitive. British Gas' advanced meter roll-out performance may therefore slow down the realisation of the benefits envisaged by the Smarter Markets Programme, in particular:

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<sup>16</sup> The Electricity and Gas (Determination of Turnover for Penalties) Order 2002.

- Accurate and timely billing - enabled by direct access to relevant information (e.g. consumption) on request and remote meter reads. These aims are impacted by British Gas' failure to fulfil its Advanced Meter Obligations because traditional meters limit billing accuracy performance, which increases reliance on estimated bills and the potential for back-billing.
- Access to the benefits of accurate (half-hourly) settlement – settling customers on a half-hourly basis necessitates having an advanced meter installed. Exposing licensees to more accurate charges for the electricity consumed by their customers should act as an incentive to innovate and offer new tariffs and services that enable customers to manage their energy demand, and shift discretionary load to off-peak periods. Licensees are under a mandate to settle all profile class 5-8 customers that have an advanced meter on a half-hourly basis by April 2017.
- Easier switching – facilitated through accurate and timely bills which are enabled by remote meter reads. These aims are impacted by British Gas' failure to fulfil its Advanced Meter Obligations because unreliable switching undermines consumer confidence in the market.

4.6 The advanced meter roll-out is an important obligation which we expect all relevant licensees to comply with. The obligations in SLC 12.18 and SLC 12.21 benefit business consumers and have wider environmental benefits. By not meeting its obligations, British Gas has fallen short on delivering these benefits.

The degree of harm or increased cost incurred by customers or other market participants after taking into account any compensation paid

4.7 The Authority considers that there may have been harm to business consumers (see para 3.7 to 3.10 and 4.5 above for details).

The duration of the contravention or failure

4.8 British Gas contravened SLC 12.18 during the Roll-Out Period.

4.9 The breach of the obligation in SLC 12.21 for the purposes of this investigation occurred on 6 April 2014. However, the obligation in SLC 12.21 is ongoing, meaning that a licensee may be in contravention of it unless the licensee installs or arranges to install advanced meters at all relevant premises or takes "all reasonable steps" to do so in accordance with SLC 12.22.

4.10 British Gas' current compliance with SLC 12.21 was not within the scope of the Authority's investigation. However, the Authority notes that British Gas has increased the number of advanced meters installed at relevant premises since 6 April 2014, although a number of British Gas customers at relevant premises still do not have an advanced meter. The Authority also notes that British Gas has agreed to increased levels of monitoring at the outstanding meter points.

Any gain (financial or otherwise) made by the licensee

4.11 The Authority considers that British Gas made a financial gain by avoiding the costs associated with installing and operating advanced meters as at 6 April 2014. The Authority recognises that British Gas took specific steps to comply with SLC 12.21 late in the Roll-Out Period, and incurred costs in doing so. The Authority has taken this into account in determining the level of penalty.

4.12 This factor does not apply in respect of the breach of SLC 12.18

*Factors tending to increase the level of penalty*

Repeated contravention or failure

4.13 British Gas has not been found to be in breach of SLC 12.18 or SLC 12.21 before. The Authority does not consider that this factor applies.

Continuation of contravention or failure after becoming aware of the contravention or failure or becoming aware of the start of Ofgem's investigation

4.14 The Authority is not making any finding regarding British Gas' current compliance with Advanced Meter Obligations. However, the Authority notes that British Gas has increased the number of advanced meters installed at relevant premises since 6 April 2014. Whilst a number of British Gas' customers at relevant premises still do not have an advanced meter, in the circumstances the Authority does not consider that this factor applies.

The involvement of senior management in any contravention or failure

4.15 The Authority is not aware of any additional steps taken or particular involvement of senior management at British Gas to secure compliance with SLC 12.18 during the Roll-Out Period.

4.16 The Authority considers that Senior Management at British Gas did not deliberately act to contravene SLC 12.21. However, the Authority considers more effective senior-level planning and monitoring would have allowed British Gas to identify problems in complying with SLC 12.21 and enabled it to develop solutions or processes, deploy additional resources and/or make other adjustments to meet its Advanced Meter Obligations.

4.17 The Authority considers that this factor applies.

Absence of any evidence of internal mechanisms or procedures intended to prevent contravention or failure

4.18 British Gas' planning, monitoring, governance and processes were not sufficiently focused on ensuring compliance with the Advanced Meter Obligations. However, British Gas has provided evidence of a number of reasonable steps to install advanced meters at relevant premises by 6 April 2014 intended to prevent the contravention.

4.19 Therefore, the Authority considers that this factor does not apply.

The extent of any attempt to conceal the contravention or failure from Ofgem

4.20 British Gas did not attempt to conceal the contravention or failure from Ofgem. This factor therefore does not apply.

*Factors tending to decrease the level of penalty*

4.21 The Authority considers there are limited factors in this investigation which would tend to decrease the level of any penalty.

The extent to which the licensee had taken steps to secure compliance either specifically or by maintaining an appropriate compliance policy, with suitable management supervision

- 4.22 British Gas confirmed that it was not standard practice for it to install a Traditional Meter at meter points at relevant premises during the Roll-Out Period, and that these were only installed in exceptional circumstances such as meter faults or supply emergencies. In some cases, advanced meters were later installed at these premises. However, the Authority was not made aware of any additional steps taken by British Gas to secure compliance with SLC 12.18 during the Roll-Out Period.
- 4.23 The Authority considers that British Gas took some steps to secure compliance with SLC 12.21 and installed advanced meters at the majority of its relevant premises by 6 April 2014. British Gas also revised the steps it took towards the end of the Roll-Out Period. However, the Authority considers that taking such steps late in the Roll-Out Period (or after the Roll-Out Period) meant that fewer advanced meters were installed at 6 April 2014 than would have been had these steps been taken earlier. Whilst British Gas took some steps to comply with its obligation it failed to take all reasonable steps to do so.
- 4.24 This factor therefore applies, albeit to a limited extent.

Appropriate action by the licensee to remedy the contravention or failure

- 4.25 The Authority considers that, based on the information provided by British Gas, British Gas has taken some steps since April 2014 to increase the number of advanced meters installed at relevant premises. However, as noted above, there are still a number of British Gas customers at relevant premises who do not have an advanced meter.
- 4.26 The Authority also takes account of British Gas' commitment to increased levels of monitoring at the outstanding meter points at relevant premises. The Authority considers that this commitment demonstrates British Gas' willingness to take further appropriate action to install advanced meters at relevant premises and the Authority has taken this positive commitment into account when determining the level of penalty. This factor therefore applies.

Evidence that the contravention or failure was genuinely accidental or inadvertent

- 4.27 The Authority considers that the breach was not genuinely accidental or inadvertent because British Gas was aware of the requirement to comply with the Advanced Meter Obligations. The Authority considers that the possibility of a breach would have been apparent to a diligent licensee. This factor therefore does not apply.

Reporting the contravention or failure to Ofgem

- 4.28 British Gas did not self-report the contraventions of SLC 12.18 and 12.21 to Ofgem. The contraventions were discovered through Information Requests from Ofgem. The Authority therefore considers that this factor does not apply.

Co-operation with Ofgem's investigation

- 4.29 The Authority notes British Gas has responded to all requests for information that have been sent to it. However, the Authority considers that at present no

behaviours have been identified that go beyond what would be expected of any regulated party facing enforcement action.

- 4.30 However, British Gas has accepted it was in breach of SLC 12.18 and SLC 12.21 as at 6 April 2014 and has agreed to settle the case. This has achieved a speedier resolution and avoided additional spending of resource by Ofgem. Accordingly, the Authority considers that a discount can be applied and the aggregate of the financial penalty and any amount of consumer redress is a lower figure than would have been the case if British Gas had not agreed to settle this investigation.

## **5. The Authority's decision**

- 5.1 Taking account of all these factors and also mindful of its principal objective to protect the interests of existing and future energy consumers, the Authority hereby proposes to impose a financial penalty of £1 on British Gas in respect of the breaches it finds of SLCs 12.18 and 12.21, which it considers to be reasonable in all the circumstances of the case. In reaching its decision the Authority has taken the following factors into account:
- British Gas' breaches, as set out in this notice, are serious contraventions;
  - There is likely to be harm to business consumers and the environment;
  - British Gas has made a financial gain by avoiding the costs associated with the roll-out of advanced meters as at 6 April 2014;
  - There is one factor tending to increase the level of any penalty (the involvement of senior management (see para 4.15 to 4.17));
  - There are three factors tending to decrease the level of any penalty (see para 4.21 to 4.26, and para 4.29 to 4.30).
- 5.2 British Gas has agreed to settle the investigation on the basis that it has agreed to pay a financial penalty of £1 and consumer redress payments of £4.5 million (minus £1 financial penalty) to the Carbon Trust to be paid within 30 days of the publication of the Notice of the Decision to impose a financial penalty.
- 5.3 In addition to the above, British Gas has agreed to increased levels of monitoring of the outstanding meter points at relevant premises.
- 5.4 If British Gas had not agreed to settle this investigation on the terms set out above, the Authority would have considered it appropriate to impose a larger penalty in view of the seriousness of the contraventions.
- 5.5 Any written representations on the proposed penalty must be received by Steve McBurney at Ofgem, 9 Millbank, London, SW1P 3GE or [steve.mcburney@ofgem.gov.uk](mailto:steve.mcburney@ofgem.gov.uk), by **5.00pm on 11 January 2017**.
- 5.6 Any representations received that are not marked as confidential may be published on the Ofgem website. Should you wish your response or part of your response to remain confidential, please indicate this clearly. Any such requests will be considered by Ofgem on a case by case basis.

**Gas and Electricity Markets Authority**  
**7 December 2016**