

APPENDICES

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These Appendices are intended to enable Parties to gain a broad understanding of matters related to Theft of Electricity, and to identify where statutory rights and obligations are set out. The information set out in these Appendices is intended for guidance only and should not be relied upon. Parties should take their own legal advice where interpretation of statutory and regulatory provisions is needed.

APPENDIX 1 - RELEVANT STATUTORY AND REGULATORY PROVISIONS

GENERAL LEGISLATION THAT CAN BE APPLIED TO ENERGY THEFT

<i>Act</i>	<i>Section</i>	<i>Offence</i>	<i>Example Application</i>
Theft Act 1968	Section 13 - Abstracting of Electricity Section 2 - interprets the term 'dishonestly'	To dishonestly use without due authority, or dishonestly cause to be wasted or diverted, any electricity.	General definition for theft of electricity
Fraud Act 2006	Section 11 – Obtaining services dishonestly	A person is guilty of an offence if he obtains services for himself or another by a dishonest act, and when he obtains them, he knows that they are being made available on the basis that payment has been, is being or will be made for or in respect for them, but intends that payment will not be made, or will not be made in full.	Not coming forward when moving into a property. User of fraudulent PPM key devices.
Criminal Damage Act 1971	Section 1 – Causing criminal damage	Without lawful excuse to destroy or damage any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed.	Damage caused by interference, particularly if deliberate.
Criminal Law Act 1977	Section 1 –The offence of conspiracy	If a person agrees with another person or persons a course of conduct which, if carried out as per the intentions, would constitute commission of an offence by one or more parties to the	Devices such as the fraudulent PPM key. Generally need to prove complete chain from manufacture to use.

		agreement (or would do so but for the existence of facts which render the commission of the offence or any of the offences impossible), that person is guilty of conspiracy to commit the offence or offences in question.	
Accessories and Abettors Act 1861	Section 8 – Abettors in misdemeanours	Any person who shall aid, abet, counsel or procure the commission of any indictable offence shall be liable to be tried, indicted, and punished as a principal offender.	Devices such as the fraudulent PPM key. Generally need to prove complete chain from manufacture to use.

LEGISLATION AND LICENCE CONDITIONS RELATING SPECIFICALLY TO THEFT AND INTERFERENCE

This Section is subdivided as to requirements in

- Primary legislation (Statute Law)
- Licence Conditions (Supply and Distribution)

Electricity Act 1989

Section	Obligation/Right/Offence	Who	Notes
Section 16 - Duties of electricity distributors	<p>(1) An electricity distributor is under a duty:</p> <p>(a) to make a connection between a distribution system of his and any premises, when required to do so by: (i) the owner or occupier of the premises; or (ii) an authorised supplier acting with the consent of the owner or occupier of the premises, for the purpose of enabling electricity to be conveyed to or from the premises;</p> <p>(b) to make a connection between a distribution system of his and any distribution system of another authorised distributor, when required to do so by that authorised distributor for the purpose of enabling electricity to be conveyed to or from that other system.</p>	Distributor	Obligation to connect a supply

<p>Schedule 6 - Paragraph 4, Supplies of electricity illegally taken</p>	<p>(1) Where any person takes a supply of electricity which is in the course of being conveyed by an electricity distributor, the distributor shall be entitled to recover from that person the value of the electricity so taken.</p> <p>(2) Where:</p> <p>(a) any person at premises at which a connection has been restored in contravention of paragraph 5(1) of Schedule 6 to the Electricity Act 1989 takes a supply of electricity which has been conveyed to those premises by an electricity distributor; and</p> <p>(b) the supply is taken otherwise than in pursuance of a contract made with an authorised supplier, or of a contract deemed to have been made with an electricity supplier by virtue of paragraph 3 of Schedule 6 to the Electricity Act 1989 or paragraph 23 (former tariff customers) of Schedule 7 to the Utilities Act 2000,</p> <p>the distributor shall be entitled to recover from that person the value of the electricity so taken.</p> <p>(3) Each electricity distributor shall make, and from time to time revise, a scheme providing for the manner in which, and the persons by whom, the quantity of electricity taken in such circumstances as are mentioned in sub-paragraph (1) or (2) above is to be determined for the purposes of that sub-paragraph.</p> <p>(4) Sub-paragraphs (9) and (10) of paragraph 3 of Schedule 6 to the Electricity Act 1989 shall apply in relation to a scheme under this paragraph as they apply in relation to a scheme under that paragraph.</p> <p>(5) In this paragraph “value”, in relation to any electricity taken in such circumstances as are mentioned in sub-paragraph (1) or (2), means the amount which, if the electricity had been taken in such circumstances as are mentioned in sub-paragraph (2) of paragraph 3 of Schedule 6 to the Electricity Act 1989, could reasonably be expected to have been payable in respect of the electricity under a contract deemed to have been made by virtue of that sub-paragraph.</p>	<p>Distributor</p>	<p>Right to recover costs for electricity illegally taken during conveyance</p>
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Schedule 6 - Paragraph 5, Restoration of connection without consent	<p>(1) Where, otherwise than in the exercise of a power conferred by regulations under section 29 of the Electricity Act 1989 (Regulations relating to supply and safety), premises have been disconnected by an electricity supplier or an electricity distributor, no person shall, without the consent of the supplier or, as the case may be, the distributor, restore the connection.</p> <p>(2) A person who acts in contravention of this paragraph shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p> <p>(3) A connection restored in contravention of this paragraph may be disconnected by the distributor to whose distribution system the connection is made or, if the original disconnection was carried out by an electricity supplier, by that supplier.</p>	Supplier / Distributor	Offence to re-connect a disconnected supply
Schedule 6 - Paragraph 6, Damage to electrical plant etc.	<p>(1) A person who intentionally or by culpable negligence damages or allows to be damaged:</p> <p>(a) any electric line or electrical plant provided by an electricity distributor; or</p> <p>(b) any electricity meter provided by an electricity supplier,</p> <p>shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p> <p>(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.</p> <p>(3) Where an offence has been committed under sub-paragraph (1) above 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</p>	Supplier / Distributor	Offence to damage equipment (+ culpable negligence), right to disconnect, no obligation to reconnect

	<p>committed), the supplier may disconnect the premises and may remove the meter.</p> <p>(4) A meter removed under sub-paragraph (3) above shall be kept safely by the supplier until the Authority authorises its destruction or disposal.</p> <p>(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) above until:</p> <p>(a) the offender is no longer the occupier or, as the case may be, the owner of the premises; or</p> <p>(b) the matter in consequence of which the premises were disconnected has been remedied.</p>		
Schedule 6 - Paragraph 7, Entry during continuance of connection or supply	<p>(1) Any officer or other person authorised by an electricity distributor may at all reasonable times enter any premises to which the distributor is maintaining a connection, for the purpose of inspecting any electric line or electrical plant provided by him.</p> <p>(2) Any officer or other person authorised by an electricity supplier may at all reasonable times enter any premises to which electricity is being supplied by him for the purpose of:</p> <p>(a) ascertaining the register of any electricity meter and, in the case of a pre-payment meter, removing any money or tokens belonging to the supplier;</p> <p>(b) removing, inspecting or re-installing any electricity meter or installing any substitute meter.</p> <p>(3) The supplier shall provide a substitute meter while a meter is removed under sub-paragraph (2)(b) above.</p> <p>(4) Where an electricity supplier is authorised by paragraph 2(1) of Schedule 6 to install a pre-payment meter on any premises, any officer or other person authorised by the supplier may at all reasonable times enter the premises for the purpose of installing such a meter.</p> <p>(5) A power of entry for the purpose of</p>	Supplier / Distributor	Rights of entry for inspection, installation etc

	removing or installing an electricity meter may not be exercised unless at least two working days' notice has been given to the occupier (or the owner of the premises if they are unoccupied).		
Schedule 6 - Paragraph 8, Entry on discontinuance of supply or connection	<p>(1) Where an electricity supplier or an electricity distributor is authorised by paragraph 6(2) or (3) of Schedule 6 above or paragraph 11(3) of Schedule 7 to the Electricity Act 1989:</p> <p>(a) to disconnect any premises; or</p> <p>(b) to remove an electricity meter,</p> <p>any officer or other person authorised by the supplier or distributor may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing the meter.</p> <p>(2) Where:</p> <p>(a) an electricity distributor is authorised by any provision of the Electricity Act 1989 (other than one mentioned in sub-paragraph (1) above) or of regulations made under it to disconnect any premises;</p> <p>(b) a person occupying premises which are connected to a distribution system of an electricity distributor ceases to require a connection; or</p> <p>(c) a person entering into occupation of any premises connected to a distribution system of an electricity distributor does not require such a connection,</p> <p>any officer or other person authorised by the distributor may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing any electrical plant or electric line provided by the distributor.</p> <p>(3) Where:</p> <p>(a) an electricity supplier is authorised by any provision of the Electricity Act 1989 (other than one mentioned in sub-paragraph (1) above), or of regulations made under it, to disconnect any premises or to discontinue the supply to any premises;</p> <p>(b) a person occupying premises which are supplied with electricity by an electricity supplier ceases to require such a supply; or</p> <p>(c) a person entering into occupation of any</p>	Supplier / Distributor	Rights of entry for disconnection

	<p>premises previously supplied with electricity by an electricity supplier does not require such a supply;</p> <p>any officer or other person authorised by the supplier may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing any electricity meter provided by the supplier.</p> <p>(4) A power of entry under sub-paragraph (2) or (3) above may not be exercised unless at least two working day's notice has been given to the occupier (or to the owner of the premises if they are unoccupied).</p>		
Schedule 6 - Paragraph 9, Entry for replacing, repairing or altering lines or plant	<p>(1) Any officer or other person authorised by an electricity distributor may at all reasonable times enter any premises for the purpose of:</p> <p>(a) placing a new electric line or any new electrical plant in the place of or in addition to any existing line or plant which has already been lawfully placed; or</p> <p>(b) repairing or altering any such existing line or plant.</p> <p>(2) A power of entry under sub-paragraph (1) above may not be exercised unless at least five working days' notice has been given to the occupier of any premises (or to the owner of the premises if they are unoccupied).</p> <p>(3) In the case of emergency arising from faults in an electric line or any electrical plant entry may be made under sub-paragraph (1) above without the notice required by sub-paragraph (2) above, but notice shall then be given as soon as possible after the occurrence of the emergency.</p>	Distributor	Rights of entry to make repairs
Schedule 6 - Paragraph 10, Provisions as to powers of entry	<p>(1) The Rights of Entry (Gas and Electricity Boards) Act 1954 (entry under a justice's warrant) shall apply in relation to the powers of entry conferred by this Schedule 6.</p> <p>(2) Any reference in this Schedule 6 to an officer or other person authorised by an electricity supplier or an electricity distributor includes a reference to a person who, in</p>	Supplier / Distributor	General provisions on rights of entry

	<p>accordance with a written authority given by the supplier or distributor to an agent of the supplier or distributor, is authorised by the agent on behalf of the supplier or distributor.</p> <p>(3) Where in pursuance of any power of entry conferred by this Schedule, entry is made on any premises by a person authorised to do so:</p> <p>(a) that person shall ensure that the premises are left no less secure by reason of the entry; and</p> <p>(b) the supplier or distributor shall make good, or pay compensation for, any damage caused by that person (or by any other person accompanying him under sub-paragraph (5) below) in entering the premises, in taking any action on the premises or in making them secure.</p> <p>(4) A person may only exercise a power of entry conferred by this Schedule 6 on production of some duly authenticated document showing his authority.</p> <p>(5) Any person exercising a power of entry conferred by this Schedule may be accompanied by such other persons as may be necessary or expedient for the purpose for which the entry is made or for the purposes of sub-paragraph (3)(a) or (b) above.</p> <p>(6) A person who intentionally obstructs a person exercising powers of entry conferred by this Schedule shall be liable on conviction to a fine.</p>		
Schedule 7 - Paragraph 1(5), Consumption to be ascertained by appropriate meter	<p>1(5) If the customer refuses or fails to take his supply through an appropriate meter provided and installed in accordance with sub-paragraphs (2) and (3) of paragraph 1 of Schedule 7, the supplier may refuse to give or may discontinue the supply.</p>	Supplier	Right to discontinue supply if not taken through an appropriate meter
Schedule 7 - Paragraph 10, Meters to	<p>(1) A customer of an authorised supplier shall at all times, at his own expense, keep any meter provided by him in proper order for correctly</p>	Supplier / Customer	Obligation to keep metering in proper

be kept in proper order	<p>registering the quantity of electricity supplied to him; and in default of his doing so the supplier may discontinue the supply of electricity through that meter.</p> <p>(2) An authorised supplier shall at all times, at his own expense, keep any meter provided by him to any customer in proper order for correctly registering the quantity of electricity supplied and, in the case of pre-payment meters, for operating properly on receipt of the necessary payment.</p> <p>(2A) Section 23 (Determination of Disputes) of the Electricity Act 1989 shall apply in relation to any dispute arising under this paragraph between an electricity supplier and a customer.</p> <p>(3) ...</p> <p>(4) Sub-paragraphs (2) and (3) above are without prejudice to any remedy the supplier may have against the customer for failure to take proper care of the meter.</p>		order
Schedule 7 - Paragraph 11, Interference with meters	<p>(1) If any person intentionally or by culpable negligence:</p> <p>(a) alters the register of any meter used for measuring the quantity of electricity supplied to any premises by an authorised supplier; or</p> <p>(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.</p> <p>(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.</p> <p>(3) Where an offence under sub-paragraph (1) above has been committed, the supplier may discontinue the supply of electricity to the</p>	Supplier	Offence to damage metering (+ culpable negligence), right to disconnect

	<p>premises until the matter has been remedied and remove the meter in respect of which the offence was committed.</p> <p>(4) Where an authorised supplier removes a meter under sub-paragraph (3) above, he shall keep it safely until the Director authorises him to destroy or otherwise dispose of it.</p>		
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Electricity Distribution Licence

Standard Licence Condition	Details	Notes
SLC 27.1 and 27.2	<p>Where in the course of providing services to any Authorised supplier of electricity to premises directly connected to the licensee's Distribution System, the licensee has reason to believe that there has been:</p> <p>(a) damage to any electrical plant, electric line, or Metering Equipment through which such premises are supplied; or</p> <p>(b) interference with the Metering Equipment through which such premises are supplied so as to alter its register or prevent it from duly registering the quantity of electricity supplied, then the licensee must inform the Authorised Supplier in question of the relevant incident as soon as is reasonably practicable.</p>	Report damage to Authorised Supplier
SLC27.3 and 27.4	<p>Where any electrical plant, electric line, or Metering Equipment that is connected to the licensee's Distribution System is owned by a person other than the licensee ("the relevant owner") and the licensee has reason to believe that there has been:</p> <p>(a) damage to that electrical plant, electric line, or Metering Equipment; or</p> <p>(b) interference with the Metering Equipment so as to alter its register or prevent it from duly registering the quantity of electricity supplied, then the licensee must inform the relevant owner about the incident in question as soon as is reasonably practicable, except if it has reason to believe that the damage or</p>	Report damage to relevant owner

	interference was caused by the relevant owner.	
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Electricity Supply Licence

Standard Licence Condition	Details	Notes
SLC 12.1	The licensee must take and must ensure that its agents take all reasonable steps to detect and prevent: (a) the theft or abstraction of electricity at premises supplied by it; (b) damage to any electrical plant, electric line or Metering Equipment through which such premises are supplied with electricity; and (c) interference with any Metering Equipment through which such premises are supplied with electricity.	Obligation to detect and prevent theft
SLC 12.14	Unless the Authority otherwise consents, the licensee must take all reasonable steps to ensure that it inspects, at least once every two years, any Non-Half-Hourly Meter in respect of premises at which it has at all times during that period been the Relevant Electricity Supplier.	Obligation to inspect metering
SLC 12.16	An inspection under paragraph 12.14 must include: (a) taking a meter reading; and (b) a visual inspection of any Metering Equipment for the purpose of assessing whether: (i) there has been damage to the Metering Equipment or to any electrical plant or electric line; (ii) there has been interference with the Non-Half-Hourly Meter to alter its register or prevent it from duly registering the quantity of electricity supplied; or (ii) the Non-Half-Hourly Meter has deteriorated in any way that might affect its safety or proper functioning.	Obligation to inspect metering
SLC 13.1	The licensee must take all reasonable steps to ensure that each Representative who visits a Customer's premises on the licensee's behalf: (a) possesses the skills necessary to perform the required function;	Obligation to ensure representatives have necessary skills

	<p>(b) can be readily identified as a Representative of the licensee by a member of the public;</p> <p>(c) uses any password that the licensee has agreed with the Customer;</p> <p>(d) is a fit and proper person to visit and enter the Customer's premises; and</p> <p>(e) is able to inform the Customer, on request, of a contact point for any help and advice that he may require in relation to the supply of electricity.</p>	
SLC 26.1	<p>If a Domestic Customer who is of Pensionable Age, disabled or chronically sick requests it and it is appropriate and reasonably practicable for the licensee to do so, the licensee must, free of charge:</p> <p>(a) agree a password with the customer that can be used by any person acting on the licensee's behalf or on behalf of the Relevant Distributor to enable that customer to identify that person;</p> <p>(b) send each Bill or statement of account in relation to the supply of electricity to the customer's premises to any other person that the customer nominates, if that person agrees to receive them;</p> <p>(c) if the customer informs the licensee that no person occupying his premises is able to read the Electricity Meter there, arrange to read that meter at least once each quarter and inform the customer of that reading; and</p> <p>(d) if Charges for the Supply of Electricity are recovered through a Prepayment Meter and the customer cannot readily make payments through that meter because of infirmity, arrange to move that meter so that the customer can access it.</p>	Obligation regarding treatment of vulnerable customers
SLC 26.2	<p>When asked to do so by, or by someone acting on behalf of, a blind or partially sighted Domestic Customer, the licensee must, by means that are readily accessible to such customers, provide information free of charge about any Bill or statement of account relating to the supply of electricity or any other service provided to the customer by the licensee.</p>	Obligation regarding treatment of vulnerable customers

SLC 26.3	<p>The licensee must provide facilities, free of charge, which enable any Domestic Customer who:</p> <p>(a) is blind or partially sighted; or</p> <p>(b) is deaf or hearing-impaired and in possession of appropriate equipment,</p> <p>to ask or complain about any Bill or statement of account relating to the supply of electricity or any other service provided to that customer by the licensee.</p>	Obligation regarding treatment of vulnerable customers
SLC 26.4	<p>The licensee must establish and maintain a Priority Services Register which lists all of the licensee's Domestic Customers who:</p> <p>(a) are of Pensionable Age, disabled or chronically sick; and</p> <p>(b) have either:</p> <p>(i) asked in person for their name to be added to the Priority Services Register; or</p> <p>(ii) had a person ask on their behalf for their name to be added to it.</p>	Obligation to maintain a priority services register
SLC 26.7	<p>The licensee must give the Relevant Distributor the following information insofar as it is relevant to the performance of that distributor's obligations under the Distribution Licence:</p> <p>(a) details relating to any person who has agreed a password with the licensee, including what that password is; and</p> <p>(b) details relating to any person who the licensee knows or has reason to believe requires advance notice of any interruption to the supply of electricity to his premises because of his chronic sickness or disability.</p>	Obligation to provide distributor with access to details of the chronically sick or disabled
SLC 27.5	<p>The licensee must offer each of the services set out in paragraph 27.6 when it becomes aware or has reason to believe that a Domestic Customer is having or will have difficulty paying all or part of the Charges for the Supply of Electricity.</p>	Obligation relating to customers in payment difficulty

SLC 27.6	<p>The services referred to in paragraph 27.5 above are:</p> <p>(a) the facility for a Domestic Customer to pay Charges for the Supply of Electricity:</p> <p>(i) by using, where available, a means by which payments may be deducted at source from a social security benefit received by that customer;</p> <p>(ii) by regular instalments calculated in accordance with paragraph 27.8 of this SLC and paid through a means other than a Prepayment Meter; and</p> <p>(iii) by using a Prepayment Meter, where it is safe and reasonably practicable in all the circumstances of the case for the Domestic Customer to do so and where any instalments to be paid are calculated in accordance with paragraph 27.8; and</p> <p>(b) the provision of information about how the Domestic Customer could reduce the Charges for the Supply of Electricity that he must pay by using the electricity supplied to his premises more efficiently.</p>	Obligation relating to customers in payment difficulty
SLC 27.9	<p>The licensee must not Disconnect a Domestic Premises at which the Domestic Customer has not paid Charges for the Supply of Electricity unless it has first taken all reasonable steps to recover those charges by means of the service referred to in subparagraph 27.6(a)(iii) above.</p>	Obligation relating to disconnection for non-payment
SLC 27.10	<p>The licensee must not Disconnect, in Winter, a Domestic Premises at which the Domestic Customer has not paid Charges for the Supply of Electricity if it knows or has reason to believe that the customer is of Pensionable Age and lives alone or lives only with persons who are of Pensionable Age or under the age of 18.</p>	Obligation relating to disconnection for non-payment
SLC 27.11	<p>The licensee must take all reasonable steps to avoid Disconnecting, in Winter, a Domestic Premises at which the Domestic Customer has not paid Charges for the Supply of Electricity if the occupants of the premises include a person who is of Pensionable Age, disabled or chronically sick and to whom paragraph 27.10 above does not apply.</p>	Obligation relating to disconnection for non-payment

SLC 27.11A	The licensee shall, before it exercises any right it may have to Disconnect a Domestic Premises, take all reasonable steps to ascertain whether: (i) the relevant Domestic Customer falls within the scope of SLC 27.10; or (ii) the restriction on its right to disconnect in accordance with SLC 27.11 applies.	Obligation relating to disconnection for non-payment
SLC 27.11B	The licensee must have regard to guidance on the interpretation of conditions 27.9A to 27.11A of this SLC which, following consultation, the Authority may issue and may from time to time revise.	Obligation relating to disconnection for non-payment

APPENDIX 2 – DISCONTINUATION OF SUPPLY

Introduction

This Appendix 3 sets out guidance regarding the statutory powers of suppliers and distributors to discontinue the supply of electricity which may arise where a person is suspected of unlawfully abstracting electricity. In some instances, powers arise when a specific offence has been committed. In other instances, no specific offence is required.

For the avoidance of doubt, this Appendix 3 does not seek to grant additional rights to signatories to this Code of Practice. This Appendix 3 is for guidance only.

This Appendix 3 draws upon some of the guidance set out by Ofgem in its open letter on the topic of theft of energy dated 20 October 2010.

For the avoidance of doubt, parties may have additional statutory powers to discontinue supply which are not set out below, for example in relation to unpaid charges for the supply of electricity.

1. Electricity meter damage

A summary of the elements of the relevant offence¹ and the suppliers' powers to discontinue supply are set out below.

The elements of this offence are made out when a person has:

- damaged or allowed to be damaged any electricity meter provided by an electricity supplier²; and
- has done so either intentionally or by culpable negligence³.

¹ See paragraph 6 of schedule 6 to the Electricity Act 1989.

² It appears that this offence does not arise otherwise than when a supplier provides the meter (for example where it is provided by the customer). Note that section 4 below sets out the arrangements where a customer owns the meter.

³ Further consideration on the definition of "culpable negligence" is set out in section 9 below.

Electricity suppliers' power to discontinue only applies to the premises where the offence was committed in so far as the offender is occupying the premises (or, where the premises are unoccupied, the offence was committed by the owner)⁴. On this basis, in order to discontinue the premises where the meter damage occurred, the electricity supplier must prove that the current occupier (or, if the premises are unoccupied, the owner) was the offender.

The supplier is under no obligation to restore the supply to any premises until either:

- the offender is no longer the owner or occupier of the premises; or
- the matter in consequence of which the premises were discontinued has been remedied⁵.

2. Damage to other electrical equipment

A summary of the elements of the relevant offence⁶ and the distributors' powers to discontinue supply are set out below.

The elements of this offence are made out when a person has:

- damaged any or allowed to be damaged any electric line or electrical plant provided by an electricity distributor; and
- has done so either intentionally or by culpable negligence⁷.

As for section 1, the power to discontinue only applies to the premises where the offence was committed in so far as the offender is occupying the premises (or, where the premises are unoccupied, the offence was committed by the owner)⁸. On this basis, in order to discontinue the premises where the damage to electrical equipment occurred, the distributor must prove that the current occupier (or, if the premises are unoccupied, the owner) was the offender.

⁴ See paragraph 6(3) of schedule 6 to the Electricity Act 1989.

⁵ See section 10 below on the meaning of 'remedied'.

⁶ See paragraph 6 of schedule 6 to the Electricity Act 1989.

⁷ Further consideration on the definition of "culpable negligence" is set out in section 9 below.

⁸ See paragraph 6(3) of schedule 6 to the Electricity Act 1989.

The distributor is under no obligation to restore the connection until either:

- the offender is no longer the owner or occupier of the premises; or
- the matter in consequence of which the premises were discontinued has been remedied⁹.

3. Electricity meter interference

A summary of the elements of this offence¹⁰ and the suppliers' powers to discontinue supply are set out below.

The elements of this offence are made out when any person intentionally or by culpable negligence¹¹ alters the register of a meter or prevents a meter from duly registering the quantity of electricity supplied.

On its face, the suppliers' power to discontinue the supply to premises applies to the premises at which the offence was committed irrespective of whether the occupier of those premises was the offender. However, best practice suggests that suppliers should endeavour to avoid discontinuing the supply to premises in circumstances where there is no evidence to suggest that the current occupier or owner has committed a relevant offence, e.g. there is no evidence to suggest that the occupier of the premises was culpably negligent in allowing the meter to be tampered with. The fact that an occupier may have benefited from meter tampering would be insufficient evidence to justify a discontinuation. For clarity, this statement is made as a statement of best practice, and does not itself constrain the suppliers' statutory powers.

A supplier must re-continue the supply to premise once the matter has been remedied¹².

4. Failure by a customer to keep a meter in proper order

⁹ See section 10 below on the meaning of 'remedied'.

¹⁰ See paragraph 11 of schedule 7 to the Electricity Act 1989.

¹¹ Further consideration on the definition of "culpable negligence" is set out in section 9 below.

¹² See section 10 below on the meaning of 'remedied'.

Where a customer opts to provide a meter, an offence is committed by that customer where a customer fails to keep that meter in proper order for correctly registering the quantity of electricity supplied¹³.

Where the customer fails to maintain the meter, the authorised supplier may discontinue the supply of electricity through that meter.

For the avoidance of doubt, this provision does not give rise to any discontinuation powers in circumstances where the supplier or third party has provided the meter.

5. Not reasonable to maintain a connection

The effect of section 17(1)(c) of the Electricity Act 1989 is that an electricity distributor is not required to maintain a connection if and to the extent that it is not reasonable in all the circumstances for him to be required to do so.

This provision may therefore gives rise to a power to discontinue the supply of electricity to a premises (or to another distribution system) where the occurrence of theft means that it is no longer reasonable to require the connection to be maintained. Note, however, that not less than seven working days' notice¹⁴ of the intention to discontinue the premises must be given to the occupier (or, if the premises are unoccupied, the owner).

6. Restoration of supply without consent

A summary of the elements of the offence¹⁵ and of the suppliers' and distributors' powers to discontinue supply are set out below.

The elements of this offence are made out when an electricity distributor or electricity supplier has discontinued premises (otherwise than pursuant to the Electricity Safety, Quality and Continuity Regulations 2002), and a person has restored the connection to the premises without consent. The relevant consent must be given by either the distributor or the supplier, whichever discontinued the supply.

¹³ See paragraph 10 of schedule 7 to the Electricity Act 1989.

¹⁴ See section 17(3) of the Electricity Act 1989.

¹⁵ See paragraph 5 of schedule 6 to the Electricity Act 1989.

Where an offence has occurred, the supplier or the distributor (whichever made the original discontinuation) may discontinue supply to the premises again.

7. Other offences

Only the specific offences outlined above trigger particular statutory powers to discontinue supply. A supplier or distributor would be unable to exercise such statutory powers on the grounds that any other energy theft offence has been committed, e.g. the unlawful abstraction of electricity contrary to section 13 of the Theft Act 1968, or an offence under paragraph 3(1) of Schedule 7 to the Electricity Act 1989.

8. Discontinuing supply on safety grounds

As noted in the introduction to this Appendix, other powers to discontinue a supply arise in circumstances unrelated to theft, such as failure to pay charges.

Powers to discontinue supply also arise on safety grounds, and instances in which theft of electricity has occurred may also give rise to safety issues. Distributors have powers to discontinue supply on grounds of safety under the Electricity Safety, Quality and Continuity Regulations 2002.

However, suppliers do not have powers to discontinue supply under those regulations, and distributors cannot delegate powers to suppliers. Nevertheless, general statutory duties may allow suppliers to discontinue supply on safety grounds in certain circumstances.

Ultimately it will be a matter for suppliers and distributors to decide what action may legally be taken in the event of safety concerns. Where suppliers and/or distributors discontinue premises they must ensure that they have a clear legal basis for doing so (and therefore must satisfy all the relevant conditions which apply to the use of discontinuation powers).

Where suppliers (or their agents) identify potential safety concerns, then they must ensure that they have appropriate processes and procedures in place to notify relevant parties, for example electricity distributors if the safety issues may fall within the scope of their responsibilities.

9. Culpable negligence

The concept of culpable negligence is relevant to the offences referred to in sections 1, 2 and 3 above.

It is considered that the customer has a duty of care in relation to the equipment that forms the subject matter of these offences (e.g. a duty not to interfere with an electricity meter). However, the concepts of ‘intention’ or ‘culpable negligence’ require the customer to have either intended to breach that duty or to have been culpably negligent in relation to that duty.

Given that the relevant offences refer to ‘culpable’ negligence it is considered that this must be something more than mere carelessness or negligence and must involve an act or omission which would deserve of punishment under the criminal law. It is therefore suggested that the concept of culpable negligence is likely to involve a high degree of negligence (i.e. gross negligence) or recklessness.

Therefore, assuming that there is evidence to prove that damage to electricity meters, electric line and electrical plant or interference to an electricity meter has actually occurred, in order for a customer to be considered to have been responsible on the basis of culpable negligence, it is considered that it would be necessary to have proof (on the balance of probabilities¹⁶) of the following elements:

- that the customer must have been aware of an act or omission which took place involving a meter (or electric line and electrical plant);
- there was an obvious risk that an act or omission which took place would amount to damage to electricity meters, electric line and electrical plant or interference to a electricity meter; and
- the customer was indifferent to such an obvious risk or failed to take reasonable steps to address that obvious risk.

Illustrative examples:

¹⁶ Although the burden of proof for the criminal offence is ‘beyond reasonable doubt’, it is accepted that the exercise of suppliers’ and distributors’ statutory powers is a civil matter and that the applicable burden of proof is ‘balance of probabilities’ (see *Queen v Minister of Energy and Director General of Electricity supply ex parte Robert Guildford* [1998] EWHC Admin 203).

By way of illustrative examples it is considered that a customer would probably be regarded as being “culpably negligent” if:

- the meter was located inside a secure area of the customer’s premises (i.e. inside the house or flat);
- the available evidence suggests that the customer was aware that another person was doing something to a meter (or other electric line and electrical plant);
- in light of all the circumstances the customer must have been aware that such an act could amount to damage to electricity meters, electric line and electrical plant or interference to an electricity meter (e.g. the meter was not being repaired/replaced by an appropriate person and/or the meter subsequently stopped recording consumption); and
- the customer did not take any steps to stop the act from occurring or to report any potential problem (e.g. reporting the matter to the police or a supplier either while the act was occurring or within a reasonable period of time thereafter).

On the other hand, it may be considered that a customer is unlikely to have been culpably negligent in circumstances where:

- they have recently moved into new premises;
- there are no obvious signs that damage to electricity meters, electric line and electrical plant or interference to a electricity meter has occurred (e.g. the meter appears to be recording consumption); and
- there is no evidence to suggest that the damage to electricity meters, electric line and electrical plant or interference to an electricity meter occurred recently or during the period when the customer becomes responsible for the premises.

10. Remedying the matter

Providing it is safe to do so, a Supplier (or where applicable a Distributor) and its Revenue Protection Agent should consider all available options for the maintenance of supply, including a prepayment meter, payment by instalments or direct payment from DWP benefits.

Once supply has been discontinued under the powers conferred by Schedule 6 paragraph 6 and Schedule 7 paragraph 11 of the Electricity Act 1989, there is no obligation to reconnect the supply¹⁷ until either:

- In respect of Schedule 6 paragraph 6:
 - the offender is no longer the owner or occupier of the premises, or
 - the matter in consequence of which the premises were discontinued has been remedied.
- In respect of Schedule 7 paragraph 11:
 - the matter in consequence of which the premises were discontinued has been remedied.

In relation to a discontinuation under the powers set out under Schedule 7 paragraph 11 it is expected that, as a matter of policy rather than legal requirement, a premises would also be reconnected when the offender is no longer the owner or occupier of the premises.

The remainder of this section provides commentary on the interpretation of when the matter in consequence of which the premises were discontinued has been remedied.

In the Smith case¹⁸, Mr Justice Pill indicated that that he could not accept that in the case of theft, the only consideration was for the repair or replacement of the meter whilst ignoring payment for gas stolen. This, he concluded, would place “the honest

¹⁷ See paragraph 19(2) of schedule 2B to the Gas Act 1986.

¹⁸ R v Director General of Gas Supply & Another ex parte Smith & Another (31st July 1989 – unreported). Whilst it is noted that this case relates to the gas market, it is considered that it has a direct read across to the provisions in electricity.

customer who could not pay his bill in a worse position than the thief”. Such a customer would have to pay for the gas used in addition to the cost of discontinuation and reconnection if supply was discontinued. Consequently, Mr Justice Pill expressed the view that “...*the expression ‘matter to be remedied’ has ... a broad meaning. The ‘state of things’ created by the offence must be remedied or put right.*”

It is therefore considered that “*The ‘state of things’ created by the offence*” will always depend on the particular circumstances of a given case and therefore it will be necessary for the supplier or electricity distributor to consider what actions and charges are a direct result of the type of injury to electricity meters, electric line and electrical plant or interference to an electricity meter which has occurred.

In considering the interpretation of when the consumer has remedied the matter. Suppliers will seek to recover their directly foreseeable costs associated with a particular incident. Such costs may include the specific investigation costs associated with determining that a theft has taken place or a genuine pre-estimate of the loss incurred by the Supplier. Distributors will seek to recover their directly foreseeable costs associated with a particular incident. Such costs may include the replacement or repair of the Distributor’s equipment, specific investigation costs associated with determining that a theft has taken place or a genuine pre-estimate of the loss incurred by the Distributor. Neither the Supplier nor the Distributor shall deem the consumer to have remedied the matter until both of conditions are met.

Other routes to discontinuation have been set out above (for example, section 17 and schedule 6 paragraph 5 of the Electricity Act 1989). Whilst these do not contain an explicit reference to remedying the matter, it is considered that once the reason for discontinuation has been removed, that there is no continued reason for discontinuation.

APPENDIX 3 - COLLECTION AND RETENTION OF EVIDENCE

Regard will in all cases be had to the principles of the Police and Criminal Evidence Act 1984 (and, in Scotland, the Criminal Procedure (Scotland) Act 1995) and relevant related codes of practice insofar as they relate to the collection and retention of evidence.

This appendix is concerned with the collection and retention of evidence. Evidence may be defined as anything that tends to prove or disprove a fact. Types of evidence include oral, documentary or real (physical), the last two usually taking the form of exhibits. Presentation of evidence, especially oral presentation at court, should be covered by appropriate training of staff.

Need for Evidence

- 1 In order for the prosecuting authority to achieve a criminal conviction, it is necessary to prove ‘beyond all reasonable doubt’ that an offence has been committed.
- 2 The test for civil matters – including whether or not the Supplier or Distributor properly exercised its statutory powers to discontinue supply – is less onerous; it is necessary to prove the matter ‘on the balance of probabilities’.
- 3 The quantity of evidence required to support a case will depend on the nature of the interference and the type of action proposed. In general it is imperative to accumulate as much evidence as possible.

Collection of Evidence

- 4 Photographic evidence is valuable. The equipment interfered with should be photographed in the state in which it was found, if possible in the presence of the customer or customer’s agent. Supporting photographs of the premises and meter site may also prove useful. Alternatively where photography is not possible, a sketch plan should be made. Whenever photographs are taken, or a sketch is made, this must be accompanied by a signed witness statement recording when and by whom the evidence was taken.

- 5 All irregularities should be brought to the attention of the customer and any witnessing party e.g. an accompanying police officer. Where the meter is not recording, this should be demonstrated by switching on electrical appliances and recorded in a signed witness statement by the investigator.
- 6 Where interference is obvious, or suspected such that further expert inspection is deemed necessary, the equipment (usually the meter but including any other equipment affected and any tampering device or other relevant object found) should then be removed and treated as described below. The right to remove an item should be established before doing so. A meter subject to bridging out or the application of a “black box” should be removed by cutting the meter tails and leaving sufficient cable attached to the meter to provide the evidence.

Custody of Exhibits

- 7 In order that evidence produced in court can be substantiated as that which was obtained during investigation, it is necessary to be able to prove “the chain of custody” i.e. that no item (exhibit) collected at the site of the alleged offence has been altered without authorisation or introduced subsequently.
- 8 In this context, “alteration” does not prevent tests on a removed meter, which may need to be dismantled, but this process itself should be documented by an engineer’s report and, if possible, photographed (both the report and photographs then become exhibits).
- 9 Where the Revenue Protection Agent proposes to dismantle an exhibit he shall first inform the appropriate prosecution authority of this intention and also inform the relevant customer of his right to have an independent expert in attendance during such dismantling.
- 10 All equipment removed from site should be treated as a potential exhibit (even if not subsequently used at trial) and should be labelled, placed in an exhibit bag and sealed as soon as possible. The label should indicate the location, the date obtained and by whom. In addition, any meter which is removed from a property and in respect of which there is, or is likely to be, a dispute regarding

meter damage or accuracy will be treated as an exhibit. A receipt must be provided for any material which is removed as part of the investigation.

- 11 Computer generated documents (e.g. account details) should also be treated as exhibits and should be supported by a statement from a person occupying a responsible position in relation to the operation of the computer.
- 12 Other statements obtained at the time or subsequently may also be treated as exhibits.
- 13 Photographs taken or sketches made as in paragraph 3 above are exhibits.

Safe keeping of exhibits

- 14 In many cases the police will take possession of exhibits and will retain them until the court hearing. In this case they will provide a receipt for the items.
- 15 In cases where the police do not wish to retain exhibits, the Revenue Protection Agent should ensure that:
 - (a) exhibits are always logged into and stored in a secure and locked place;
 - (b) any movements of exhibits is recorded both on the property label and in the store log book, and includes the date and time of removal, by whom and the reason. The party taking possession of the property must also sign the label and book;
 - (c) whenever an exhibit is opened, a statement is made and signed by the person responsible, and the bag then resealed; and
 - (d) the exhibit label and, if requested, the log book is/are available to the court.

Retention of exhibits

- 16 All exhibits will be retained for an appropriate period, taking into account any pending prosecutions. A tampered meter should be retained until authority for its disposal has been obtained.

APPENDIX 4 – RECORD KEEPING

It is recommended that parties record the following information, where relevant, for future regulatory reporting requirements. Note that this list may not be exhaustive. At case level:

Supplier Records

- Customer Name
- Property Address
- MPAN
- MSN
- Status of Theft case i.e. suspected, confirmed, not confirmed, Passed to DNO as Theft in Conveyance
- Date Theft suspected
- Source of information on suspected theft
- Number of investigative visits to premises

If Theft confirmed:

- Estimate of unrecorded units (kWh)
- Date from and date to
- Charges levied to the customer (split into unrecorded units and transactional costs)
- Nature of interference
- Necessity for a warrant
- Criminal prosecution attempted?
- Criminal prosecution successful?

Distributor Records

- Customer Name
- Property Address
- MPAN
- MSN

- Estimate of unrecorded units
- Date from and date to
- Charges levied to the registered supplier
- Charges levied to the customer (split into unrecorded units and transactional costs)
- Nature of interference
- Necessity for a warrant
- Criminal prosecution attempted
- Criminal prosecution successful

APPENDIX 5 - INFORMATION TO BE PROVIDED BY THE RP SERVICE

The following list is the information Revenue Protection Agent staff should maintain. This list is not exhaustive and if the RPA representative on site feels other information is relative to the case, they are at liberty to record this too.

- Date of visit
- Name of Representative on site
- Confirmation of address details
- Existing / old / new customer name
- Customer telephone number
- Vulnerable customer status (if applicable)
- Premise details
 - Occupied or vacant
 - How long customer owned or occupied the premise
 - Owned or rented
 - If rented – name of landlord and landlord contact details / address
 - Number of bedrooms / reception rooms
- Old meter details
 - Meter Serial Number
 - Type of meter
 - Meter location
 - Readings
 - Credit / Debt on meter
 - Debt setting
- New meter details
 - Meter Serial Number
 - Type of meter
 - Meter location
 - Readings
 - Debt set on meter (where applicable)
- Tamper found
- Is this a first visit or a repeat visit (second / third / etc)

- Energisation status on leaving the premise (energised / discontinued)
- Tong / amp reading or appliance list
- Any further comments

APPENDIX 6 – REPORTING**Revenue Protection Agent to Supplier**

	Report	Purpose
1	Number of Suppliers Metering Points	Gives perspective to the number of reports generated
2	Number of reports received, categorised as priority level A, B or C	Gives relevance to all other data supplied and reveals the portion of supplies referred for investigation
3	Number of cases resolved outside timescales required by this code categorised as level A, B or C	Indicator of the success of the call, albeit subject to limitations (see 4)
4	Number of cases resolved outside timescales required by this code categorised as levels A, B or C	Appraisal of performance. Failures may not reflect shortcomings, as problems of access may lead to protracted process
5	Number of warrants of entry actioned	Indicates degree of difficulty in gaining access qualifying 4 to some extent. Actioned means applying for and visiting to force entry; whether or not this was the outcome
6	Cases of interference A] suspected but not confirmed B] confirmed Current occupier	Indicates level of interference and comments on quality of referrals, related to cases where there is a culpable party for recovery
7	Cases of interference A] suspected but not confirmed B] confirmed Previous occupier	Indicates level of interference and comments on quality of referrals, related to cases where there may not be a culpable party for interference but the case may be treated as a meter fault
8	Irregularity found	Problem found but where no

		interference is suspected. Meter accuracy may or may not be affected.
9	All in order	Nothing found. Indicates bad quality of referral
10	Abortive call	Unable to action due to misleading information. Reflects quality of referrals and records
11	Discontinued for more than 24 hours	This will depend upon supplier policy, but an overall figure indicates a work level for the RP Service
12	Unrecorded units assessed	The number of unrecorded units discovered by the RP Service.

From Supplier to Distributor

For the purpose to verify units into settlement it will be necessary to report on the following:

	Report
1	MPAN
2	Start date of the unrecorded unit assessment period
3	Start date of the Suppliers registration if later than (2) otherwise enter the same date as (2)
4	End date of the unrecorded unit assessment period
5	Total number of unrecorded units
6	Total number of unrecorded units attributable to the reporting supplier (which may be the same as (5))
7	Total number of unrecorded units entered into settlement

Items (2) and (5) should not be left blank.

Note – for the avoidance of doubt the current supplier is only responsible for unrecorded units for period when it is the registered supplier to the MPAN. The

reporting of the total number of unrecorded units is only for the completeness of information within the industry and is not intended to imply responsibility.

APPENDIX 7 – ASSESSMENT OF UNRECORDED UNITS

1. APPROACH

Assessment of units unrecorded, following Theft of Electricity, should be carried out in a systematic, consistent and transparent way. The following list of options is set out in no particular order. No one single method is necessarily appropriate in all cases:

1.1 where there is a clear pattern from past consumption history, by which is meant an obvious step change following an earlier established level or pattern, then this may be used as the basis for assessing what should have been consumed from the time of that change. Less obvious but inconsistent consumption history may also be used in support of, or to check, the general value obtained using other methods;

1.2 where the customer permits an audit of appliances, then this method may be used. Standard consumption figures should be applied, concentrating on the major appliances which the customer admits to using or have obviously been in use. An example assessment calculator is set out below. Account should be taken of valid input from the customer to assess whether some scaling of the figures might be appropriate;

1.3 typical consumption levels for the type of property may be applied, taking into account where available the type of premises, tariff in use, number of occupants and occupancy patterns (e.g. night working), other fuels available, geographic location, etc;

1.4 monitor ongoing consumption;

1.5 Load testing.

2. GENERAL

The following general points should be considered:

2.1 In cases of Theft In Conveyance, the Distributor is responsible for determining the final assessment of unrecorded units, having taken into account any information held about the consumer's history and individual relevant circumstances.

2.2 In all other cases of Theft of Electricity, the Supplier is responsible for determining the final assessment of unrecorded units, having taken into account information held about the customer's account history and individual relevant circumstances; however this must be as accurate as possible. The Supplier will notify the Distributor of the final assessment.

2.3 Where the customer will not permit an audit of appliances, this should be recorded.

2.4 Attempts should be made to agree with the customer the time over which the interference has taken place - past consumption history may help. Due regard should be given to when the meter was last inspected and when the interference was reported to help determine the length of time that abstraction could have been occurring. Length of occupancy should be confirmed and validated.

2.5 The Revenue Protection Agent should explain to the customer the basis of their assessment of how much has been under recorded due to the meter tampering / damage. They should further explain that the customer's Supplier will discuss with them the final details. However, the customer's right to refer the matter to the Energy Ombudsman will be explained.

2.6 Whilst conducting the investigation, direct evidence of an appliance in use (e.g. an electric fire seen ‘on’) will be noted and witnessed, which may help counter any later claims by a customer challenging an assessment that a particular appliance did not exist or was never used.

APPENDIX 8 – ELECTRICITY PROCESS DIAGRAM FOR DEALING WITH REPORTS OF SUSPECTED INTERFERENCE

