

**DCUSA CP 372 – Changes to the Theft Code of Practice**

**Draft Legal Text**

**Amend Schedule 23 of the DCUSA as follows<sup>1</sup>:**

**1. INTERPRETING THIS DOCUMENT**

- 1.1 This Code of Practice is a Schedule to the Distribution Connection and Use of System Agreement (the DCUSA) established under the licences of the Distributors.
- 1.2 The Distributors and the Suppliers are obliged (by Clause 32 of the DCUSA) to either:
- (a) comply with the respective obligations of Distributors and Suppliers under this Code of Practice; or
  - (b) procure that external Revenue Protection Agents comply with their respective obligations as Distributors and Suppliers under this Code of Practice.
- 1.3 A Distributor may act as a Supplier's external Revenue Protection Agent pursuant to Clause 32.3 of the DCUSA, in which case the Distributor's obligation (in its capacity as the Supplier's Revenue Protection Agent) is to meet the obligations of the Supplier under this Code of Practice (and to otherwise perform the role of the Supplier's Revenue Protection Agent under this Code of Practice).
- 1.4 A Party may contract with an external Revenue Protection Agent outside of the DCUSA. Such a Party may do so by referring (or otherwise given effect) to the obligations of such Party under this Code of Practice. In such circumstances, the external Revenue Protection Agent's obligation is to meet the obligations of the Party (whether as Distributor or Supplier) under this Code of Practice (and to otherwise perform the role of that Party's Revenue Protection Agent under this Code of Practice).

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<sup>1</sup> This Change Proposal does not amend or delete the Theft Charter wording which is due to be added to this Schedule by DCP 369.

- 1.5 This document is generally divided into sections headed “**OBLIGATIONS**”, “**BEST PRACTICE**” and “**REFERENCES**”, which are to be interpreted as follows:
- (a) sections marked “**OBLIGATIONS**” detail actions which must be taken by the relevant Party. Failure to take these actions constitutes a breach of this Code of Practice (and therefore of the DCUSA or of the other agreement by which this Code of Practice is given effect);
  - (b) sections marked “**BEST PRACTICE**” set out a suggested course of action for achieving the Obligations. They confer no obligation, and Parties may choose whether they follow the course of action set out or another course of action entirely. They are therefore provided for information only and denote one way in which the Obligations may be achieved; and
  - (c) sections marked “**REFERENCES**” provide information on requirements outside of this Code of Practice that are relevant to its subject matter. Failure to adhere to any of the requirements described is not a breach of this Code of Practice itself, but may lead to a Party being in breach of their obligations elsewhere. They are provided for information only. All of the appendices to this Code of Practice are intended as “References”.
- 1.6 Some sections of this Code of Practice are not marked as “Obligations”, “Best Practice” or “References”. These sections do not confer any obligation on the Parties, but are included so as to support and provide context to the Obligations (and the Obligations should be read accordingly).
- 1.7 Any reference to days, months, years throughout this document should be interpreted as calendar days, calendar months and calendar years unless otherwise stated.

## 2. DEFINITIONS

2.1 In this Code of Practice, and without prejudice to the provisions of paragraph 2.2, the following words or expressions shall have the meanings set out opposite them.

**Confirmed Theft** means that a Supplier, Distributor or Revenue Protection Agent (as applicable) reasonably determines that, on the balance of probabilities and taking into account all of the evidence then available, one or more instances of Theft of Electricity has occurred. A Party may not make such a determination unless it has sufficient evidence to substantiate the occurrence of a Theft of Electricity. Such evidence must include (as a minimum): (a) an indication of theft via a desktop review; (b) a report of a site visit (where access was successful); (c) photographic evidence (or a sketch) of the theft including any illegal connection/bypass or meter tamper; (d) a determination of the value of electricity stolen; and (e) a police report or crime reference number (where available).

**Disconnect** means to disconnect a Premises as referred to in the Electricity Act, and includes 'De-energisation' (as defined in Clause 1 of the DCUSA).

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**Distributor** means a holder of a distribution licence under the Electricity Act (and, in respect of Theft in Conveyance from a Premises, is the owner and/or operator of the Distribution System to which such Premises are connected).

Deleted: Premise

**Domestic Customer** has the meaning given to that expression in the Supplier licences.

**Electricity Act** means the Electricity Act 1989.

**Party** means the Distributor or the Supplier.

**Perpetrator** means the person who has committed the Theft of Electricity.

<b>Personal Characteristics or Circumstance</b>	includes: (a) the Domestic Customer being of pensionable age; or (b) the Domestic Customer being chronically sick, or having an impairment, disability, long term medical condition (including but not limited to a visual, auditory, literacy or mobility impairment), or severe financial insecurity (they are unable to safeguard their personal welfare or the personal welfare of other members of the household).
<b>Premises</b>	includes any land, building or structure.
<b>Priority Services</b>	is to be interpreted by reference to the licence obligations of Distributors and Suppliers concerning their priority service registers.
<b>Relevant Costs</b>	has the meaning given to that expression in Clause 3.3(b).
<b>Revenue Protection Agent</b>	means a person undertaking any of the revenue protection activities described in this Code of Practice on behalf of a Party (whether as an internal or external provider)
<b>Supplier</b>	means a holder of a supply licence under the Electricity Act (and, in respect of Theft of Electricity for use at a Premises, is the electricity Supplier Registered for the Metering Point or Metering System relating to the supply of electricity to those Premises).
<b>Theft in Conveyance</b>	means the abstraction of electricity (regardless of where such abstraction takes place) for use otherwise than at a Premises for which there is a Metering Point or Metering System that is Registered by a Supplier.
<b>Theft of Electricity</b>	includes (but is not limited to) Theft in Conveyance, the circumstances described in paragraph 4 of schedule 6 to the Electricity Act, and the circumstances described in paragraph 11 of schedule 7 to the Electricity Act.

<b>Value</b>	means, in respect of stolen electricity, the amount which could reasonably be expected to have been payable for the electricity had it been supplied under a deemed supply contract.
<b>Vulnerable Customer</b>	means a Domestic Customer who, due to their Personal Characteristics or Circumstance or otherwise being in a vulnerable situation, may require Priority Services or additional support.

- 2.2 Any other words or expressions used in this Code of Practice (excluding headings or any parts thereof) which bear initial capital letters are to be interpreted in accordance with Clause 1 of the DCUSA.

### 3. INTRODUCTION

#### **Objectives of the Code**

- 3.1 This Code of Practice outlines the relationships between Distributors and Suppliers in respect of Theft of Electricity. It sets out the minimum service standards that Distributors and Suppliers require from their Revenue Protection Agents. It documents how Parties should communicate with one another where Theft of Electricity is suspected and/or identified. It also specifies how unrecorded units of electricity arising as a result of Theft of Electricity are to be assessed and how they should be recorded. The Code describes how Parties shall deal with Customers who are suspected of, or are identified as having undertaken, Theft of Electricity in order to ensure consistency of treatment between Parties and their appointed agents.
- 3.2 This Code of Practice does not deal with:
- (a) theft or fraud other than Theft of Electricity;
  - (b) the recovery of bad debts;
  - (c) the abstraction of electricity beyond the point at which it is recorded for Settlement purposes under the BSC (either from networks that are not owned and/or operated by Distributors or from a Customer Installation), and such abstraction shall not constitute Theft of Electricity.

### High Level Principles

3.3 Working within the statutory and regulatory framework, the following principles have been identified:

- (a) **Make safe.** Where any activities are undertaken in accordance with this Code of Practice safety is paramount.
- (b) **Costs should be borne by those that steal.** Parties should use reasonable endeavours to pursue the Perpetrator, and to recover from the Perpetrator (or other beneficiary) the Value of the electricity stolen, the costs of repairing or replacing any equipment as a result of the Theft of Electricity (including any equipment installed to prevent Theft of Electricity) and the costs of any associated investigation (such Value and costs together being the “**Relevant Costs**”).
- (c) **Seek to identify and prevent theft.** Parties should ensure that effective measures are in place to prevent and deter Theft of Electricity.
- (d) **Collect and report trend data.** Trend data and management information relating to types of Theft of Electricity should be shared throughout the industry in a standard format.
- (e) **Collect and report data associated to the Theft of Electricity.** Data relating to the Theft of Electricity should be shared throughout the industry in a standard format. Once data is collected, it is important that it is then collated in to usable reports and provided back to the industry.
- (f) **Enable theft reporting.** Parties should have mechanisms in place to enable any third party to report suspected Theft of Electricity.
- (g) **Ensure that Customers are treated in an appropriate manner.** It is recommended that Parties should adopt industry best practice for the management of Customer relationships, and in particular the needs of Vulnerable Customers.

- (h) **Investigation by competent individuals.** Theft of Electricity should only be investigated by a person possessing appropriate skill, experience and authorisation.
- (i) **Standardisation.** Minimum standards should be established for the delivery of a Revenue Protection Service and create a common approach to the treatment of Customers and of Perpetrators.

4. **RESPONSIBILITIES OF PARTIES**

**OBLIGATION**

The Distributor shall investigate and resolve all cases of Theft in Conveyance. Where such theft is identified, the Distributor shall seek to recover the Relevant Costs from the Perpetrator.

The Supplier shall investigate and resolve all cases of Theft of Electricity other than Theft in Conveyance. Where theft is identified, the Supplier shall seek to recover the Relevant Costs from the Perpetrator, and shall (to the extent possible under the BSC) arrange for the stolen electricity to be entered into Settlement.

Where there is Theft of Electricity and the Customer Installation is unsafe, the Supplier or its agent shall notify the Distributor in a prompt and appropriate manner, of the unsafe situation and any actions taken.

Suppliers and Distributors shall (and shall ensure that their agents shall) act on reports made to them regarding Theft of Electricity for which they have responsibility in accordance with this Code of Practice, and take the appropriate steps required of them in respect of such Theft of Electricity (whether required of them under this Code of Practice, the Relevant Instruments or general laws).

**BEST PRACTICE**

*Distributor*

The Distributor should cooperate with Suppliers to identify and prevent Theft of Electricity.

The Distributor should aim to educate the public, staff and the community about the dangers of interference with meters and electrical equipment, and the need to report any suspected or damaged equipment to the responsible Party.

*Supplier*

The Supplier should cooperate with Distributor to identify and prevent Theft of Electricity.



The Supplier should aim to educate the public, staff and the community about the dangers of interference with meters and electrical equipment, and the need to report any suspected or damaged equipment to the responsible Party.

The Supplier's approach to making a police complaint (or not) in respect of Theft of Electricity, shall be detailed in the Supplier's revenue protection policy.

The Supplier's right (whether statutory or contractual) to Disconnect a Premises at which Theft of Electricity has occurred is at the discretion of the Supplier, and the Supplier's approach should be detailed in the Supplier's revenue protection policy.

The Supplier should keep the Perpetrator and the Customer for the relevant Premises informed as to whether the Relevant Costs shall be recovered.

#### **REFERENCE**

The Distributor has the right to Disconnect a Premises under paragraph 5 or 6(2) of schedule 6 to the Electricity Act.

The Supplier has the right to Disconnect a Premises under paragraph 5 or 6(3) of schedule 6 to the Electricity Act, or paragraph 11 of schedule 7 to the Electricity Act.

The Electricity Safety, Quality and Continuity Regulations 2002 (including regulation 29), the Connection Agreement for the Connected Installation, and Clauses 25 and 41 of the DCUSA set out the rights and obligations of Distributors in respect of Disconnections (including Clause 25.9.2 in situations where safety is at risk and Clause 25.9.4 where an accident or emergency threatens personal injury or damage to property).

Standard Licence conditions 12A.1 to 12A.6 of the Supply Licences oblige licensees to detect, prevent and investigate Theft of Electricity.

See Appendices 1 and 2 to this Code of Practice for further information.

## 5. INFORMATION SOURCES

### **OBLIGATION**

Parties shall have an appropriate reporting process in place to enable individuals to inform them of suspected interference. This should include a telephone number for reporting such information, which should be widely publicised.

### **BEST PRACTICE**

Suppliers should monitor [analytical sources of data](#) and identify trends in Customer behaviour [as part of their desktop review](#), which [will](#) enable them to [categorise leads and to decide whether or not to continue investigation of a lead](#).

Each Party should instruct its Revenue Protection Agents to proactively undertake cold calls on such Party's behalf as a means of deterring Theft of Electricity for which such Party is responsible.

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## **6. INFORMATION EXCHANGE BETWEEN PARTIES**

### **6.1 Provision of Information from Distributors to Suppliers**

#### **OBLIGATION**

Where the Distributor is providing information to the Supplier (or other equipment owner) in accordance with standard licence condition 27.3 of the Distribution Licence, the Distributor shall provide such information not later than the next Working Day after becoming aware of the same.

When the Distributor carries out Disconnection on the grounds of safety due to damage or interference arising as a result of Theft of Electricity, the Distributor shall inform the Supplier of such Disconnection as soon as reasonably practicable (especially where Vulnerable Customers are affected), and in all cases not later than the next Working Day following such Disconnection.

If the Distributor (or its Revenue Protection Agent) becomes aware of any suspected or actual incidence of Theft of Electricity which is not Theft in Conveyance, the Distributor shall ensure that the Supplier is notified of such incidence and provided with all relevant information known to the Distributor (or its Revenue Protection Agent) promptly and in all cases not later than the next Working Day after becoming aware of the same. Neither the Distributor (nor its Revenue Protection Agent) shall undertake any future visits or attempt to remedy the situation unless requested and authorised by the Supplier.

#### **REFERENCE**

Standard licence condition 27.3 of the Distribution Licence obliges Distributors to notify the Supplier (or relevant equipment owner) where the Distributor has reason to believe that there has been damage to any electrical plant or electric line or damage to or interference with any metering equipment belonging to such person.

Clause 25.10 of the DCUSA obliges the Distributor to notify the Supplier as soon as is reasonably practicable (and no later than the end of the next Working Day when MPAS is available) when the Metering Point or Metering System has been De-Energised if any of the

circumstances specified in clause 25.9 apply (which include safety, security and interference issues amongst others).

Clause 30.12 of the DCUSA obliges the Distributor to notify the Supplier in a prompt and appropriate manner where the Distributor carries out any remedial work in relation to damage or interference.

#### 6.2 Provision of information by Suppliers to Distributors

##### **OBLIGATION**

Where the Supplier is providing information to the Distributor under Clause 30.5 and/or 30.9 of the DCUSA in respect of incidents arising as a result of Theft of Electricity, the Supplier shall provide such information not later than the next Working Day after becoming aware of the same.

##### **REFERENCE**

Clause 30.5 of the DCUSA obliges the Supplier to notify the Distributor of an incident that is likely to cause danger or require urgent attention in relation to the distribution of electricity, or to affect the security, availability and quality of service of the Distributor's Distribution System.

Clause 30.9 of the DCUSA obliges the Supplier to notify the Distributor of incidents of damage or interference.

Clause 30.11 of the DCUSA obliges the Supplier to notify the Distributor of its policy relating to damage or interference, which may include substitution of alternative meters, the provision of prepayment meters or De-energisation Works.

#### 6.3 Provision of Information by the Supplier to its Revenue Protection Agent

##### **OBLIGATION**

The Supplier shall provide its Revenue Protection Agent with the relevant information required for investigation of a case (where known), including: Customer name; address; MPAN, reason

for suspicion; any known or suspected vulnerability status; or any known or suspected potential hazards.

#### **BEST PRACTICE**

Category A issues should be notified by telephone followed by the DTC Data Flow D0238.

Category B and C issues should be notified by the DTC Data Flow D0238.

Where the investigation is initiated by telephone this should be followed up by the DTC Data Flow D0238.

Where Theft of Electricity is suspected to have taken place in a multi-dwelling unit, it should be made clear in the reports and dealt with in line with Category A, B or C safety concerns. Section 7.2 of this Code of Practice defines Category A, B and C issues, and sets out the timescales applicable to each.

#### **6.4 Provision of information by a Revenue Protection Agent to the Supplier**

##### **OBLIGATION**

*Provision of Information regarding Theft of Electricity (other than Theft in Conveyance) to a Supplier to whom the Revenue Protection Agent does not provide a service*

The Supplier by whom the Revenue Protection Agent was appointed shall ensure that any safety issues that have been identified are appropriately dealt with, and that the Revenue Protection Agent informs the relevant Supplier of the situation as soon as is reasonably practical (and not later than the next Working Day after becoming aware of the same). The Supplier shall then evaluate the situation and initiate the appropriate action, which may be instructing its own Revenue Protection Agent to investigate the matter in accordance with section 7.2 below (Priorities and Timescales).

*Provision of Information regarding Theft of Electricity (other than Theft in Conveyance) to a Supplier to whom the Revenue Protection Agent is providing a service*

The Revenue Protection Agent shall prepare (on behalf of the Supplier) a report regarding the incident and send it to the Supplier giving relevant information as soon as is reasonably practical

and not later than the next Working Day after the investigation is completed. Where the Supplier's Revenue Protection Agent has carried out a Disconnection, the Revenue Protection Agent shall notify the Supplier immediately and advise the method of Disconnection, and whether the Customer is a Vulnerable Customer.

**BEST PRACTICE**

Appendix 5 contains a list of the information items which a Revenue Protection Agent should provide to the Supplier.

6.5 Provision of information by a Revenue Protection Agent to the Distributor

**OBLIGATION**

*Provision of Information regarding Theft in Conveyance to a Distributor to whom the Revenue Protection Agent does not provide a service*

The Distributor by whom the Revenue Protection Agent was appointed shall ensure that any safety issues that have been identified are appropriately dealt with, and that the Revenue Protection Agent informs the relevant Distributor of the incident as soon as is reasonably practical (and not later than the next Working Day after becoming aware of the same).

*Provision of Information regarding Theft in Conveyance to a Distributor to whom the Revenue Protection Agent is providing a service*

The Revenue Protection Agent shall prepare (on behalf of the Distributor) a report regarding the incident and send it to the Distributor giving relevant information as soon as is reasonably practical and not later than the next Working Day after the investigation is completed.

6.6 Provision of Information by the Distributor to its Revenue Protection Agent

**OBLIGATION**

A Distributor shall provide its Revenue Protection Agent with the relevant information required for investigation of a case (where known), including: Customer name; address; MPAN, reason for suspicion; any known vulnerability status; or any known potential hazards.

The Distributor shall also ensure that the Revenue Protection Agent is provided with up-to-date contact details that can be given to the Customer during a site visit.

## REFERENCE

An instruction to investigate the matter from the Distributor to its Revenue Protection Agent will be given in accordance with section 7.2 below (Priorities and Timescales).

The Distributor may Disconnect on safety grounds in accordance with section 17 of the Electricity Act 1989 and/or The Electricity Safety, Quality and Continuity Regulations 2002.]

## 6.7 Exchange of information between Suppliers

### OBLIGATION

Each Supplier shall populate the template theft contacts register set out below with the Supplier's relevant details, and shall provide the populated register to the DCUSA Secretariat. Each Supplier shall include the exact details outlined in the template below and shall provide updates to the DCUSA Secretariat as the Supplier's personnel or their contact details change.

Supplier name	Registration Number	MPID	Contact Level Primary/ Escalation	Contact Name	Department	Telephone	Email

Each Supplier shall carry out an annual review of the information contained in its theft contacts register and shall ensure that its register remains accurate and up to date.

The DCUSA Secretariat shall publish the theft contacts register on the DCUSA Website in accordance with Schedule 14 of the DCUSA and shall update the published register with the information received from Suppliers from time to time.

Suppliers and Distributors shall use the relevant contact details set out in the published theft contacts register when there are no other applicable avenues to report matters relating to the identification of theft and/or revenue protection activities.

Where any incorrect information is identified in the published theft contacts register, this may be notified to the DCUSA Secretariat or the relevant Supplier's Contract Manager under the DCUSA. Where the DCUSA Secretariat receives any such notification, it shall notify the relevant Supplier. Each Supplier shall ensure that updated information is provided to the DCUSA Secretariat within 10 Working Days of the Supplier correctly being notified of an error.

**BEST PRACTICE**

In the event of a change of Supplier part way through a live Theft of Electricity investigation, the outgoing Supplier should endeavour to provide the incoming Supplier with information relevant to that investigation.

6.8 Data Protection Requirements

**BEST PRACTICE**

Any information transfer pursuant to this Code of Practice should be made in compliance with relevant data protection legislation, and the relevant Party's data protection policies and procedures. Guidance on a list of data items which Parties can potentially transfer between themselves is set out in section 1.1.1 of the Privacy Impact Assessment produced in respect of this Code Of Practice and available via [www.dcusa.co.uk](http://www.dcusa.co.uk).

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## 7. PROCEDURES FOR INVESTIGATION

### 7.1 Process to be followed

A diagram showing the process to be followed is attached at Appendix 8.

### 7.2 Priorities and Timescales

OBLIGATION			
<b>Category Determination</b>	On receipt of information Parties must assess whether or not there is a serious safety concern <u>or other reason for urgency</u> .		
	<b>Category A</b>	<b>Category B</b>	<b>Category C</b>
<b>Description</b>	<u>Evidence of Theft of Electricity where there is a serious safety concern <u>or other reason for urgency</u>.</u>	Evidence of Theft of Electricity <u>where there is no serious safety concern <u>or other reason for urgency</u>.</u>	Information giving cause for suspicion that Theft of Electricity <u>may have taken</u> place.
<b>Likely source of information</b>	Employees and third parties who have gained access to the Premises.	Employees and third parties who <u>may or may not</u> have gained access to the Premises.	<u>Employees/third parties who <u>may or may not</u> have gained access to the Premises; or as identified through an analysis of data.</u>
<b>Action to be taken</b>	Distributor to be notified by Supplier if there is a dangerous situation the Distributor needs to rectify.	Supplier <u>or the Distributor</u> to screen the information received and, where further action is needed,	Supplier <u>or the Distributor</u> to screen the information received and, where further action is needed, refer case to its Revenue Protection

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	Supplier to notify its Revenue Protection Agent on the day the issue is brought to Supplier's attention. Where possible, Supplier's Revenue Protection Agent to attend the Premises at same time as Distributor (where applicable).	refer case to its Revenue Protection Agent as soon as reasonably practicable.	Agent as soon as reasonably practicable.
<b>Response Times</b>	Supplier's Revenue Protection Agent to use reasonable endeavours to visit the Premises at the same time as the Distributor (where applicable) and in any event within 1 Working Day, and resolve within 20 Working Days.	Supplier's Revenue Protection Agent to visit the Premises within 20 Working Days, and resolve within 40 Working Days.	Supplier's Revenue Protection Agent to visit the Premises within 30 Working Days, and to resolve within 90 Working Days.
<b>Examples</b>	Bridge in place.  Consumer Tails removed from Meter and inserted into cut out.  Meter smashed, inner workings exposed.	Silver paper around meter (gas lighter used).  Hole in meter casing.  Burn marks on wall behind meter.	Discrepancies and data anomalies.  Low payments.  Low consumption.  Comments made by Customer that give rise to suspicion.

	<i>In all the above, the supply would need still to be on for it to be a serious safety concern.</i>		
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In the absence of allocation of priority by the Supplier, or where the information is not through the normal notification procedure, the Revenue Protection Agent shall allocate priority in discussion with the Supplier. The Revenue Protection Agent may suggest a re-allocation of the priority but this must be confirmed with the Supplier.

For the purposes of this section 7.2:

- “visit” means use reasonable endeavours to gain access to the Premises; and
- “resolve” means gain access to the Premises, investigate and take action in appropriate timescales, but does not include assessment of unrecorded units (which shall be carried out as soon as reasonably practicable) nor the provision of any optional services.

The time periods shall commence once the Revenue Protection Agent has received instruction to visit. It is acknowledged that longer timescales shall have to apply where access to a Premises is delayed by circumstances outside of the Supplier’s control (including where a warrant is needed to obtain access).

#### **BEST PRACTICE**

Where reports are received from the ETTOS Service Provider, Parties should determine whether to investigate as Category A, B or C.

#### **REFERENCE**

The rights and obligations of Distributors in respect of Disconnections are set out in the “Reference” section of section 4 above.

Sections 9 and 10 of this Code of Practice provide further information regarding visits and investigations.

8. **QUALIFICATION OF STAFF**

**OBLIGATION**

Each Party shall ensure that its Revenue Protection Agents employ individuals possessing skill, experience, qualification and authorisation appropriate to the task they are undertaking.

**REFERENCE**

Condition 13 of the Supply Licence sets out the requirements for a Supplier's representative to possess the skills necessary to perform the required function.

Condition 9 of the Distribution Licence sets out the requirements for a Distributor's representative to possess the skills necessary to perform the required function.

Clause 25 of the DCUSA requires individuals undertaking De-energisation or Re-energisation to be approved and competent in accordance with Schedule 5 to the DCUSA.

The Parties have obligations with respect to compliance with the Meter Operator Code of Practice under Clause 27 of the DCUSA.

**9. VISIT PROCEDURE/GAINING ENTRY**

**BEST PRACTICE**

*Investigative visits*

Each Party should (where required to investigate) ensure that its Revenue Protection Agent visits the Premises without prior notification, provides appropriate identification for themselves and states on whose behalf they are calling, and requests entry to inspect the Premises. Circumstances, as determined by the nature of the report and/or known local factors, should determine how many staff are involved and whether police accompaniment may be requested (for instance if a breach of the peace is considered likely).

Care should be taken when recording what is said by the Customer or others present at the Premises, especially where a Vulnerable Customer has been identified. In particular:

- Care should be taken in the treatment of people who have a visual impairment, hearing impairment, physical or learning disabilities, a mental health condition or are under 18 years of age. Such persons should not be interviewed alone - if necessary an 'appropriate adult' should be present.
- Where, as part of any contact with the Customer, it is identified that the Customer has difficulty (or claims to have difficulty) in understanding English, an interpreter may be required. Parties should establish policy guidance for staff for such situations and ensure that they are aware of this guidance. Where it is identified that the Customer is a user of British Sign Language, Parties should make all reasonable efforts to communicate with the Customer through the use of sign language, or alternatively in writing.

On leaving a Premises, when contact with the Customer has been made, the Revenue Protection Agent should leave a letter at the Premises as set out in section 14 below.

*Need for a Warrant*

Where access to the Premises has not been gained after reasonable attempts have been made, the Party should seek to obtain a warrant to enter the Premises.

**REFERENCE**

Warrants to enter Premises are granted under the Rights of Entry (Gas and Electricity Boards) Act 1954 and pursuant to schedule 6 of the Electricity Act (see paragraphs 8 and 10).

Standard licence condition 12A.11(a) of the Supply Licences oblige licensees to identify whether an occupant is of pensionable age, disabled or chronically sick and/or will have difficulty paying all or part of the Charges for Theft of Electricity.

Standard licence condition 12A.11(h) of the Supply Licences oblige licensees to provide accurate information and advice about any assessments and disputes regarding Theft of Electricity.

**10. VISIT PREPARATION**

**BEST PRACTICE**

Parties and their agents should gather and consider all the relevant information required for the investigation prior to attending a Premises.

The nature of the information obtained may indicate that a warrant should be obtained in advance to facilitate access to the Premises.

Where all relevant information is not available to a Party in advance of a visit, it shall be the responsibility of the Party to attempt to obtain such information during or subsequent to the visit.



## 11. CONDUCT OF INVESTIGATIONS

### **OBLIGATION**

In this section “Relevant Offence” means Theft of Electricity that amounts to an offence under schedule 6 or schedule 7 to the Electricity Act, and “Statutory Powers” means a Party’s powers under schedule 6 or schedule 7 to the Electricity Act to Disconnect and/or remove a meter as a result of a Relevant Offence.

Each Party shall ensure that:

- its Statutory Powers are only exercised where it (or its Revenue Protection Agent) reasonably believes that there is sufficient evidence to prove (on the balance of probabilities) that a Relevant Offence has been committed;
- its Statutory Powers are only exercised where it (or its Revenue Protection Agent) reasonably believes that there is sufficient evidence to prove (on the balance of probabilities) that the Relevant Offence was committed by the current occupier (or owner) of the Premises; and
- neither it (nor its Revenue Protection Agent) misleads Customers about the scope of the Party’s Statutory Powers.

### **REFERENCE**

Standard licence condition 12A.11(e) of the Supply Licences obliges licensees to have (and ensure that any Representative has) sufficient evidence to establish (on the balance of probabilities) the statutory right to Disconnect before stopping the supply of electricity to the [Premises](#) on grounds of Theft of Electricity.

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**12. COLLECTION AND RETENTION OF EVIDENCE (TO INCLUDE  
HANDLING OF CASE MATERIALS)**

**OBLIGATION**

Where a Distributor (or its Revenue Protection Agent) suspects that Theft in Conveyance has occurred, that Party (or such agent) shall collect and retain such evidence as it reasonably considers necessary to demonstrate that Theft in Conveyance has occurred.

Where a Supplier (or its Revenue Protection Agent) suspects that that Theft of Electricity (other than Theft in Conveyance) has occurred, that Party (or such agent) shall collect and retain such evidence as it reasonably considers necessary to demonstrate that such Theft of Electricity has occurred.

Each Party shall clearly explain to the Customer the reason why evidence is being collected and the basis on which the Party is acting.

[The Distributor shall contact the occupier \(and the owner if the owner is not the occupier\) of the Premises to register their MPAN with a Supplier and continue to contact the occupier and/or owner until the Premises is registered or disconnected.](#)

**BEST PRACTICE**

No inference should be made that the Customer is the Perpetrator.

Best practice for the collection and retention of evidence is further described in Appendix 3.

**REFERENCE**

Section 14 of this Code of Practice sets out the information which should be left with the customer during a visit to a Premises.

Schedule 6 paragraph 6, and schedule 7 paragraph 11 of the Electricity Act set out the authorisations that need to be sought before disposing of or destroying meters that have been removed on suspicion of Theft of Electricity.

The standard of proof for criminal prosecution is proof beyond reasonable doubt. However, a lower standard (on the balance of probabilities) is sufficient for the responsible Party to bring civil proceedings to recover the Relevant Costs.

### **13. TREATMENT OF VULNERABLE CUSTOMERS**

#### **OBLIGATION**

Each Party shall use reasonable endeavours to safeguard the personal welfare of Vulnerable Customers in respect of the activities set out in this Code of Practice.

If a Customer account is flagged as being on the 'Priority Services Register', this shall be notified to the Revenue Protection Agents so that (if Theft of Electricity is suspected or a Confirmed Theft has occurred) appropriate actions are taken. Any additional 'vulnerable person flags' shall be notified to the Revenue Protection Agents and the Revenue Protection Agents shall have regard to the Supplier's Revenue Protection Policy when investigating Theft of Electricity.

Each Party shall take reasonable steps to ascertain who in the household might be a Vulnerable Customer, and then make a judgement regarding the action that needs to be taken in the light of this information.

#### **BEST PRACTICE**

In many cases, a prepayment meter may need to be installed, and in some cases, alternative means of collecting charges may be considered by the Supplier.

If there is repeated Theft of Electricity, there may be no alternative other than to Disconnect the supply.

#### **REFERENCE**

Condition 10 of the Distribution Licences and Condition 26 of the Supply Licences oblige Distributors and Suppliers (respectively) to have regard to the interests of individuals who are

blind partially sighted, deaf or hearing impaired, disabled, chronically sick or of pensionable age. This includes establishing and maintaining a 'Priority Services Register'.

In addition, most Suppliers have 'vulnerable person flags' on Customer accounts.

Standard licence condition 12A.11(a) of the Supply Licences oblige licensees to identify whether an occupant is of pensionable age, disabled or chronically sick and/or will have difficulty paying all or part of the Charges for Theft of Electricity.

Standard licence condition 12A.11(c) of the Supply Licences require that, where such occupants are identified, the licensee must offer the chance to pay the Charges by using a prepayment meter before seeking to Disconnect the [Premises](#).

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Standard licence condition 12A.11(d) of the Supply Licence provides that, where the licensee believes there may be an occupant who is of pensionable age, disabled or chronically sick, the licensee must take all reasonable steps not to Disconnect the relevant [Premises](#) in winter.

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#### 14. INFORMATION TO CUSTOMERS

##### **OBLIGATION**

On arrival at the Premises, the Revenue Protection Agent shall inform the Customer of the Party which the Revenue Protection Agent is representing, and act in accordance with that Party's policy on site attendance.

On leaving the Premises, the Revenue Protection Agent shall leave the following information for the Customer:

- the contact details for the Party which the Revenue Protection Agent is representing;
- the outcome of the visit (e.g. sufficient evidence of Theft of Electricity has occurred, and whether or not there has been a Disconnection);
- a statement explaining the statutory basis for any action taken (i.e. specific reference to legislation);
- who the Customer needs to contact in order to get their supply re-instated (where relevant);
- what the Customer can expect next / what they should do (e.g. contact the Supplier/Distributor, await to hear from the Supplier/Distributor etc);
- what the Customer should do if they are unhappy with the outcome (e.g. contact the Supplier/Distributor in the first instance, and other options available under the Supplier's/Distributor's normal redress processes);
- informing the Customer that if they are not able to resolve the issue with the Supplier/Distributor in 8 weeks they can contact the energy ombudsman scheme; and
- contact details for further independent sources of help and advice (e.g. Consumer Focus; Consumer Direct; Citizen's Advice Bureau; Social Services).
- Parties shall ensure that the responsible Party is informed as appropriate as to the Relevant Costs to be recovered from the Perpetrator in relation to Theft of Electricity; and

- Customers are informed, following a make safe, Disconnection of who to contact in order to find out how to get the supply reinstated.

Where a Customer is not present at the Premises, written documentation shall be left at the Premises in a sealed and addressed envelope.

Where it is not possible for a Party or its agent to leave the written information, as described above, with the Customer on leaving the Premises, this must be done so as soon as possible thereafter.

#### **REFERENCE**

Standard licence condition 12A.11(h) of the Supply Licences oblige licensees to provide accurate information and advice about any assessments and disputes regarding Theft of Electricity.

## **15. OUTCOME OF INVESTIGATION**

### **15.1 Theft of Electricity suspected but not a Confirmed Theft**

#### **BEST PRACTICE**

Following an investigation, where Theft of Electricity is suspected but cannot be determined as a Confirmed Theft, there are a number of actions which may be taken. These include:

- exchange of the meter;
- fitting of security measures e.g. anti tamper labels;
- revisits; and
- consumption monitoring.

Where investigation has recovered no evidence of Theft of Electricity, and Theft of Electricity is no longer suspected, the investigation should be closed and no further action should be taken.

### **15.2 Confirmed Theft**

#### **OBLIGATION**

In cases of a Confirmed Theft, Parties shall seek to identify the Perpetrator. In most cases the Customer shall be the Perpetrator, but this may not be the case.

In cases of a Confirmed Theft, appropriate steps shall be undertaken to stop the Theft of Electricity continuing.

#### **BEST PRACTICE**

In cases of a Confirmed Theft, appropriate steps undertaken to remedy the situation may include one or more of the following:

- Disconnection;
- exchange of meter;
- assessment of Value of unrecorded units, and of Relevant Costs;

- assessment of the ability of the Perpetrator (or other beneficiary) to pay the Relevant Costs;
- using reasonable efforts to receive the Relevant Costs from the Perpetrator (or other beneficiary);
- prosecution of the Perpetrator; and
- request of a security deposit against future supply.

Where the meter installation has been physically tampered with and rectification work is necessary, this should be undertaken as soon as reasonably practicable. It may be necessary to temporarily de-energise supply pending the completion of remedial works.

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Parties should make reasonable efforts to identify the person against whom charges should be levied. Wherever possible the assessment of charges should be completed on site with the aim of agreeing the assessment with the Customer or their representative. The aim should be to secure payments on site. Where this is not possible, an interim assessment of unrecorded units and charges should be completed and the final assessment completed and issued to the Perpetrator (or other beneficiary).

#### REFERENCE

Standard licence condition 12A.11(d) of the Supply Licence provides that, where the licensee believes there may be an occupant who is of pensionable age, disabled or chronically sick, the licensee must take all reasonable steps not to Disconnect the relevant Premises in winter.

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Standard licence condition 12A.11(g) of the Supply Licence provides that the licensee must have sufficient evidence to establish that Theft of Electricity has occurred as a result of an intentional act before requiring payment in respect of the Charges for supply relating to that Theft of Electricity.



### 15.3 Assessment of Unrecorded Units

**OBLIGATION**

Each Party must ensure that the assessment of unrecorded units, in respect of a suspected or confirmed Theft of Electricity, is carried out in a systematic, reasonable, consistent and transparent way.

When assessment calculation tools are required to assess unrecorded units, Parties must utilise the DCUSA Theft Assessment Calculator most recently made available by the Panel under the DCUSA.

**BEST PRACTICE**

No one single method is necessarily appropriate in all cases, but it is recommended that Parties follow the method set out in Appendix 7 to this Code of Practice.

### 15.4 Remediating the matter

**BEST PRACTICE**

Providing it is safe to do so, each Party (and its Revenue Protection Agent) should consider all available options for the maintenance of supply, including fitting a prepayment meter and payment by instalments.

In determining the Relevant Costs, Parties should only seek to recover their direct and reasonably foreseeable costs associated with a particular incident. Such costs should not be a penalty but could, for example include the specific investigation costs associated with determining that a Confirmed Theft has taken place or a genuine pre-estimate of the loss incurred by the Party.

**REFERENCE**

Following Disconnection of a Premises pursuant to paragraph 6 of schedule 6 to the Electricity Act, the Distributor or Supplier (as applicable) is only obliged to restore the supply where the Perpetrator is no longer in occupation or the Theft of Electricity has been remedied.

Appendix 2 provides commentary on the interpretation of when the Consumer has remedied the matter.

15.5 Negotiation of Payment: Determining the Relevant Costs

**BEST PRACTICE**

Relevant Costs may include the Value of electricity taken, the cost of remedial work, the cost of damage to equipment and the cost of investigation. Invoices should take into account statutory requirements in regards to VAT, Climate Change Levy and bill presentation.

**REFERENCE**

Distributors have the ability (in accordance with Schedule 6, paragraph 4 of the Act) to bill the consumer for the Value of electricity taken.

15.6 Demand for Payment of Relevant Costs

**BEST PRACTICE**

Where a Supplier or Distributor has the process to safely take payment at a Premises and the Perpetrator (or other beneficiary) is in agreement, then monies can be taken and receipted on site. Where this is not possible, taking into account Consumers' ability to pay, Parties should seek to agree terms for payment arrangements at the earliest opportunity.

This information should allow the Party to complete the assessment and come to an agreement with the Perpetrator (or other beneficiary) as to the best method of recovering any outstanding Relevant Costs.

#### 15.7 Assess ability to pay and agree payment arrangements

##### **OBLIGATION**

Parties shall ensure that where a debt in respect of Relevant Costs arises, the following shall apply:

- they have appropriate credit management policies and guidelines, including clear guidance and training for staff;
- they allow for debtors to be dealt with on a case-by-case basis; and
- they put in place appropriate controls to ensure that staff incentives do not drive inappropriate behaviour.

##### **BEST PRACTICE**

Parties should:

- make it easy for debtors to raise concerns;
- proactively explore payment amount and appropriate payment methods;
- set repayment rates taking into account ability to pay;
- ensure all available information is obtained and taken into consideration, including the Perpetrator's (or other beneficiary's) circumstances identified on the visit;
- ensure the debtor understands the arrangement which shall include: how much they are repaying each week; when the debt shall be repaid; and what to do if they experience difficulties;(for pre-payment meter Customers) explain how the debt shall be recovered e.g. regardless of usage for time based debt recovery; and
- monitor arrangements after they have been set up (e.g. broken or failed arrangements to understand whether inappropriate rates are being set).

The OFT has also issued guidance for debt collectors on how to deal fairly with debtors. It is expected that Parties shall take due note of the OFT guidance as part of their contractual or policy arrangements (or both) with debt collection agencies.

#### REFERENCE

Suppliers are obliged under Condition 27 of the Supply Licences to take all reasonable steps to ascertain the Customer's ability to pay and to take this into account when calculating instalments.

Standard licence condition 12A.11(b) of the Supply Licences oblige licensees to take into account an occupant's ability to pay when calculating instalments.

Standard licence condition 12A.11(c) of the Supply Licences require that, where there may be an occupant who is of pensionable age, disabled or chronically sick and/or who will have difficulty paying all or part of the Charges for Theft of Electricity, the licensee must offer the chance to pay the Charges by using a prepayment meter before seeking to Disconnect the [Premises](#).

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Standard licence condition 12A.11(e) of the Supply Licences obliges licensees to have (and ensure that any Representative has) sufficient evidence to establish (on the balance of probabilities) the statutory right to Disconnect before stopping the supply of electricity to the [Premises](#) on grounds of Theft of Electricity.

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#### 15.8 Disconnection for safety reasons

#### BEST PRACTICE

A Party should not (and should ensure that its Revenue Protection Agents do not) Disconnect a Premises where to do so would Disconnect other Premises that are not associated with the Theft of Electricity incident unless there is a serious safety concern.

Where a Party Disconnects a Premises, it should be clear and record on what authority it is exercising its powers.

**REFERENCE**

See section 11 of this Code of Practice in respect of Disconnections made in reliance on statutory powers relating directly to an offence under the Electricity Act.

In addition, however, a Party (particularly a Distributor) may have wider powers to Disconnect Premises that arise as an indirect result of Theft of Electricity – particularly on the grounds of safety (under the Electricity Safety, Quality and Continuity Regulations 2002, the Connection Agreement for the Connected Installation, and/or Clause 25 of the DCUSA).

Ultimately it will be a matter for a Party to decide what action may legally be taken in the event of safety concerns. Where a Party Disconnects a Premises, it must ensure that it has a clear legal basis for doing so (and therefore must satisfy all the relevant conditions which apply to the use of powers to Disconnect the supply).

15.9 Maintenance of records

**OBLIGATION**

Each Party shall maintain appropriate records in relation to its activities in relation to Theft of Electricity in accordance with the requirements set out in Appendix 4.

**BEST PRACTICE**

Notes of visits to Premises should be written up within 1 Working Day of the visit. It is recommended that Parties develop processes to keep records of a standard which are aligned with a criminal prosecution. This is because where repeated incidents occur it may be appropriate to report all incidents to the police, particularly where safety or large volumes of electricity theft has or have been a significant factor.

**REFERENCE**

Standard licence condition 12A.12 of the Supply Licences obliges the licensee to keep a record of its compliance with standard licence condition 12A.

#### 15.10 Prosecution

**BEST PRACTICE**

Where there is sufficient evidence, a Party should consider pursuing criminal prosecution and/or civil proceedings.

In the following cases, criminal procedures and/or civil proceedings are strongly recommended: repeat offenders; electrical contractors; employees of an organisation involved in the electricity distribution or supply market; commercial Customers, cases involving extensive theft, and cases involving damage or endangerment to life or property.

The presentation of evidence, especially oral presentation, should be covered by appropriate training of staff.

The Party should provide its staff to attend court and act as witnesses as appropriate.

#### 15.11 Re-visits

**BEST PRACTICE**

Parties may wish to undertake revisits in certain circumstances. These include:

- High risk Premises (i.e. where there has been previous history of interference or suspected interference. However, this should be at Suppliers' discretion, as information may be held which indicates that a re-visit is not needed. The Revenue Protection Agent shall report the result of the revisit as soon as reasonably practicable and not later than 5 Working Days).
- Where the supply at a Premises has been Disconnected and not Reconnected during the same visit.
- Where the supply at a Premises has been Disconnected and Reconnection has not occurred or is not planned.
- Where the Party is responsible for detecting theft, and has evidence that re-offending may have occurred or where other information is held that indicates this may be the case, then the Party shall arrange for further visits to properties.

#### 15.12 Reports

**OBLIGATION**

The Supplier shall provide a monthly report to each Distributor setting out each of the cases of Theft of Electricity investigated, identifying those which were a Confirmed Theft and the volume of units associated with each such case.

**BEST PRACTICE**

The information set out in Appendix 6 should be collated by Suppliers, as the Authority may request such information.

**REFERENCE**

Standard licence condition 12A.14 of the Supply Licences obliges licensees to provide the Authority with information regarding compliance with standard licence condition 12A.

### 16. RESOLVING DISPUTES

- 16.1 Where a Party has evidence of another Party being non-compliant with this Code of Practice, the escalation procedure detailed in Clause 58 of the DCUSA shall apply.

## **APPENDICES**

- 1. RELEVANT STATUTORY AND REGULATORY PROVISIONS**
- 2. DISCONTINUATION OF SUPPLY**
- 3. COLLECTION AND RETENTION OF EVIDENCE**
- 4. RECORD KEEPING**
- 5. INFORMATION TO BE PROVIDED BY THE RP SERVICES**
- 6. REPORTING**
- 7. ASSESSMENT OF UNRECORDED UNITS**
- 8. PROCESS DIAGRAM**

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>
<b>Theft Act 1968</b>	<b>Section 13 - Abstracting of Electricity</b>  <b>Section 2 - interprets the term 'dishonestly'</b>	To dishonestly use without due authority, or dishonestly cause to be wasted or diverted, any electricity.	General definition for theft of electricity
<b>Fraud Act 2006</b>	<b>Section 11 – Obtaining services dishonestly</b>	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.
<b>Criminal Damage Act 1971</b>	<b>Section 1 – Causing criminal damage</b>	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.
<b>Criminal Law Act 1977</b>	<b>Section 1 – The offence of conspiracy</b>	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.	
<b>Accessories and Abettors Act 1861</b>	<b>Section 8 – Abettors in misdemeanours</b>	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
<b>Section 16 - Duties of electricity distributors</b>	<p>(1) An electricity distributor is under a duty:</p> <p>(a) to make a connection between a distribution system of his and any <u>Premises</u>, when required to do so by:</p> <p>(i) the owner or occupier of the <u>Premises</u>; or</p> <p>(ii) an authorised Supplier acting with the consent of the owner or occupier of the <u>Premises</u>,</p> <p>for the purpose of enabling electricity to be conveyed to or from the <u>Premises</u>;</p>	Distributor	Obligation to connect a supply

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	(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.		
<b>Schedule 6 - Paragraph 4, Supplies of electricity illegally taken</b>	(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.	Distributor	Right to recover costs for electricity illegally taken during conveyance
	(2) Where:		
	<p>(a) any person at <a href="#">Premises</a> 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 <a href="#">Premises</a> 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</p>		

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	<p>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>		
<b>Schedule 6 - Paragraph 5, Restoration of connection without consent</b>	<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), <u>Premises</u> 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
<b>Schedule 6 - Paragraph 6, Damage to</b>	<p>(1) A person who intentionally or by culpable negligence damages or allows to be damaged:</p>	Supplier / Distributor	Offence to damage equipment (+ culpable

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electrical plant etc.	(a) any electric line or electrical plant provided by an electricity distributor; or		negligence), right to disconnect, no obligation to reconnect
	(b) any electricity meter provided by an electricity Supplier,		
	shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.		
	(2) Where an offence has been committed under sub-paragraph (1) by the occupier of any <u>Premises</u> (or by the owner of the <u>Premises</u> 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 <u>Premises</u> , the distributor may disconnect the <u>Premises</u> .		
	(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 <u>Premises</u> , by the occupier (or by the owner of the <u>Premises</u> if they are unoccupied when the offence is committed), the Supplier may disconnect the <u>Premises</u> and may remove the meter.		
	(4) A meter removed under sub-paragraph (3) above shall be kept safely by the Supplier until the Authority authorises its destruction or disposal.		
	(5) The distributor or Supplier shall not be under any obligation to reconnect (and in the case of a Supplier to restore the supply to) any <u>PPremises</u> disconnected under sub-paragraph (2) or (3) above until:		
	(a) the offender is no longer the occupier or, as the case may be, the owner of the <u>Premises</u> ; or		
	(b) the matter in consequence of which the <u>Premises</u> were disconnected has been remedied.		

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<b>Schedule 6 - Paragraph 7, Entry during continuance of connection or supply</b>	(1) Any officer or other person authorised by an electricity distributor may at all reasonable times enter any <a href="#">Premises</a> to which the distributor is maintaining a connection, for the purpose of inspecting any electric line or electrical plant provided by him.	Supplier / Distributor	Rights of entry for inspection, installation etc
	(2) Any officer or other person authorised by an electricity Supplier may at all reasonable times enter any <a href="#">Premises</a> to which electricity is being supplied by him for the purpose of:		
	(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;		
	(b) removing, inspecting or re-installing any electricity meter or installing any substitute meter.		
	(3) The Supplier shall provide a substitute meter while a meter is removed under sub-paragraph (2)(b) above.		
<b>Schedule 6 - Paragraph 8, Entry on discontinuance of supply or connection</b>	(4) Where an electricity Supplier is authorised by paragraph 2(1) of Schedule 6 to install a pre-payment meter on any <a href="#">Premises</a> , any officer or other person authorised by the Supplier may at all reasonable times enter the <a href="#">Premises</a> for the purpose of installing such a meter.		
	(5) A power of entry for the purpose of 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 <a href="#">Premises</a> if they are unoccupied).		
	(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:	Supplier / Distributor	Rights of entry for disconnection
	(a) to disconnect any <a href="#">Premises</a> ; or		
	(b) to remove an electricity meter, any officer or other person authorised by the Supplier or distributor may at all		

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	<p>reasonable times enter the <u>Premises</u> for the purpose of disconnecting the <u>Premises</u> or removing the meter.</p>		
(2) Where:			
(a)	<p>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 <u>Premises</u>;</p>		
(b)	<p>a person occupying <u>Premises</u> which are connected to a distribution system of an electricity distributor ceases to require a connection; or</p>		
(c)	<p>a person entering into occupation of any <u>Premises</u> 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 <u>Premises</u> for the purpose of disconnecting the <u>Premises</u> or removing any electrical plant or electric line provided by the distributor.</p>		
(3) Where:			
(a)	<p>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 <u>Premises</u> or to discontinue the supply to any <u>Premises</u>;</p>		
(b)	<p>a person occupying <u>Premises</u> which are supplied with electricity by an electricity Supplier ceases to require such a supply; or</p>		
(c)	<p>a person entering into occupation of any <u>Premises</u> 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 <u>Premises</u> for the purpose of disconnecting the <u>Premises</u> or removing any electricity meter provided by the Supplier.</p>		
(4)	<p>A power of entry under sub-paragraph (2) or (3) above may not be exercised unless at</p>		

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	least two working days' notice has been given to the occupier (or to the owner of the <a href="#">Premises</a> if they are unoccupied).		
<b>Schedule 6 - Paragraph 9, Entry for replacing, repairing or altering lines or plant</b>	(1) Any officer or other person authorised by an electricity distributor may at all reasonable times enter any <a href="#">Premises</a> for the purpose of:	Distributor	Rights of entry to make repairs
	(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		
	(b) repairing or altering any such existing line or plant.		
	(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 <a href="#">Premises</a> (or to the owner of the <a href="#">Premises</a> if they are unoccupied).		
	(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.		
<b>Schedule 6 - Paragraph 10, Provisions as to powers of entry</b>	(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.	Supplier / Distributor	General provisions on rights of entry
	(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 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.		
	(3) Where in pursuance of any power of entry conferred by this Schedule, entry is made on any <a href="#">Premises</a> by a person authorised to do so:		
	(a) that person shall ensure that the <a href="#">Premises</a> are left no less secure by reason of the entry; and		
	(b) the Supplier or distributor shall make good, or pay compensation for, any damage caused by that person (or by		

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	<p>any other person accompanying him under sub-paragraph (5) below) in entering the <u>Premises</u>, in taking any action on the <u>Premises</u> 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>		
<b>Schedule 7 - Paragraph 1(5), Consumption to be ascertained by appropriate meter</b>	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.	Supplier	Right to discontinue supply if not taken through an appropriate meter
<b>Schedule 7 - Paragraph 10, Meters to be kept in proper order</b>	<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 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</p>	Supplier / Customer	Obligation to keep metering in proper order

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	<p>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>		
<b>Schedule 7 - Paragraph 11, Interference with meters</b>	<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 <a href="#">Premises</a> by an authorised Supplier; or</p> <p>(b) prevents any such meter from duly registering the quantity of electricity supplied,</p> <p>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 <a href="#">Premises</a> 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>	Supplier	Offence to damage metering (+ culpable negligence), right to disconnect

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**Electricity Distribution Licence**

Standard Licence Condition	Details	Notes
SLC 27.1 and 27.2	Where in the course of providing services to any Authorised Supplier of electricity to <a href="#">Premises</a> directly connected to the licensee's Distribution System, the licensee has reason to believe that there has been:	Report damage to Authorised Supplier
	(a) damage to any electrical plant, electric line, or Metering Equipment through which such <a href="#">Premises</a> are supplied; or	
	(b) interference with the Metering Equipment through which such <a href="#">Premises</a> 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.	
SLC27.3 and 27.4	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:	Report damage to relevant owner
	(a) damage to that electrical plant, electric line, or Metering Equipment; or	
	(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 interference was caused by the relevant owner.	

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## Electricity Supply Licence

Standard Licence Condition	Details	Notes
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<b>SLC 12.1</b>	The licensee must take and must ensure that its agents take all reasonable steps to detect and prevent:	Obligation to detect and prevent theft
	(a) the theft or abstraction of electricity at <u>Premises</u> supplied by it;	
	(b) damage to any electrical plant, electric line or Metering Equipment through which such <u>Premises</u> are supplied with electricity; and	
	(c) interference with any Metering Equipment through which such <u>Premises</u> are supplied with electricity.	
<b>SLC 12A.1 and 12A.2</b>	The licensee and its Representatives must take all reasonable steps to secure achievement of the 'Objective' – being (a) detection of Theft of Electricity, investigation of suspected Theft of Electricity, prevention of Theft of Electricity once detected, and prevention of Theft of Electricity by other means; and (b) when taking those steps, behaving in a fair, transparent, not misleading, appropriate and professional manner; and taking into account whether Domestic Customers and/or the occupiers of Domestic <u>Premises</u> who are of Pensionable Age, disabled or chronically sick will have difficulty in paying all or part of the relevant charges.	Objective in respect of Theft of Electricity
<b>SLC 12A.11 to 12A.15</b>	The licensee must comply with certain specified standards in respect of Theft of Electricity investigations, treatment of vulnerable occupiers, disconnections, provision of information to occupiers, and record keeping.	Standards for Theft of Electricity investigations
<b>SLC 13.1</b>	The licensee must take all reasonable steps to ensure that each Representative who visits a Customer's <u>Premises</u> on the licensee's behalf:	Obligation to ensure representatives have necessary skills
	(a) possesses the skills necessary to perform the required function;	
	(b) can be readily identified as a Representative of the licensee by a member of the public;	
	(c) uses any password that the licensee has agreed with the Customer;	
	(d) is a fit and proper person to visit and enter the Customer's <u>Premises</u> ; and	
	(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.	

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<b>SLC 26.1</b>	<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> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) send each Bill or statement of account in relation to the supply of electricity to the Customer's <a href="#">Premises</a> to any other person that the Customer nominates, if that person agrees to receive them;</li> <li>(c) if the Customer informs the licensee that no person occupying his <a href="#">Premises</a> 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</li> <li>(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.</li> </ul>	Obligation regarding treatment of vulnerable Customers
<b>SLC 26.2</b>	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.	Obligation regarding treatment of vulnerable Customers
<b>SLC 26.3</b>	<p>The licensee must provide facilities, free of charge, which enable any Domestic Customer who:</p> <ul style="list-style-type: none"> <li>(a) is blind or partially sighted; or</li> <li>(b) is deaf or hearing-impaired and in possession of appropriate equipment,</li> </ul> <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

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<b>SLC 26.4</b>	The licensee must establish and maintain a Priority Services Register which lists all of the licensee's Domestic Customers who: <ul style="list-style-type: none"> <li>(a) are of Pensionable Age, disabled or chronically sick; and</li> <li>(b) have either: <ul style="list-style-type: none"> <li>(i) asked in person for their name to be added to the Priority Services Register; or</li> <li>(ii) had a person ask on their behalf for their name to be added to it.</li> </ul> </li> </ul>	Obligation to maintain a priority services register
<b>SLC 26.7</b>	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: <ul style="list-style-type: none"> <li>(a) details relating to any person who has agreed a password with the licensee, including what that password is; and</li> <li>(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 <a href="#">Premises</a> because of his chronic sickness or disability.</li> </ul>	Obligation to provide distributor with access to details of the chronically sick or disabled
<b>SLC 27.5</b>	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.	Obligation relating to Customers in payment difficulty
<b>SLC 27.6</b>	The services referred to in paragraph 27.5 above are: <ul style="list-style-type: none"> <li>(a) the facility for a Domestic Customer to pay Charges for the Supply of Electricity: <ul style="list-style-type: none"> <li>(i) by using, where available, a means by which payments may be deducted at source from a social security benefit received by that Customer;</li> <li>(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</li> <li>(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</li> </ul> </li> <li>(b) the provision of information about how the Domestic Customer could reduce the Charges for the Supply of Electricity that he</li> </ul>	Obligation relating to Customers in payment difficulty

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	must pay by using the electricity supplied to his <a href="#">Premises</a> more efficiently.	
<b>SLC 27.9</b>	The licensee must not Disconnect a Domestic <a href="#">Premises</a> 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 sub-paragraph 27.6(a)(iii) above.	Obligation relating to disconnection for non-payment
<b>SLC 27.10</b>	The licensee must not Disconnect, in Winter, a Domestic <a href="#">Premises</a> 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.	Obligation relating to disconnection for non-payment
<b>SLC 27.11</b>	The licensee must take all reasonable steps to avoid Disconnecting, in Winter, a Domestic <a href="#">Premises</a> at which the Domestic Customer has not paid Charges for the Supply of Electricity if the occupants of the <a href="#">Premises</a> include a person who is of Pensionable Age, disabled or chronically sick and to whom paragraph 27.10 above does not apply.	Obligation relating to disconnection for non-payment
<b>SLC 27.11A</b>	The licensee shall, before it exercises any right it may have to Disconnect a Domestic Premises, take all reasonable steps to ascertain whether: <ul style="list-style-type: none"> <li>(i) the relevant Domestic Customer falls within the scope of SLC 27.10; or</li> <li>(ii) the restriction on its right to disconnect in accordance with SLC 27.11 applies.</li> </ul>	Obligation relating to disconnection for non-payment
<b>SLC 27.11B</b>	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

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## APPENDIX 2 – DISCONTINUATION OF SUPPLY

### Introduction

This Appendix 2 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 2 does not seek to grant additional rights to signatories to this Code of Practice. This Appendix 2 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 offence<sup>2</sup> 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 Supplier<sup>3</sup>; and
- has done so either intentionally or by culpable negligence<sup>4</sup>.

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

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<sup>2</sup> See paragraph 6 of schedule 6 to the Electricity Act 1989.

<sup>3</sup> 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.

<sup>4</sup> Further consideration on the definition of "culpable negligence" is set out in section 9 below.



unoccupied, the offence was committed by the owner)<sup>5</sup>. 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 remedied<sup>6</sup>.

## 2. **Damage to other electrical equipment**

A summary of the elements of the relevant offence<sup>7</sup> 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 negligence<sup>8</sup>.

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)<sup>9</sup>. 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.

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

<sup>5</sup> See paragraph 6(3) of schedule 6 to the Electricity Act 1989.

<sup>6</sup> See section 10 below on the meaning of 'remedied'.

<sup>7</sup> See paragraph 6 of schedule 6 to the Electricity Act 1989.

<sup>8</sup> Further consideration on the definition of "culpable negligence" is set out in section 9 below.

<sup>9</sup> See paragraph 6(3) of schedule 6 to the Electricity Act 1989.

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- the matter in consequence of which the [Premises](#) were discontinued has been remedied<sup>10</sup>.

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### 3. Electricity meter interference

A summary of the elements of this offence<sup>11</sup> 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 negligence<sup>12</sup> 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.

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A Supplier must re-continue the supply to premise once the matter has been remedied<sup>13</sup>.

### 4. Failure by a Customer to keep a meter in proper order

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 supplied<sup>14</sup>.

<sup>10</sup> See section 10 below on the meaning of 'remedied'.

<sup>11</sup> See paragraph 11 of schedule 7 to the Electricity Act 1989.

<sup>12</sup> Further consideration on the definition of "culpable negligence" is set out in section 9 below.

<sup>13</sup> See section 10 below on the meaning of 'remedied'.

<sup>14</sup> See paragraph 10 of schedule 7 to the Electricity Act 1989.

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 give 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' notice<sup>15</sup> of the intention to discontinue the Premises must be given to the occupier (or, if the Premises are unoccupied, the owner).

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6. **Restoration of supply without consent**

A summary of the elements of the offence<sup>16</sup> 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.

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

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7. **Other offences**

<sup>15</sup> See section 17(3) of the Electricity Act 1989.

<sup>16</sup> See paragraph 5 of schedule 6 to the Electricity Act 1989.

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 to supply 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 probabilities<sup>17</sup>) 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 an 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:*

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

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<sup>17</sup> 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).

- 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).

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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 an 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](#).

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#### 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 supply<sup>18</sup> 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 case<sup>19</sup>, 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 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 necessary for the Supplier or electricity distributor to consider what actions and charges are a direct result of the type of

<sup>18</sup> See paragraph 19(2) of schedule 2B to the Gas Act 1986.

<sup>19</sup> 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.

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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

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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 are recorded both on the property label and in the store logbook, 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 logbook is/are available to the court.

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#### 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, a Confirmed Theft, not confirmed, Passed to DNO as Theft in Conveyance
- Date Theft suspected
- Source of information on suspected theft
- Number of investigative visits to [Premises](#)

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In respect of a Confirmed Theft:

- 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)
- Premises details
  - Occupied or vacant
  - How long Customer owned or occupied the Premises
  - 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)

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- Tamper found
- Is this a first visit or a repeat visit (second / third / etc)
- Energisation status on leaving the Premises (energised / discontinued)
- Tong / amp reading or appliance list
- Any further comments

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**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

### 17. APPROACH

Assessment of units unrecorded, following Theft of Electricity, should be carried out in a systematic, reasonable, 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:

- 17.1 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;
- 17.2 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. Where this method is chosen, the Theft Assessment Calculator most recently made available by the Panel under the DCUSA must be used. Account should be taken of valid input from the Customer to assess whether some scaling of the figures might be appropriate;
- 17.3 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;
- 17.4 monitor ongoing consumption;
- 17.5 Load testing.

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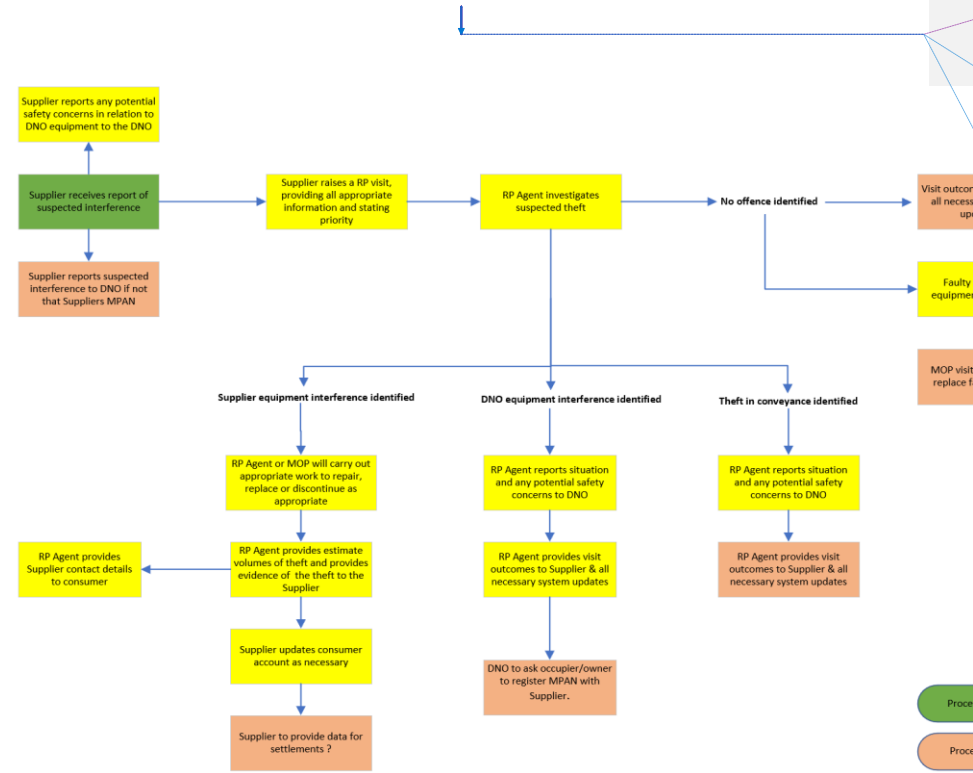
### 18. GENERAL

The following general points should be considered:

- 18.1 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.

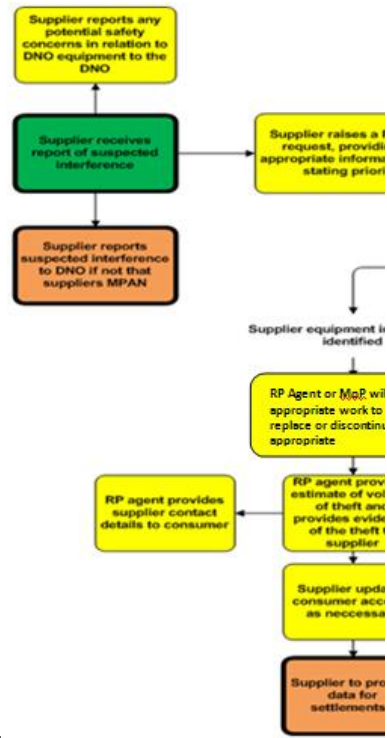
- 18.2 In all other cases of Theft of Electricity, the Supplier is responsible for determining the final assessment of unrecorded units, having taken into account information held about the Customer's account history and individual relevant circumstances; however, this must be as accurate as possible. The Supplier will notify the Distributor of the final assessment.
- 18.3 Where the Customer will not permit an audit of appliances, this should be recorded.
- 18.4 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.
- 18.5 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.
- 18.6 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**



**Commented [MS2R1]:** Insert box after Theft in Conveyance identified under orange box

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Gowling WLG (UK) LLP

6 August 2020