

## **Foreword to Director General's Statement on Alleged Equipment Damage and Meter Interference**

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### **BACKGROUND**

It is widely accepted that unmetered electricity consumption is primarily a social problem rather than an inherent desire to avoid paying for electricity consumed. In other words there appears to be a direct correlation, although not exclusively, between high levels of unmetered electricity consumption and deprivation and/or times of economic depression. It is a problem that has always existed and one which will be difficult to fully eradicate.

The Director General of Electricity Supply for Northern Ireland ("Director General") has a dual role to play in this area, in that he can be requested by an individual to look into an allegation of meter interference/equipment damage, while at the same time having an obligation to protect the generality of customers by discouraging this practice.

It is important to highlight that unmetered electricity consumption is both highly dangerous and also a burden which all other customers effectively pay for. The general public appear in general to be oblivious to these facts, which is in part due to the previous lack of publicity given to this problem.

### **HISTORICAL AND CURRENT POSITION IN NORTHERN IRELAND**

Prior to the setting up of NIE's Revenue Protection Unit ("RPU") in 1996, this work was carried out on an ad-hoc basis by the local district offices. This approach appears to have lacked co-ordination and inevitably led to differing levels of resources and emphasis being given to tackle the problem.

The setting up of the new RPU in 1996, with dedicated resources and staffing, has allowed for a more centralised and strategic approach to be taken, and has seen a greatly increased level of activity in the revenue protection field. While it is difficult to put a definitive figure on revenue lost due to electricity being used but not paid for, NIE believes that it could be as high as £10 million per annum.

During 1996, following allegations of meter interference, the Director General was approached by several customers who requested that he investigate NIE's actions and procedures. His involvement in these cases signalled a more "hands on" approach to revenue protection matters by Ofreg. This involvement included contributing to the production of NIE's own Internal Revenue Protection Policy Manual, and the subsequent completion of three determinations by the Director General of Electricity Supply for Northern Ireland in this field.

## **WORLDWIDE POSITION**

While researching the detail of this complex matter, two of Ofreg's officers have attended Annual World Revenue Protection Conferences which are organised by the International Utilities Revenue Protection Association.

These Conferences are attended by Revenue Protection Investigators and Government Regulators from as far afield as Australia and South America and are an invaluable networking experience, which provides Ofreg with both practical expertise and a unique blend of shared experiences from which to draw on, to assist the Director General in formulating future policy in this area.

US research has confirmed that the incidence of unmetered energy consumption occurs when people are in great need, and that there is a perception with some individuals that it is acceptable to steal from a large impersonal utility. It was consequently indicated that the most effective way of tackling meter interference was through a concerted effort to change public perception and demonstrate that unmetered electricity consumption was anti-social, wrong and extremely dangerous.

Other points of interest included:

- ◆ The Detroit Edison Company wrote off approximately \$36 million in 1998/9 as uncollectable, and suspects that the majority of this was directly related to fraud.
- ◆ The South Californian Edison Company's Revenue Protection unit avoids the use of the term "theft".

- ◆ Strategic Audits of Australian Hydro's Revenue Protection activities discovered that some suspected fraud cases actually turned out to be the result of *equipment error*.
- ◆ Future protected revenue is the main thrust of Australian Hydro's policy.
- ◆ There was widespread agreement that the average figure for revenue lost, as a result of fraud, was approximately 1½% of total revenue received.

There were many other noteworthy contributions made during the conferences which Ofreg attended, but the main conclusions were the need for a pro-active approach, and sufficient resources to deal with this escalating problem, while at the same time increasing consumer awareness of the dangers and illegality of such practices.

### **GB POSITION**

The annual GB National Revenue Protection Conference attracts attention with representatives from as far afield as America and South Africa.

It provides some novel ideas, while also reinforcing previously discussed concerns. These included the dramatic increase in electricity fraud from the 1970's onwards, which was primarily attributed to a combination of the following:

- (i) the jump in energy costs as a result of the oil crisis.
- (ii) the slump/depression of the 1980's.
- (iii) a belief in certain quarters that theft from nationalised industries, as they were then, was acceptable.

It was also interesting to note the Electricity Association's praise for OFGEM'S (previously OFFER) Revenue Protection Policy statement, which had been issued some years before, in response to concerns being voiced by the industry regarding inconsistencies in the approach of the different OFFER regional offices when dealing with meter interference cases.

Quite a lot of the current thinking in GB is taken up with how Revenue Protection will work following the onset of "full competition", and the need for companies to co-operate fully with each other in this field.

### **OFREG POSITION**

While having had an input into NIE's Operational Revenue Protection Policy, recent problem cases have highlighted the need for the Director General to outline his thinking on this matter.

It is hoped that the attached Policy Statement will have the dual effect of reassuring the industry of the DG's thinking while offering consumers strong redress and protection where necessary.

The challenge therefore for both Ofreg and NIE is to agree an approach that is pro-active, effective and equitable, with a strong emphasis on future prevention and the creation of a credible deterrent.

# **ALLEGED EQUIPMENT DAMAGE & METER INTERFERENCE**

## **OFREG POLICY STATEMENT**

**October 2001**

**OFREG POSITION PAPER CONCERNING DISPUTES RELATING TO ALLEGED  
EQUIPMENT DAMAGE AND/OR METER INTERFERENCE UNDER SCHEDULE 6  
AND 7 OF THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992**

1. Introduction

1. This document sets out Ofreg's position on the issues surrounding alleged equipment damage and meter interference, (for brevity, both issues will often be contained within references to "meter interference" in this paper). The legal background is summarised below together with relevant developments which have clarified matters in recent times. The interpretation of The Electricity (Northern Ireland) Order 1992 ("the Order") expressed here is not definitive; this can only be provided by the Courts. However, in the absence of further guidance from the Courts Ofreg adopts this interpretation in fulfilling its responsibilities. Consequently, the statement also describes the principles which Ofreg will follow when handling disputes concerning alleged meter interference, and the Director General's role in determining the outcome of such matters. Ofreg's objective must be to protect the general public from having to bear the cost of electricity being used but not metered by a small minority of consumers and to protect the rights of the individual consumer from being wrongly asked to make good an unmetered loss.
2. Although this Policy Statement is intended to apply mainly to domestic customers the general principles in this statement e.g. in terms of the requirement of reasonableness and for procedural and substantive fairness should apply equally to both domestic and commercial customers. However, the Director General recognises that NIE's policies in cases of suspected meter interference and equipment damage cannot be uniform as between domestic and commercial customers.
3. In recent times Ofreg has been approached to arbitrate in a number of cases of alleged meter interference, and to date most have been resolved without the need to resort to the production of a full and final determination. At all stages in dealing with any such complaint, it is Ofreg's policy to disclose all information to both parties to the dispute, to ensure transparency and fairness in relation to both sides in the dispute. Ofreg expects the company to explain to tariff customers the reason for its actions in cases where meter

interference has been alleged, and also, unless there is a genuine reason not to, to bring to the attention of the customer the existence of any obvious evidence before removing it from the premises. In any event, the customer must be provided with access to, and the opportunity to make representations about, the evidence put before the Director General, and generally be allowed the opportunity to rebut the charges, and therefore remove any doubt about the veracity of any evidence at a later stage. Ofreg notes that in the past some tariff customers have felt intimidated by the attitude and approach of the company representatives when dealing with specific cases of this nature.

4. Meter interference represents a sizeable problem in some areas, and the resulting consumption of electricity which is not metered involves the company in considerable financial loss which, inevitably, is eventually borne by customers who pay their bills. In addition, interference with meters can be extremely dangerous to the perpetrator and others. Ofreg therefore, welcomes the steps taken by the company to identify cases of unmetered consumption and encourages the company to request prosecution, where appropriate, as a deterrent to other customers who are considering taking such actions.

The company has been given powers under the Order to discontinue supplies of electricity in certain circumstances. Ofreg's concern is to ensure that the powers granted to the company under the Order in relation to these matters are used in a fair manner, both in terms of the general policy that is adopted by the company and in relation to individual disputes, and that its actions are consistent with its obligations under the Human Rights Act 1998. While being concerned at the financial effect that meter interference has on the generality of customers, the Director General will resolutely investigate any such matters brought to his attention under Article 26 of the Order consistent with his obligations under the Human Rights Act 1998 and will ensure that any resulting determination will be of a fair and balanced nature.

5. Under Article 19 of the Order, where a person requests a supply, the company has a duty to supply and maintain a supply to the premises concerned. This duty is qualified by Article 20, which sets out a number of circumstances in which the company is relieved of this duty. These include where "it is not reasonable in all the circumstances for him to be required" to give a supply of electricity. In Schedules 6 and 7, the company is also

relieved of its duty to supply in other specific instances set out in the Order where it has the power to cut off or discontinue the supply. Such instances include the non-payment of accounts and in circumstances related to alleged meter interference. Ofreg has a statutory role to play in ensuring that the company complies with its duty to supply as outlined above, and the Director General has the power under Article 26 of the Order to make a binding determination in such cases where the customer feels that the company has been in breach of this obligation.

6. In order to ensure best practice in meter interference cases, Ofreg has agreed a standard procedure (see paragraph 13) with the company which describes the steps to be taken when the company believes that "on the balance of probabilities" meter interference has taken place. This agreed approach between Ofreg and NIE in no way detracts from the company's rights as laid down in the Order, or alternatively the customer's right to request a determination.

## **II Alleged Equipment Damage and Meter Interference**

7. The provisions in the Order relating to alleged equipment damage and interference with the electricity meter are contained within Schedule 6, paragraph 4 and Schedule 7, paragraph 12 respectively.
8. Schedule 6, paragraph 4(1) of the Order makes a person guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale (at present £1,000) if he intentionally, or "by culpable negligence" damages or allows to be damaged, any electric line, electrical plant or electricity meter belonging to the company. This is described in this paper as "equipment damage".
9. Under paragraph 4(2) of the above Schedule the supplier may discontinue the supply of electricity to the offending customer, "until the matter has been remedied" and also remove the meter. Paragraph 4(4) requires the supplier to keep safe any meter he removes until the Director General authorises him to dispose of it.



10. Schedule 7 paragraph 12(1) makes a person guilty of an offence and liable on summary conviction to a fine (again, not exceeding level 3 on the standard scale) if he intentionally, or by culpable negligence, alters the register of any meter used for measuring the quantity of electricity supplied by an electricity supplier, or prevents the proper operation of the register of such a meter. This is referred to as “meter interference” in this paper. Paragraph 12(3) further provides that a supplier may discontinue the supply to the premises where any interference with its meter has occurred and may remove the meter concerned. The supplier is not obliged to resume the supply until the matter has been remedied. If the meter has been removed in these circumstances, however, paragraph 12(4) requires the supplier to keep the meter safely until the Director General authorises him to destroy it or otherwise dispose of it.
11. Under the provisions of paragraph 12(2), where any person is prosecuted for meter interference, "the possession by him of artificial means for the causing and alteration of the register of the meter or the prevention of the meter from duly registering shall, if the meter was in his custody or under his control", be evidence that the alteration or prevention was intentionally caused by him.
12. We consider that the word “offence” contained in Schedule 6, paragraph 4 and Schedule 7, paragraph 12 can include a breach of private law as well as a crime and as such the company is not required to wait until a criminal conviction has been secured before it may disconnect. In *R -v- Director General of Gas Supply and another ex parte Smith and another* ("the Smith case"), Mr Justice Pill, in dealing with an application for judicial review of the actions of British Gas and the powers of the Director General of Gas Supply, concluded that a conviction of an offence was not a precondition to the exercise by the supplier of the power to discontinue the supply, (the wording in the Gas Act 1986 is similar to that contained in the Electricity Order).
13. This view is further reinforced by Mr Justice Kerr's judgement in the matter of applications by Christine Sherlock and Briege Morris for judicial review. This judgement did however highlight the need for the company to give an explanation to the customer if deciding to withdraw such a fundamentally important service. It also stressed the need to take into account a person's personal circumstances when deciding such action.

14. As a criminal prosecution is not necessary before the company is empowered to act in accordance with the relevant provisions of the Order, a different burden of proof is required to that of criminal cases. In the Smith case Mr Justice Pill accepted that British Gas was justified in taking disconnection action on the ground that the evidence available was "sufficient to establish that it was more likely than not that such an offence had been committed - [by the tariff customer], - taking into account the *seriousness of the charge*".
15. It is clear that the company has the right to disconnect in the circumstances outlined in the above provisions. However pursuant to the policy agreed with Ofreg for dealing with such matters, the company will initially insert a temporary powercard meter so as to provide the customer with a chance to "remedy the matter" or alternatively request a determination by the Director General under Article 26 of the Order. The powercard meter installed will automatically disconnect after a minimum of 14 days has elapsed if the matter is not remedied (unless the matter has been referred to the Director General in which case he may require a continuation of supply under Article 26(2) of the Order). The company holds that a disconnection remains the likely outcome if the customer chooses not to proceed with one of the alternatives.

### **III Evidence of Meter Interference**

16. In the case of both equipment damage and meter interference *clear* evidence is required before the company can exercise its powers under the Order. Where equipment damage is suspected, the tariff customer must be advised of the grounds for suspicion in writing. The tariff customer should, as soon as practicable, be given a chance to comment and provide an explanation. Where interference is suspected, *clear* evidence must be set out where possible, in the presence of the tariff customer, to support suspicions that interference may have taken place.

17. Each case must be considered individually in the light of the evidence available.

However, the following considerations could be relevant in demonstrating whether or not there is *clear* evidence:-

- (i) evidence about the state of the meter and other company equipment on the premises (including photographic evidence, diagrams and written statements obtained at the time the offence was discovered, as well as equipment retained for possible inspection);
- (ii) the tariff customer's previous electricity consumption record;
- (iii) the presence of artificial means for altering the register of the meter or preventing it from registering correctly (such as 'black boxes', bridges etc); and,
- (iv) explanation and or evidence provided by the customer in his defence;
- (v) attitude/reaction of customer may also be a useful pointer e.g. refusal of access or refusal to allow an appliance survey; and
- (vi) any other relevant information about the tariff customer or his electricity usage.

18. It is difficult to weight the significance of specific items of information. In general it is preferable that there should be several items of corroborative evidence available to the company on which it would determine, on the balance of probabilities, that an offence has been committed. However, this is not an essential requirement as it may be the case that an individual piece of evidence would point with a high level of certainty to an offence having been committed (for example the discovery of a "black box" at the meter

position).

19. Particular care should be exercised where there has been a change of tariff customer.

The tariff customer should not be held responsible for damage and/or interference caused

by a previous tariff customer. Depending on the precise circumstances of such cases it

will normally be appropriate for the company to either fit a replacement meter of the same

type or reseal the existing meter, in both cases without charge to the present tariff customer unless it is apparent in the circumstances that it is reasonable for the company

to hold a tariff customer so responsible.

20. In general Ofreg considers that even where there is clear evidence of meter interference or equipment damage, it will normally be in the interests of both the tariff customer and

the supplier to maintain a supply to the tariff customer on a proper and appropriate basis

(subject to the customer taking steps to remedy the matter or refer it for determination),

as evidenced by the previously mentioned policy agreed between the company and Ofreg.

There will, of course, be exceptions to this, for example where there is serious concern

about the future safety of the occupants of premises concerned or in cases involving persistent meter interference. However, keeping the tariff customer on supply not only

protects the tariff customer's interests but should also allow the company to continue to

sell electricity and may assist in assessing the amount of electricity consumed but not metered during the period of meter interference (see the section on "Remedying the

Matter”).

21. In such circumstances it may be appropriate for the company to require changes to the way in which the supply is given. For example, meters can be housed in protective

enclosures and there are other steps which can be taken that are designed to make the meter more secure and also detect any subsequent attempts at interference. These can include self adhesive labels, PVC blocks and security bridges to protect meter tails.

Moving the meter position should also be considered in exceptional cases, although this

may not always be feasible and, as it is likely to involve substantial costs to the tariff customer, should be avoided wherever possible. At all times, the representatives of the

company should explain their actions, and wherever practicable this explanation should

be set out in writing at the time of the visits. Where this is not possible a statement in writing of the action taken and the reason for it should be sent to the tariff customer as

soon as is practicable after a visit.

#### **IV Remedying the Matter**

22. Once it has discontinued the supply in accordance with Schedule 6, paragraph 4 or Schedule 7, paragraph 12 the company is not required to restore the supply until "the

matter has been remedied". In the Smith case, Mr Justice Pill indicated 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 tariff 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

disconnection and reconnection if supply was discontinued. Consequently, the "matter"

itself has, by virtue of the Smith case and a determination by OFFER (reference S23/C/001/B) under section 23 of the Electricity Act 1989 ("the OFFER Determination"),

has been interpreted to include damage to the meter, the costs of any disconnection and reconnection and the payment of electricity used but not metered.

This interpretation has been reinforced by Justice Kerr in the matter of applications by Christina Sherlock and Briege Morris for judicial review, when he concluded "I

consider, therefore, that NIE was entitled to demand that payment for the cost of replacing

the damaged meter and for unrecorded electricity be made a condition of restoring the supply." This view was also upheld in the subsequent determination made by the Director

General in the same cases, which were completed in line with his powers as outlined in Article 26 of the Order.

23. In the OFFER Determination the Director concluded that a change from a credit meter

to a powercard meter was an alteration of the terms and conditions of supply and could

not be considered as part of the remedy of the matter. This is not to say that the installation of a powercard meter and/or other changes in the terms and conditions of supply cannot be undertaken in cases where the company has clear evidence that damage/ and or interference has taken place. Indeed, keeping a customer on supply via a powercard meter is normally preferable to outright disconnection. However, any

such change in the terms and conditions of supply is similarly subject to scrutiny, via a

Determination, as would be the case if disconnection had taken place.

24. Under Article 20 (2)(c) of the Order, the company can refuse to give a supply on the existing terms where it is unreasonable in all circumstances for it to be required to do so. In most cases the company is required to give seven days notice in writing prior to taking

such action. However in cases where there is clear evidence of meter interference the company is empowered to discontinue the supply and if a supply is not being given to a

premises the company is not required to give such a period of notice. Nevertheless, if a powercard meter is to be installed as a replacement for a credit meter, then any consequential dispute on the terms and conditions of the supply can be determined by the

Director General. Such disputes will be considered on their merits by the Director General. However, in considering such cases he will take into account the extent to which there is clear evidence of meter interference and the fact that where such evidence

can be shown the installation of a powercard meter is likely to be the only alternative to disconnection.

## **V Assessing Electricity Consumed but not Metered**

25. When calculating the "remedy to the matter" the company will wish to take account of the likely number of units consumed but not metered: that is, the amount of electricity

it is assessed has been used but not paid for. The amount assessed must be calculated so

as to identify the amount that on the balance of probabilities the customer used but has not paid for. It is not a function of the assessment to include any sum as a penalty for

any offence or otherwise to penalise the tariff customer for the meter interference. That

is the task for the Courts only. It is of course open to the company to pursue its claim through the Courts if it wishes, in which case it is a matter for the Courts and not an issue

for Ofreg to decide the amount required to remedy the matter. However, any company that requires the customer to pay more than he should risks being in breach of its duty to supply the customer if it withholds supply until, or threatens to withhold supply unless, the excess amount is paid.

26. The calculation of the amount the customer owes will, at its simplest level, be a function

of the length of time that interference is identified as having taken place and the likely typical demand during that period (minus any amount that has been paid previously). In identifying the time over which interference has on the balance of probability taken place, the following considerations could be relevant:-

- (i) the customer's previous consumption record (for example evidence of significant decreases in the number of billed units and the date when the customer first occupied the premises);
- (ii) bona fide explanation/evidence produced by the customer; and
- (iii) any other relevant evidence (for example about the occupation of the premises).

27. There is no specific limit on the number of years that the company may seek to go back to recover sums it considers are due for electricity stolen. However, the assessment

should be made on the basis of the balance of probabilities that the sum is indeed owed. Inevitably the extent to which the company can be confident that interference took place

in the past will normally decrease the further back it seeks to go. Except where there is clear evidence to suggest a longer period would be appropriate, Ofreg believes it unlikely that such assessments could go back more than 2 years from the time the interference was



first discovered without giving rise to serious doubts about whether the sums so calculated could be justified on the balance of probabilities.

28. The typical number of units consumed during the identified period is often more difficult

to establish. Inevitably, there can be little firm evidence about the number of units consumed but not metered. There are various different methods of assessing this. These

can range from calculations of usage based on an inventory of the customer's appliances, to firm usage figures from records of past consumption or from check periods

after the interference has been established and a new meter has been installed. With these

factors in mind, the company presently follows a standard approach as laid down in its

agreed Policy Document. Ofreg does not have any evidence to suggest that any one of

the methods used provides consistently better results than the other methods.

29. Whatever method used, the company should give the customer a copy of the calculation

it has made. The customer should be given the opportunity to produce evidence that is relevant to the calculation. For example, the purchase of new electrical

appliances, the removal of other heating systems and periods of absence from the premises. Such evidence should be taken into account in assessing the amount due.

## **VI Other Costs Associated with Meter Interference**

30. In addition to the costs of units used but not metered the customer can, as part of the remedy to the matter, be required to recompense the company for the expense incurred

in disconnecting and reconnecting the supply. In addition, where relevant, the company

may recover the expenses it has incurred in repairing or replacing the meter, electric line or electrical plant as the case may be.

31. In calculating the extent of these charges the company should adopt a consistent policy

and should only include those expenses which are necessary and reasonably incurred. Even when disconnection action is taken, the company should avoid undertaking extensive work on its equipment, such as disconnecting supplies by disconnecting the service outside the customer's premises, except in exceptional circumstances.

32. In considering the costs that are reasonably and necessarily incurred by the company the actions of the customer will be relevant. For example, the refusal to grant reasonable access to the company's equipment may give rise to additional costs being incurred by the company which the tariff customer could reasonably be asked to recompense as part of the remedy of the matter. Wherever practicable, the customer should be alerted to the implication of his actions, before the company incurs additional costs.

## **VII Disconnection on the Grounds of Safety**

33. There are other reasons which can be connected with meter interference which would give rise to a right for the company to disconnect a customer. Where there are serious

concerns about the safety of an installation which give rise to a reasonable belief that immediate action by the company is justified in the interests of safety, disconnection action can be undertaken by the company without notice. There are statutory powers for

the company to do this, contained in the Electricity Supply Regulations (Northern Ireland)

1991 (Regulation 28 and 29). In these circumstances, supply should not be recommenced

until the meter or installation has been made safe to the reasonable satisfaction of the company. Disconnection on such grounds should not, however, be carried out other than by suitably qualified personnel.

34. Reasons for disconnections on the grounds of safety should be given to the customer in writing as soon as practicable together with a clear statement of what is necessary to

make safe the installation. The power to disconnect on the grounds of safety does not allow the company to withhold supply simply because it believes that interference may

take place again. Any decision to discontinue supply on safety grounds can be referred

to the Secretary of State for determination, but Ofreg will intervene if requested to do so.

Finally, disconnection is also allowed, under Schedule 7, para 2 of the Order, where the

customer “refuses or fails to take his supply through an appropriate meter,”

appropriateness to be determined in the light of the customer’s terms of supply. The

consumer again has the right to refer any dispute in relation to this provision to the

Director General under Article 26.

## **VIII Conclusion**

35. Meter interference is of little long-term benefit to any consumer, including those who are presently engaged in this activity, and as such Ofreg believes it is imperative for both

the company and Ofreg to find an effective way of getting their message across to consumers.

This paper provides a legal and policy framework within which more detailed procedures

can and have been formulated. Ofreg, in dealing with disputes, will adopt the principles

set out in this paper and will expect the company to review its procedures for dealing with these matters in accordance with this policy statement.

To summarise Ofreg:

- (i) recognises that the unmetered consumption of electricity is primarily a social problem rather than an inherent desire to avoid paying for electricity consumed;
- (ii) recognises that unmetered usage is both highly dangerous and also a burden which all other customers effectively pay for;
- (iii) supports the need for the company to tackle this problem in a pro-active and effective, yet equitable manner, with a strong emphasis on future prevention and the creation of a credible deterrent; and
- (iv) highlights the need to promote greater awareness amongst all consumers of the many associated dangers caused by unmetered usage of electricity and associated problems.