

Energy Theft Code of Practice

UR Second Consultation
7th February 2017



About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs; Electricity; Gas; Retail and Social; and Water. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

Our Mission

Value and sustainability in energy and water.

Our Vision

We will make a difference for consumers by listening, innovating and leading.

Our Values

Be a best practice regulator: transparent, consistent, proportionate, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

Abstract

Energy theft can have serious safety consequences and the value of the energy stolen is paid for by other domestic consumers within their bills, increasing the costs for all energy consumers.

To address this, the Utility Regulators Forward Work Plan includes the development of an Energy Theft Code of Practice as part of its Consumer Protection Strategy.

This second consultation seeks industry and stakeholder views on the revised proposals for the high level design, principles and contents of the Energy Theft Codes of Practice.

Audience

This consultation paper will be of interest to gas and electricity suppliers, distribution companies and organisations representing consumer interests.

Consumer impact

The objective of the Energy Theft Codes of Practice is to protect consumers from the safety issues and costs related to energy theft.

This paper is the second consultation on draft Energy Theft Codes of Practice. The final outcome of the project will require the suppliers and distribution network operators in gas and electricity to establish and implement detailed industry procedures defining roles and responsibilities and best practice processes to prevent, detect and investigate energy theft.

Executive Summary

The Utility Regulator published its 2016/2017 Forward Work Plan in March 2016. The Forward Work Plan includes the implementation of a five-year Consumer Protection Strategy. One of the priorities of the Consumer Protection Strategy is to implement an Energy Theft Code of Practice (“Energy Theft CoP”).

The overall aim of the Energy Theft CoP is to protect consumers from the safety issues and costs related to energy theft. To do this we propose to use the Energy Theft CoP to provide transparency on the obligations on electricity and gas distribution network operators and suppliers to work together to establish and implement detailed and best-practice industry procedures to prevent, detect and investigate energy theft.

This paper follows on from the first consultation paper published in July 2016. We have summarised and responded to the comments raised in the first consultation. The comments have fed into the development of the proposals in this paper.

Respondents were supportive of the proposals to have separate Energy Theft CoP for gas and electricity and to have a combined code between suppliers and network operators for each sector. There was general support for a mandatory arrangement which would be supported by licence conditions.

In further developing the Energy Theft CoP, this paper proposes a number of revisions to the high level design, governance and compliance arrangements for the codes. The proposed changes include some amendments to the principles underpinning the Energy Theft CoP, including the principles relating to reporting, costs and vulnerable customers. A revised definition for vulnerable customers is also included.

Clarity has been included on arrangements for identifying and dealing with vulnerable customers and on how costs associated with energy theft can be recovered from customers. We have also clarified the compliance arrangements including the submission of an Energy Theft Compliance Report.

We also make some proposals to the arrangements for the drafting of the industry procedures necessary to ensure compliance with the Energy Theft CoPs. We propose that NIE Networks take the lead when developing industry procedures and that the gas network operators share this role.

Drafting of specific requirements in the Energy Theft CoP have also been amended to reflect the feedback from the initial consultation.

We have also provided an indicative time frame of the key milestones for the next steps in the Energy Theft CoP consultation process. This includes a timeline for potential licence consultations and their alignment with the development and implementation of the industry procedures.

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1. Introduction

Purpose of this paper

- 1.1. Energy theft is a matter of concern to consumers, the energy industry and to the Utility Regulator. It can have serious safety consequences and the value of the energy stolen is paid for by other consumers within their bills, increasing the costs for all energy consumers.
- 1.2. The safety issues and increased energy costs related to energy theft are of significant concern to the Utility Regulator. The Utility Regulator (UR) published its 2016/2017 Forward Work Plan (FWP)¹ in March 2016. The FWP includes the implementation of a five-year Consumer Protection Strategy (CPS). One of the priorities of the CPS is to implement an Energy Theft Code of Practice (“Energy Theft CoP”).
- 1.3. The objective of the Energy Theft CoP is to protect consumers and the wider industry from the safety issues and costs related to energy theft. To do this we propose to use the Energy Theft CoP to provide transparency on the obligations on electricity and gas distribution network operators (DNOs) and suppliers to work together to establish and implement detailed and best-practice industry procedures to prevent, detect and investigate energy theft.
- 1.4. This is the second consultation on the Energy Theft CoP. Its purpose is to further develop the Energy Theft CoP following responses from industry and consumer groups to the first consultation.

Consultation Process

- 1.5. We held an industry workshop on the development of an Energy Theft CoP in April 2016. The purpose of the workshop was to seek views on the approach to developing an Energy Theft CoP, in advance of a formal consultation. The workshop was well attended with good engagement from parties representing the supply and network sides of the gas and electricity industry plus consumer protection organisations and the Police Service of Northern Ireland (PSNI).
- 1.6. The workshop facilitated positive discussions on the consumer and industry issues relating to energy theft and also asked some specific questions on the approach to developing an Energy Theft CoP. We also met separately with industry parties to discuss their views on the relevant issues. The discussions at the workshop and separate meetings fed into our thinking for the first consultation paper.

¹ FWP 2016/2017: http://www.uregni.gov.uk/uploads/publications/Forward_Work_Programme_2016-17.pdf

- 1.7. In July 2016 we published an initial consultation² on the Energy Theft CoP. The first consultation paper set out our initial proposals on the principles and high level design for the Energy Theft CoP. A draft Energy Theft CoP for gas and electricity was also included in the Appendices to the first consultation. This consultation sought views from industry and stakeholders on the principles and high level design for the Energy Theft CoP and also on the detail included in the draft Energy Theft CoPs included in the Appendices.
- 1.8. We received a wide range of responses to the first consultation from industry and other stakeholders such as consumer representative bodies and the PSNI. We have carefully considered each of the responses and we have included a summary of the responses and our comments on the responses within this paper.
- 1.9. Since the first consultation paper was published we have also undertaken further engagement with the participants from the gas and electricity industries to discuss the proposed Energy Theft CoPs.
- 1.10. We have used the consultation responses and the feedback received through further stakeholder engagement to further develop our proposals for the Energy Theft CoP. Our revised proposals for the Energy Theft CoP are set out later in this second consultation paper along with updated versions of each CoP.
- 1.11. As outlined later in this paper, we are proposing that compliance with the Energy Theft CoP will be mandatory for all distribution and supply licence holders in gas and electricity and new licence conditions will be introduced to require compliance. This paper includes our proposals for the new licence conditions. The proposed modifications are included in this paper as we are consulting on a policy change to make compliance with Energy Theft CoP a licence condition.
- 1.12. When this second consultation closes we will review and consider all responses received and we will use the responses to form our final decisions on the Energy Theft CoP. We will publish a decision paper setting out our final decisions and the final versions of the CoPs.
- 1.13. The decision paper on the Energy Theft CoP will set out our final decisions on whether we intend to proceed with the proposal to implement new licence conditions.
- 1.14. When the decision paper and final CoP have been published, representatives from the electricity and gas industries will be required to work together in order to establish and implement detailed industry procedures to manage theft.

² Energy Theft Code of Practice, UR Consultation, 18 July 2016:
<https://www.uregni.gov.uk/sites/uregni/files/consultations/Consultation%20paper%20on%20energy%20theft%20codes%20of%20practice.pdf>

- 1.15. It is important to note that if we do decide to implement new licence conditions to require compliance with the Energy Theft CoP then we will publish a 28 day statutory consultation³ for the licence modifications with the decision paper. We are proposing that we would publish the statutory consultation notice on the proposed licence condition after publishing our final decision paper. We understand that it will take time for the industry to complete their procedures to comply with the Energy Theft CoP and therefore we plan to wait until the industry procedures are near completion before publishing a decision notice on the new licence condition. Our intention therefore would be that we could align the implementation of the new licence condition with the completion and implementation of the industry procedures.
- 1.16. The industry procedures must comply with the requirements set out in the Energy Theft CoP. We note that some theft procedures already exist within the gas and electricity sectors and the industry participants may opt to build on the existing procedures in order to comply with the Energy Theft CoP.
- 1.17. The proposed key milestones for the Energy Theft CoP consultation process through to implementation of industry procedures are set out in the table below. We note that some of these timeframes have been revised since the initial consultation.

Milestone	Proposed Date
Pre consultation stakeholder engagement	April – May 2016
Publication of initial consultation	18 July 2016
Closure of initial consultation	12 September 2016
Further stakeholder engagement	August – December 2016
Publication of second consultation (including proposed licence modifications)	7 th February 2017
Closure of second consultation	7 th April 2017
Publication of final decisions (including decision on licence modifications if applicable)	Summer 2017
Publish consultation notice on proposed licence modifications (if applicable)	Q3 2017
Development of industry procedures	Q3-Q4 2017
Final decision on licence condition published	January 2018
Licence condition in force and industry arrangements in place by	31 st March 2018

³ Under Article 14 of the Gas (Northern Ireland) Order 1996 and Article 14 of the Electricity (Northern Ireland) Order 1992 NI, a 28 day statutory consultation is required for all licence modifications

Structure of this paper

- 1.18. For consistency this paper has a similar structure to that of the first consultation paper.
- 1.19. The paper has the following sections:
- **Section 2** provides a summary of the responses to the first consultation along with the UR's comments on the responses received.
 - **Section 3** describes the updated proposals in relation to the requirements of the Energy Theft CoP and compliance with the CoPs.
 - **Section 4** contains the updated proposals for principles for the Energy Theft CoPs
 - **Section 5** sets out the updated proposals for the high level design of the Energy Theft CoPs.
 - **Section 6** sets out the proposed licence modifications for gas and electricity licence holders
 - **Section 7** provides more detail on the next steps for this project.
 - **Appendix 1:** contains a draft, revised version of the Energy Theft CoP for electricity
 - **Appendix 2:** contains a draft, revised version of the Energy Theft CoP for gas
 - **Appendix 3:** contains a Glossary of Terms
- 1.20. A tracked change version of the Energy Theft CoPs contained in the Appendices to this document has also been published for ease of reference.
- 1.21. Sections 3 to 5 of this paper the set out the revised proposals for the Energy Theft CoP. These sections follow the same format as the equivalent sections within the initial consultation paper; however the full justification for the proposals has not been restated where the proposals remain unchanged. For ease of reading, at the beginning of each of these sections we have highlighted the main changes made to the proposals since the initial consultation.

Equality Considerations

- 1.22. As a public authority, the UR has a number of obligations arising from Section 75 of the Northern Ireland Act 1998. These obligations concern the promotion of equality of opportunity between:
- i. persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - ii. men and women generally;
 - iii. persons with disability and persons without; and
 - iv. persons with dependants and persons without.

- 1.23. The UR must also have regard to the promotion of good relations between persons of different religious belief, political opinion or racial groups.
- 1.24. In the development of its policies the UR also has a statutory duty to have due regard to the needs of vulnerable customers i.e. individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low incomes and individuals residing in rural areas. Some of the above equality categories will therefore overlap with these vulnerable groupings.
- 1.25. In order to assist with equality screening of the proposals contained within this second consultation paper, the UR requests that respondents provide any information or evidence in relation to the needs, experiences, issues and priorities for different groups which they feel is relevant to the implementation of any of the updated proposals. Furthermore, the UR welcomes any comments which respondents might have in relation to the overall equality impact of the proposals.

Responding to this consultation

- 1.26. The deadline for responses to the issues raised in this paper is 5pm on 7th April 2017. Responses should be sent to:

Richard Hume

Compliance and Network Operations

Utility Regulator

Queens House

14 Queens Street

Belfast BT1 6ER

richard.hume@uregni.gov.uk
- 1.27. The Utility Regulator's preference would be for responses to be submitted by e-mail.
- 1.28. We welcome general feedback on any aspect of the proposals in this paper, the draft Energy Theft CoP and the draft licence condition. However if responses were provided to the initial consultation and we have commented on these, then we do not expect to receive the same responses to this consultation paper as these comments have been considered in developing this iteration.
- 1.29. Individual respondents may ask for their responses (in whole or in part) not to be published, or that their identity should be withheld from public disclosure. Where either of these is the case, the Utility Regulator will also ask respondents to supply the redacted version of the response that can be published.

- 1.30. As a public body and non-ministerial government department, the Utility Regulator is required to comply with the Freedom of Information Act (FOIA). The effect of FOIA may be that certain recorded information contained in consultation responses is required to be put into the public domain. Hence it is now possible that all responses made to consultations will be discoverable under FOIA, even if respondents ask us to treat responses as confidential. It is therefore important that respondents take account of this and in particular, if asking the Utility Regulator to treat responses as confidential, respondents should specify why they consider the information in question should be treated as such.
- 1.31. This paper is available in alternative formats such as audio, Braille etc. If an alternative format is required, please contact us and we will be happy to assist.

2. Consultation Responses

2.1. We received thirteen responses to the initial consultation from the following organisations:

- Advice NI
- Budget Energy
- Citizens Advice
- CCNI
- Firmus energy
- Go Power
- NEA
- NIE Networks
- PNGL
- Power NI
- PSNI
- SGN
- SSE Airtricity

2.2. A summary of the responses to each question is set out below. Some respondents noted that their response or elements of their response was confidential and requested that they not be published. To respect this and to apply a consistent approach to all respondents we have decided to keep responses confidential. As such the responses in this section have been anonymised.

2.3. However there is one exception to this in that we have referenced the PSNI's response. The PSNI have a specific role and we thought that it would be useful to share their response to all stakeholders and in particular to provide guidance to the companies when developing their detailed procedures.

2.4. Due to the number of responses received and the confidential nature of many of the responses, it has not been possible to summarise all of the comments received within this paper. We have however considered all responses and in this section we have outlined the key points raised along with our comments on the responses and a summary on these.

Q1. Do you agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?

2.5. We received a mixed response to this question. Some respondents provided no comment or a neutral response in that they did not identify any issues or expect the Energy Theft CoP to have a negative impact to equality of opportunity for energy consumers. Whereas others were of the view that the Energy Theft CoP would be likely to provide a positive impact. The key points from the responses to this question are summarised here.

- It was suggested that all consumers must be treated equally and that the Energy Theft CoP must seek to obtain an approach that works for both industry and consumers. The Energy Theft CoP should set out requirements with respect to all customers and not distinguish between

certain customer categories. It was noted that there is no difference in the consequences of energy theft between different customer groups as the costs, legal ramifications and safety issues are the same regardless of the customer. As such the same procedures should apply to all customers and all customers should be provided with identical information related to the seriousness of energy theft.

- Some responses noted that companies will take the specific needs of each customer, including any vulnerability issues, into consideration when dealing with energy theft but no particular group should be given preferential treatment with respect to illegal activity.
- Some concerns were raised about the impact of energy theft on the whole house. It was noted that whilst the person suspected of illegal interference may have no Section 75 equality needs, there may be a whole house impact. In many instances other occupants within the household include children, the disabled, chronically sick or older persons. It was suggested that the needs of all affected persons that occupy a property require consideration in the Energy Theft CoP. Feedback also suggested that the outcome for the whole household would be difficult to assess without all of the relevant information.
- Some responses noted concerns that the Energy Theft CoP could, under certain circumstances, have a negative impact on vulnerable energy consumers. For example, an incident where a single parent with young children who has tampered with a meter could face criminal proceedings and have supplies cut off. Under these circumstances the Theft CoP could have a negative impact for the individual through a subsequent criminal record and also a negative outcome for their vulnerable dependents.
- The definition of vulnerable customers was raised in several responses with mixed comments. Some responses suggested that the definition should be expanded to cover wider groups of people, as then the impact of the Energy Theft CoP would be likely to be positive. Whereas other responses suggested that the definition should be aligned to the licence definition. Furthermore there was opposite views in relation to whether customers who are experiencing financial difficulties should be included in the definition of vulnerable customers with some supporting this and some against it.

Utility Regulator Response

- 2.6. As indicated above there were mixed views on the potential effect of the Energy Theft CoP to some of the groups listed under Section 75 of the Northern Ireland Act.
- 2.7. We have responded to each of these issues below. In developing our response we have considered our statutory duties under the Energy

(Northern Ireland) Order 2003 to have due regard to the needs of individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low incomes and individuals residing in rural areas. We also have a duty to protect the public from dangers arising from the generation, transmission distribution or supply of electricity and from dangers arising from the conveyance, storage, supply or use of gas.

Impact on the equality of opportunity for energy consumers

- 2.8. From a general perspective it is our view that the Energy Theft CoP will have a positive effect on the equality of opportunity for all energy consumers. The objective of the Energy Theft CoP is to protect domestic and business consumers from the safety issues and costs related to energy theft.
- 2.9. To do this we propose to use the Energy Theft CoP to provide transparency on the obligations on electricity and gas distribution network operators (DNOs) and suppliers to work together to establish and implement detailed, consistent and best-practice industry procedures to deal with energy theft. This approach should improve arrangements for all consumers, regardless of their grouping within Section 75.
- 2.10. We recognise that many of the respondents consider that all customers must be treated equally in all aspects of energy theft and we agree that specific groups of customers should not be given preferential treatment with respect to illegal activity. However it is also important to acknowledge that specific groups with the Section 75 listings may need specific protection.
- 2.11. In recognition of this we have amended the proposals for the Energy Theft CoP such that it will be the responsibility of each licence holder to consider the impact of their actions on occupants of a property where there are vulnerability issues and to take appropriate measures. Further detail on our revised proposals in relation to vulnerable customers is set out in section 5 of this paper.

Definition of vulnerable customers

- 2.12. Determining the particular circumstances which may cause a person to be vulnerable is difficult. An individual's circumstances may change quickly and place them into, or take them out of, a position of vulnerability. Therefore, regardless as to the definition used for vulnerable customers, it may be difficult, under certain circumstances, to determine whether a consumer is vulnerable or not. In other circumstances identifying vulnerability will be clear cut.
- 2.13. We have considered the vulnerable customer definition further along with the suggestions that the definition used for the Energy Theft CoP could be aligned to definitions used by other organisations such as the NHS or Citizens Advice Bureau. We do not consider it would be appropriate to

introduce a definition which is completely new to NI energy industries, solely for the purposes of the Energy Theft CoP and therefore the definition in this CoP will be aligned to the definition currently used in the supply licences.

- 2.14. However, having considered the concerns about the impact of energy theft on the whole house we acknowledge that the needs of all of the occupants of a domestic property should be considered by the gas and electricity licensees where there are vulnerability issues. This view was considered as part of the decisions on IME3⁴ implementation in 2012 whereby the definition of vulnerability was expanded to include any occupant of the domestic property that may be vulnerable, and not the bill payer alone⁵.
- 2.15. We have amended the definition of vulnerable customers from the initial consultation to ensure that the definition within the Energy Theft CoP is more aligned to the definition in the energy supply licences.
- 2.16. The revised definition for vulnerable customers in this consultation is:
- Vulnerable Customer: means a domestic consumer who is of pensionable age, disabled or chronically sick*
- 2.17. The licensees will be required to identify if any occupants of the domestic premises are vulnerable, and where a vulnerable customer is identified they must consider the impact of their actions on the occupants of the property and take appropriate measures. We expect that the industry procedures required under the Energy Theft CoP will have effective arrangements to identify and manage consumer vulnerability. We have provided further detail on requirements in relation to vulnerable customers in section 5 of this paper.
- 2.18. Where vulnerability is not clear we would expect the energy companies to cooperate and treat the circumstances on a case-by-case basis. The circumstances should include a review of the safety implications of the case, which should take priority.

Q2. Do you consider that the proposals for the development of the Energy Theft Code of Practice need to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.

- 2.19. There was considerable overlap between the responses received under questions 1 and 2. Several responses noted that the proposed Energy Theft CoP met the equality provisions and issues were identified. We have highlighted some responses which have indicated new issues and further explained our rationale for the approach taken where appropriate to the individual response.

⁴ European Union's third legislative package of energy measures

⁵ Code of Practice on Provision of Services for persons who are of Pensionable Age or Disabled or Chronically Sick: Electricity supply licence condition 31.4 (b) to (d) and gas supply licence condition 2.11.4 (b) to (d)

- There was a suggestion that Energy Theft CoP should provide clear and consistent guidance to all licences with respect to the treatment of all customers. There should not be any provision in the CoPs to allow certain customer types to be treated differently as this would be contradictory to the purpose of the CoPs.
- There was a request for clarity on the relationship between two key principles on costs and customer vulnerability. It was noted that whilst being aware of customer vulnerability, theft and the associated risks cannot be justified on any level. The consultation was not clear about whether the costs should be borne by those that steal unless that customer is vulnerable.
- The issue of the working poor was raised. Traditionally this group of customers would not be considered as vulnerable and would not fall within proposed definition of vulnerable customers. However, this group often finds it difficult to make ends meet and may have no savings to support their family if they experience an income shock or serious life event. These issues should be considered when finalising the Energy Theft CoP.
- There should be a prioritised and consistent approach to identifying customer vulnerability. It was suggested that it must be immediately ascertained if there are any vulnerable customers within the household.
- There was a recommendation that protections should be implemented for people without electricity or gas for a long period of time and who have no prospect of paying the alleged debt in full.

Utility Regulator Response

- 2.20. The key points in this response were related to the whether the procedures for energy theft should treat all customers equally, or whether vulnerable customers should be treated differently.
- 2.21. We consider that it is entirely possible for the two principles on costs and vulnerable customers to work together to ensure that the costs are paid for, where possible, by the customers that have stolen. If a vulnerable customer has stolen electricity or gas they should bear the costs of theft and pay back what they owe, and also face the possibility of a criminal prosecution in the same way that any other customer would. However if the customer or any occupant of the household is vulnerable, the licence holders should consider any particular needs of that customer and the impact of the licensee's actions on that customer. For example, the method of communicating with a vulnerable customer may need to be considered and the licensee may need to take action to communicate with the customer using different methods than other customers.

- 2.22. In relation to the suggestion that the Energy Theft CoP should consider the working poor. We note that we have updated the proposals in section 5 of this paper to include a requirement that licensees consider the customer's ability to pay and to offer payment arrangements as appropriate.
- 2.23. Having a consistent approach to identifying vulnerability is something that we agree with and this is addressed in the principles of the Theft CoP. We expect that the industry procedures will provide detail on how the companies would address this in practice. The Energy Theft CoP focuses on the prevention, detection and investigation of energy theft.
- 2.24. Disconnection and reconnection issues are not considered under the Energy Theft CoP as such issues would fall within the scope of the DNO's connection policies.
- 2.25. Section 5 of this paper sets out further information on the revised proposals for identifying and dealing with vulnerable customers.

Q3. What is your view on the proposed arrangements for the industry procedures resulting from the Energy Theft CoP?

- 2.26. The key points raised in the responses to question three are summarised here.
- There was support for the proposed arrangements to use a principle based approach with a separate code for electricity and gas. Underpinning the principles with detailed industry procedures was also largely supported;
 - There was a mixed response to proposed options for one industry procedure in gas to cover all three distribution network areas, or separate industry procedures for each network area; however a clear majority favoured having one procedure for the entire gas industry. It was considered that it would be more efficient for gas suppliers to follow one procedure for all networks areas and this option would promote greater cooperation across the gas industry; consumer bodies also largely favoured this approach.
 - The arrangements need to be effective from the perspective of both the industry and the consumer. Consumer bodies, the advice sector and the other relevant stakeholders should be engaged with to ensure that procedures are effective. Most agreed that there is a need to establish and be clear on and define roles and responsibilities;
 - To develop electricity industry procedures in an effective way there was a suggestion that the DNO should be given responsibility for being the author of the industry procedures with a facility for review and input from the other industry participants. However others welcomed the proposal to allow licensees to input into any review process was a welcome measure

as current industry procedures do not have a review mechanism of this nature;

- Concern was raised that the UR did not plan to have a role in approving the industry procedures as there is a high risk of no agreement being reached by all parties without involvement from UR. It was also suggested that the sharing of best practice ideas between gas and electricity could work better if the UR took an active role in developing the industry procedures;
- The issue of the costs related to introducing the energy theft CoP was raised. It was noted that existing price controls include costs for managing current operations and any additional resource or operational costs incurred as part of the development or ongoing requirements for the industry procedures will need to be reflected in the price controls;
- There was also a request that any industry procedures are made publically available.

Utility Regulator Response

- 2.27. We have taken on board the clear majority support for a single industry procedure to cover all distribution network areas in gas. We agree that this option offers the best opportunity to provide a consistent approach across the three gas network areas and to clarify the roles and responsibilities of parties involved at each stage of effectively dealing with theft. We have therefore amended our proposals in this second consultation to propose that the gas industry will have a single industry procedure for energy theft.
- 2.28. A single industry procedure across NI should not hinder each DNO's ability to effectively deal with theft issues in fact the reverse will be true if it delivers best practice arrangements. We note that it will be the responsibility of the DNOs and suppliers to draft the industry procedures and therefore all licensees can input to ensure the procedures are effective and efficient. We also note that the proposals for the CoP allow for differences between each distribution network area where valid reasons exist for differences.
- 2.29. In relation to the concerns regarding the UR not approving or having an active role in implementing the industry procedures. We are of the opinion that the licensed companies in electricity and gas should be more experienced and better equipped to draw up detailed and technical industry procedures. As such we do not think that it is appropriate for the Utility Regulator to approve the detailed industry procedures.
- 2.30. In addition, it is the responsibility of each licensed business to ensure that they are fully aware of all legislation relevant to their business and that they are compliant with any such legislation and therefore the licensees are best placed to ensure that the industry procedures are developed in accordance with all relevant legislation (including Health & Safety requirements).

- 2.31. However, we note that the gas and electricity industry may wish to invite the UR to attend working group meetings to discuss the development of the industry procedures. The UR could share its views to help the industry to develop best practice procedures. We also note the interest from consumer bodies and advice sectors and would suggest that the DNOs and suppliers should engage with CCNI and other stakeholders where relevant, during the development of the industry procedures.
- 2.32. We have revised our proposals in recognition of the concerns raised that the gas and electricity industry may not be able to reach agreement on the procedures. If situations arise during the drafting of the procedures where the industry participants cannot reach agreement on certain issues, then the industry may seek independent views from other parties such as the Health & Safety Executive for Northern Ireland (HSENI) or the CCNI.
- 2.33. In addition, we have revised our proposals such that the industry participants can bring issues to the UR for adjudication. However where an issue is brought to the UR then the UR's decision will be considered final and all industry participants must accept and implement the UR's decision within the industry procedures. The revised Theft CoP now has provisions for such issues to be referred to the UR for determination.
- 2.34. We consider that there is some merit in the proposal for the electricity DNO to have a leading role in developing the electricity industry procedures; however we do not agree with the proposal that the DNO should be the sole author of the industry procedures. We have revised our proposals to give the DNO a principal coordinator role in developing the industry procedures.
- 2.35. We would also propose that this concept is applied to the development of the gas industry procedures. However given that there are three gas DNOs we propose that the DNOs share the co-ordinator role and that they could decide between themselves to nominate one DNO to be overall co-ordinator. In relation to the issues regarding costs, at this stage our view is that the Energy Theft Code is re-structuring and improving activities that are already being carried out. We do not expect that this will lead to any additional costs. If roles, responsibilities are clarified and procedures are streamlined across the sectors we would expect that this could reduce overall costs.
- 2.36. Whilst we understand that there may be some benefits in making the industry procedures publically available, we consider that doing so could result in a negative impact on the energy industries as some elements of the industry procedures may include sensitive or confidential details. Therefore we are not proposing to mandate that the industry procedures must be made publically available; however we would expect that where the DNOs and suppliers consider it appropriate they would share information on the procedures with consumer bodies or third sector organisations.

2.37. Based on the responses to question 3, our revised proposals for the arrangements for industry procedures are set out in section 3 of this paper. Section 3 includes a brief summary of the key changes from the initial consultation to this second consultation.

Q4: What is your view on the proposed arrangements for compliance with the Energy Theft CoP?

Q7: What is your view on the proposal for mandatory compliance with the Energy Theft CoP through the introduction of new licence modifications?

2.38. We have linked questions 4 and 7 together as there is a lot of overlap in the responses to each of these questions. The main points identified in the responses to these questions are summarised here.

- In general there was support for the proposed compliance arrangements. Many of the respondents welcomed a mandatory requirement to comply with the Energy Theft CoP to ensure all licensees were incentivised to adhere to the procedure.
- It was noted that although compliance with the Energy Theft CoP should be mandatory, there should be flexibility in the day to day procedures to allow companies to adapt to effectively deal with energy theft cases. It was also suggested that it is not appropriate to introduce 'best practice' into a licence requirement as this would add a level of subjectivity.
- It was also suggested that the requirement for third parties acting on behalf of the licensee to be compliant with the Energy Theft CoP should be weakened so that the licensee would use reasonable endeavours to ensure that its third parties are compliant.
- The timeframes for implementation and compliance with the industry procedures was highlighted as a concern. It was suggested that mandatory requirements should not be enacted without allowing industry participants sufficient time to implement and trial industry procedures. There was also a concern that if the UR is not involved in approving the procedures, then licensees could be forced into a position of accepting inadequate industry procedures in order to avoid a licence breach.
- There was a level of confusion around the proposals for compliance monitoring and reporting. The number of different types of compliance reporting proposed was considered excessive and many of the responses welcomed an annual compliance report as it was considered to be the most appropriate. Reporting of metrics related to energy theft should not be used to judge against compliance with the Energy Theft CoP or industry procedures as a licensee's compliance cannot be measured solely based on how much energy theft was occurring.

- There was a concern that information provided to the UR could be subject to the Freedom of Information Act (FOIA) and therefore could be made public which could potentially damage the industry's achievements in dealing with energy theft.

Utility Regulator Response

- 2.39. The UR welcomes the support for mandatory compliance with the Energy Theft CoP and therefore we have retained this proposal in this second consultation.
- 2.40. We note that under our proposals it will be the responsibility of gas and electricity licence holders to develop and implement the industry procedures and therefore the licensees can include flexibility into the procedures. In relation to the response which suggested that it was not appropriate for best practice requirements to be subject to mandatory compliance, we consider that removing this from the mandatory requirements would weaken the Energy Theft CoP so we are minded to retain the requirement to have best practice requirements within the codes.
- 2.41. We note that it is normal regulatory practice that licence requirements apply equally to any third parties acting on behalf of the licensee. The licensee has a responsibility to comply with its licence and this obligation is not removed or weakened where a licensee opts to employ a third party to carry out an activity on its behalf therefore we have retained this in the Energy Theft CoP within this second consultation.
- 2.42. Having considered the concerns in relation to the timeframes for implementation of, and compliance with the industry procedures, we have revised our proposals in this consultation. We are now proposing that when we publish our final decision paper, including the final versions of the Energy Theft CoPs, we will set out a deadline for when the industry procedures must be completed and implemented. Once the UR's final decision paper has been published, the gas and electricity licence holders will be required to commence work on developing the industry procedures. The gas and electricity industry participants will be required to provide regular progress updates to the UR on the development of the industry procedures.
- 2.43. We are proposing that there will be a new licence condition added to distribution and supply licences in gas and electricity to require compliance with the Energy Theft CoP. We are proposing that we publish the statutory consultation notice on the proposed licence condition after publishing our final decision paper. However, we propose to wait until the industry procedures are near completion before publishing a decision notice on the new licence condition. Our intention therefore would be that we could align the implementation of the new licence condition with the completion and implementation of the industry procedures.

- 2.44. In relation to the reporting requirements, the various types of reporting proposed in the initial consultation were intended to be options for discussion, rather than a suggestion that we would require the licensees to complete all reporting requirements. For this second consultation we have amended the proposals such that licensees would be required to provide a retrospective Energy Theft Compliance Report. This would be accomplished through normal licence compliance monitoring for DNOs and suppliers.
- 2.45. We accept that our intentions for the specific reporting metrics were not clear in the initial consultation. We would clarify that such metrics would be used to monitor the severity of theft issues and progress in dealing with such issues, rather than being used to monitor licence compliance. We propose that such reporting metrics would be agreed with licensees through informal reporting as this allows the UR and licensees to react to different issues as they arise.
- 2.46. In relation to the publication of operational procedures under the Freedom of Information Act. The UR is subject to the requirement of the Freedom of Information Act, however the legislation allows for some exemptions to be applied where it may not be in the best interest of the public to publish certain types of information.
- 2.47. Based on the responses to questions 4 and 7, our revised proposals for the compliance and reporting arrangements are set out in section 3 of this paper. Section 3 includes a brief summary of the key changes from the initial consultation to this second consultation.

Q5: What is your view on the proposed arrangements for future reviews of the Energy Theft CoP?

- 2.48. The main points from the responses to question 5 are summarised here.
- There was majority support for the need for future reviews of the Energy Theft CoP to ensure that the arrangements for dealing with energy theft can be amended to reflect market changes.
 - There was agreement that that the Energy Theft CoP should not require frequent reviews or changes because it was principle based and high level but it would still allow the industry participants to have flexibility to deal with changes in the market.
 - There were different opinions in relation to how future changes should be consulted on. Some considered that the nature of the changes required to the Energy Theft CoP should determine whether or not the changes should be consulted on publically or within the energy industries; whereas another response noted that a public consultation was necessary for all changes in the future.

- There were many comments on the potential for future reviews of the industry procedures rather than the Energy Theft CoP. It is considered that there will be a need for reviews to the industry procedures to allow the gas and electricity industries to adapt to market changes. Some points were also raised about the governance for changes to industry procedures and how these should work in practice.

Utility Regulator Response

- 2.49. Having considered the responses to this question we still consider that Energy Theft CoP will not need to be reviewed or changed on a frequent basis due to the nature of the CoP being principle based and high level.
- 2.50. We have decided to retain our proposal from the initial consultation whereby we stated that all potential changes will be consulted upon; however the UR would decide at the time of the changes about whether the consultation should be open to the public or should be restricted to the gas and electricity industries. We note however that for this consultation we have widened the scope for the restricted consultations so that they may include key stakeholders (such as consumer groups and the PSNI) in addition to the gas and electricity licence holders. We consider if it necessary to allow an option for future consultations to be restricted to a smaller audience as a consultation may be required on issues that are considered to be confidential or sensitive.
- 2.51. In relation to the points raised in the responses about future reviews of the industry procedures. The UR agrees that it will be important to have governance arrangements and a process in place to deal with potential reviews to the industry procedures in the future. We note that it will be the responsibility of the gas and electricity licensees to consider this further when developing the industry procedures and to ensure that a clear review process is included, alongside clear and effective governance arrangements for those procedures.
- 2.52. Based on the responses to question 5, our revised proposals for the arrangements for future reviews of the Energy Theft CoP are set out in section 3 of this paper. Section 3 includes a brief summary of the key changes from the initial consultation to this second consultation.

Q6. What is your view on the proposed principles underpinning the Energy Theft CoP?

- 2.53. We received a substantial amount of feedback in relation to the principles for the Energy Theft CoP; however much of this feedback was suggestions for specific changes to the drafting of the principles. We have summarised the main comments received to this question below.
- 2.54. In general there was support for the principles with some commentary supplied on specific principles. Some thought that the principles should be

reviewed over time to consider if they remain workable. There was some requests for more detail on how the energy companies would put the principles into practice

Principle 1: Safety

- Safety should be the primary concern and it was noted that this principle should apply to the safety of customers, employees or agents and third parties and the general public.

Principle 2: Costs

- Respondents agreed with this principle in theory, however there were queries about how to prove that a person has stolen energy in practice and who would be responsible for the energy theft with some suggesting that it should be the customer or occupier that is benefiting from the theft of energy. There was also a request for clarity on the steps that licensees can take to pursue and recover the costs, with a suggestion that this principle should be clear that criminal or civil proceedings are permitted. Questions were raised about which licensed business should pursue the costs associated with energy theft (i.e. the DNO or the supplier). One response stated that the legislation governing the collection of monies is directly linked to the DNO and therefore suppliers would be acting as agents for the DNO when collecting charges from customers.
- Some responses noted that any costs charged should be fair and reasonable and that they should be deducted in instalments at a rate which is affordable to the particular customer in their individual circumstances. One respondent added that payments by instalments should be allowed, even in cases where there have been multiple instances of tampering at one site.
- There was a suggestion that energy companies should bear some responsibility for the costs of meter tampering and that energy companies should cover the costs of investment into new meter types that are more difficult to tamper with.
- Several respondents highlighted that not all costs associated with energy theft will be recoverable through the person that has stolen and therefore the issue of unrecoverable debt needs to be addressed.

Principle 3: Deter, Detect and Deal with Theft of Energy

- There was mixed feedback to this principle as it was noted that, at present, detecting and dealing with energy theft can come at a significant cost to suppliers and the costs are often not recoverable which means there is little incentive for suppliers to take action, however there was also positive feedback indicating commitment to developing energy theft procedures to protect the interests of all parties.

Principle 4: Collect and report data

- From the responses it appears that there were various interpretations of this principle. There was a suggestion that reporting requirements should be a secondary principle and should be determined after the industry procedures.
- A concern was raised that this principle could be interpreted to require confidential information to be shared, including information governed by data protection legislation. Similarly there was a concern that sharing detailed information on types of theft could undermine the theft procedure and information on investigation techniques should not be shared.
- Some respondents noted that reporting information should be used to assess energy trends, rather than to determine compliance with theft procedures. It was also noted that reporting responsibilities should fall to network companies as they can report for the whole industry, rather than placing reporting obligations on individual suppliers.
- It was also suggested that this principle should be extended to include bodies that represent consumers.

Principle 5: Communication and reporting

- It was noted that the level of communication and reporting required should become evident when developing the industry procedures.
- The introduction of a central network operated telephone number was proposed. It was suggested that this could be an appropriate mechanism to assist with communication and to allow third parties to report suspected energy theft as it would allow for a central source for the collection of information related to energy theft and could reduce the financial burden on the industry.

Principle 6: Treatment of customers

- There was support for this principle but it was also noted that it is important that customers are aware that once they engage in criminal activity they will be responsible for their actions.
- There was a suggestion that the principle should include the requirement to treat customers in an equitable manner as energy theft policies would only be effective if this was the case. While another respondent suggested that the principle should include the requirement to treat customers in a reasonable way.

Principle 7: Customer Vulnerability

- Some of the responses noted that vulnerable customers should not be given preferential treatment in respect to illegal activity and vulnerable

customers should be subject to the same industry procedures and associated legal proceedings. It was also noted that the safety issues and legal ramifications are the same for all types of customers.

- There were also comments which indicated that when the principles about costs, treatment of customers and customer vulnerability were all considered together it would suggest that there would be little difference in the treatment of vulnerable customers, other than recognising any particular aspects of their vulnerability.
- It was noted that licensees should take into account the specific needs of each customer when resolving any issues with that customer, for example, the communication needs for specific types of vulnerable customers. There was a request for the Energy Theft CoP to set out requirements for what licensees need to do to give appropriate consideration to the needs of vulnerable customers.
- There was clear suggestion that domestic customers having difficulty paying bills should not be included in the definition of vulnerable customers.

Principle 8: Investigation by competent individuals

- It was noted that the skills, qualifications and experience require would need to be considered further given the numerous tasks that are involved.

Principle 9: Cooperation

- There was support for the principle of cooperation between licensees with PSNI and CCNI. It was suggested that an annual meeting between all stakeholders would assist in cooperation between the parties. There was also a suggestion that the HSENI should be included in this principle.
- Further information on how to comply with this principle was requested as it was considered that for effective cooperation the PSNI and CCNI would also need theft policies in place with clear lines of communication.

Utility Regulator Response

- 2.55. The majority of the respondents agreed with the proposed principles however some wanted to know how the principles would work in practice. The purpose of the principles is to set over arching values and standards that the gas and electricity industry must work to when developing and implementing the industry procedures for energy theft. The gas and electricity industry participants will be responsible for documenting the prescriptive detail in their industry procedures.

Principle 1: Safety

- 2.56. We agree that safety should be a key concern for all licence holders. We note that we have not dictated any order of priority for the principles and we do not think this is necessary for the Energy Theft CoP as the licensees will need to consider each principle when developing their industry procedures. We also agree that the principle of safety should apply to the safety of customers, employees or agents and third parties and the general public and we consider that the drafting of this principle allows for this.
- 2.57. We have accepted a suggestion to make a minor amendment to the wording of this principle. The revised principle on safety is included in section 4 of this paper.

Principle 2: Costs

- 2.58. Procedures for costs that are considered to be included in this CoP are costs associated with the theft such as unbilled units of the energy and administration costs. Costs associated with disconnection or reconnection of premises are dealt within the DNOs' Connection Policies.
- 2.59. Many of the comments received in response to this principle were seeking clarity on how the procedures would work in practice (for example, how would the licensees prove energy theft, what steps would they take to pursue and recover costs and which company should be responsible for pursuing the costs). It would not be appropriate for the principles in the Energy Theft CoP to set out this detail. The DNOs and suppliers will be responsible for developing industry procedures that set out the processes that the licensees will follow to deal with all aspects of energy theft and that they will be compatible with legal requirements. There is a requirement for the licence holders to ensure the industry procedures are compliant with all relevant legislation and therefore the companies will need to be cognisant of this when developing the industry procedures.
- 2.60. In relation to the responses noting that costs should be fair and reasonable and should be deducted in affordable instalments. We note that we have included a requirement in the costs principle that any charges for costs associated with energy theft must be fair, transparent and as far as possible, must not exceed the actual costs incurred by the licensees.
- 2.61. We have also updated the proposals for dealing with energy theft in section 5 of this paper to include requirements in relation to the collection of the costs associated with energy theft.
- 2.62. We note that, under the Energy Theft CoP, we confirm that the costs that apply to customers who have stolen (e.g. unbilled units of energy) should be treated as a debt to suppliers and recovered through normal debt recovery arrangements. Therefore the UR considers any amount owed by any given customer, due to the theft of energy, should be dealt with by suppliers

according to the principles of the Suppliers Code on “Payment of Bills” and the minimum standards therein. This was consulted and decided on as part of the consultation on the minimum standards for the Code of Practice on Payment of Bills⁶.

- 2.63. We note that one respondent believes that energy companies should bear some responsibility for the costs of meter tampering; however we do not agree that this should be included within the principles of the Energy Theft CoP. We consider that the principle should be that the costs should be borne by the people who have stolen electricity or gas and that the energy companies should attempt to recover costs from those responsible for energy theft.
- 2.64. In response to the comments about not all costs associated with energy theft being recoverable. We recognise that it may be difficult to recover all of the debt from customers engaged in energy theft. However this issue relates to a wider one of incentivising companies to recover debt from customers which we considered was outside of the scope of the Energy Theft CoPs.
- 2.65. There were some specific comments related to the drafting of the principle and the level of detail included in it and in recognition of this we have redrafted the principle on costs as set out in section 4 of this paper.

Principle 3: Deter, Detect and Deal with Theft of Energy

- 2.66. We welcome the commitment towards development of industry procedures and note that compliance with the Energy Theft CoP will be mandatory and therefore all licence holders will be incentivised to comply with the CoP and the industry procedures through licence requirements.
- 2.67. We received some feedback which suggested that the references to ‘deter, detect and deal’ within the Energy Theft CoP should be replaced with ‘prevention, detection and investigation’ as this terminology is already used by the law enforcement community and judiciary. We have taken this on board and have therefore amended this wording in this principle as set out in section 4 of this paper.

Principle 4: Collect and report data

- 2.68. Having reflected on the feedback received we no longer consider that this principle is needed and therefore we have removed it from this second consultation.
- 2.69. The DNOs and suppliers are required by the Energy Theft CoP to work together to deal with all aspects of energy theft. Principle 5 (Communication and reporting) deals with this and the Energy Theft CoP includes a specific section on information exchanges between the licensees.

⁶https://www.uregni.gov.uk/sites/uregni.gov.uk/files/mediafiles/UR_Decision_Paper_on_Energy_Supplier_Marketing_Code_of_Practice.pdf

- 2.70. In addition, and as already mentioned earlier in this paper, the licensees will be required to report on compliance to the UR through Energy Theft Compliance Reports and where additional information reporting is required we will agree with the relevant industry participants on an ad-hoc and informal basis. Therefore we consider that this principle can be erased.

Principle 5: Communication and reporting

- 2.71. We agree that the licensees should identify and put in place appropriate levels of communication when developing the industry procedures.
- 2.72. We note the response which suggested that a central network operated telephone number should be established for third party reporting on suspected energy theft. It would not be appropriate for the UR to mandate the inclusion of this in the Energy Theft CoP; however the electricity and gas industry participants should consider if there is any merit in this proposal when developing the industry procedures. It may well be an efficient and effective way forward.
- 2.73. We have accepted suggestions for minor amendments to the wording of this principle. The revised principle on communication and reporting is included in section 4 of this paper.

Principle 6: Treatment of customers

- 2.74. We recognise the suggestion that it is important to make customers aware that once they engage in criminal activity they will be responsible for their actions. We would note that the licensees should consider this when developing their industry procedures.
- 2.75. We note the suggestions that customers should be treated in an equitable and reasonable way and we consider that the wording of the principle already covers this as it states that customers must be treated in a way that is fair.
- 2.76. We have accepted suggestions for minor amendments to the wording of this principle. The revised principle on treatment of customers is included in section 4 of this paper.

Principle 7: Customer Vulnerability

- 2.77. We want to clarify that the purpose of this principle is to ensure that each licensee has a responsibility to consider the needs of vulnerable customers and whether any particular aspects of the customer's vulnerability would mean that the customer needs to be treated differently. An example of this could be where a blind or deaf customer is involved in an energy theft case, all licensees would need to consider how they communicate with this customer and they would most likely require special treatment in regards to the communication methods used. Note that this principle also applies to the household if there is any member of that household defined as vulnerable.

- 2.78. When developing the industry procedures the licensees should consider the impact of their actions on vulnerable customers and therefore consider whether vulnerable customers should or should not be treated differently to other customers in any aspects of the procedures. We have provided further discussion on the treatment of vulnerable customers within section 5 of this paper.
- 2.79. We note that there was an inconsistency in the consultation paper in relation to the definition of vulnerable customers in the initial consultation as the definition within the principle included customers having difficulty paying bills, whereas the definition at the end of the Energy Theft CoP did not include such customers. We have considered the definition further and have amended it to ensure that the definition of vulnerable customers within the Energy Theft CoP is aligned to the definition in licences; which includes premises where any occupant of the household is defined as vulnerable.

Principle 8: Investigation by competent individuals

- 2.80. We agree that licensees will need to carefully consider the skills, experience and qualifications required to complete the tasks involved in dealing with energy theft. This is something that the licensees must consider when developing the industry procedures.
- 2.81. We have made minor amendments to the wording of this principle. The revised principle is set out in section 4 of this paper.

Principle 9: Cooperation

- 2.82. We also consider that there may be merit in the gas and electricity industries holding an annual meeting with the external stakeholders and would encourage the licensees to consider this further when developing the industry procedures. However we also consider that the licensees would need to engage with external stakeholders more frequently during the phase when industry procedures are being developed.
- 2.83. We cannot mandate that external stakeholders need energy theft policies and therefore the gas and electricity industry participants will need to discuss the best methods for cooperation and communication with each external stakeholder while developing the industry procedures.
- 2.84. We agree with the suggestion that cooperation with HSENI should be included in this principle and have amended the principle to reflect this. The revised principle on cooperation is set out in section 4 of this paper.

Q8. What is your view on the proposals deterring theft within the Energy Theft CoP?

- 2.85. In general, the majority of the respondents supported the proposal to include a section in the Energy Theft CoP on deterring theft in an effort to prevent

and reduce crime. The main comments received in response to this question are summarised here.

2.86. There were a large number of comments related to consumer education as a means to deter energy theft and these respondents had mixed opinions. The key messages in relation to consumer education were:

- Education on issues around energy theft needs to be supported by all industry participants;
- The UR should mandate that a single organisation is responsible for consumer education to ensure that it is carried out in a consistent and cost effective manner;
- Consumer education programmes should be led by the Consumer Council (CCNI) with support from licensees;
- Need to educate consumers on the dangers associated with theft as well as the consequences of theft and potential for civil and court proceedings;
- Consumers should be informed about the steps that the licensees are willing to take if energy theft is detected. This could be included in leaflets to be included with bills or delivered by meter readers;
- Any consumer education messages must not have a detrimental effect on network growth;
- Lessons could be learned from other jurisdictions in relation to consumer education, for example in Republic of Ireland (RoI) energy theft and safety materials are posted to consumers annually; and
- Ongoing consumer education would incur additional costs for licensees.

2.87. In addition there were a number of responses in relation to the type of meters used. Some respondents welcomed the practical benefits in relation to fitting tamper resistant meters. There was a suggestion that DNOs should be required to proactively monitor both market and meter manufacturing developments. However others noted that DNOs continually work with meter manufacturers and it would be inappropriate to place an obligation on DNOs to install tamper resistant meters.

2.88. Two respondents suggested that an action plan should be devised to provide detailed plans on how energy theft can be deterred. The action plan should include involvement from key stakeholders such as PSNI and CCNI.

Utility Regulator Response

2.89. We welcome the support for promoting consumer education on the dangers and consequences of energy theft. Consumer education can be used as an effective tool to deter consumers from involvement in these activities.

- 2.90. We welcome the CCNI's support and assistance they are providing to develop a consumer education programme that highlights the issues related to energy theft. Going forward, the gas and electricity industry will be responsible for consumer education under the Energy Theft CoP; however we suggest that they continue to engage with CCNI to use CCNI's experience and assistance in any such programmes.
- 2.91. Our discussions with the DNOs have indicated that they are already proactively engaging with meter manufacturers and industry bodies such as the UK Revenue Protection Association to keep up to date with advancements in equipment. Therefore the DNOs should not have any difficulty in meeting the requirements in the Energy Theft CoP in relation to deterring energy theft through advancements in technology. Not all energy theft is confined to tampering with the meter itself and to reflect this we have made some minor changes to the Energy Theft CoPs.
- 2.92. Based on the responses to questions 8, our revised proposals for deterring theft are set out in section 5 of this paper. Section 5 includes a brief summary of the key changes from the initial consultation to this second consultation.

Q9. What is your view on the proposals detecting theft within the Energy Theft CoP?

- 2.93. In general respondents welcomed the proposal to include requirements for DNOs and suppliers to establish procedures which detail arrangements to carry out activities to detect energy theft. The main points raised in the responses to this question are summarised below.
- Efforts should be focused on deterring theft but there is also a need for industry to detect theft;
 - The majority of the requirements are already in place in the NI energy industries and are currently working well. Analysing energy usage to attempt to identify theft was welcomed and it was noted that further requirements are needed in this area. It was suggested that a central telephone number for reporting suspected theft should be implemented at a network level.
 - The proposals for detecting theft will be one of the key areas that will differ between the electricity and gas sectors because the responsibilities for meter reading and inspection fall on different parties within the sectors. NIEN are responsible for electricity meter reading and inspection whereas in gas the suppliers are responsible for these functions.
 - There is should be an appropriate sharing of responsibilities between DNOs and gas suppliers with regards to meter reading. Another respondent stated that they understood from the Energy Theft CoP that

gas supplier's current obligations in relation to meter reading were being placed on the DNOs and this duplication would have cost issues.

- The obligation for a DNO to check for evidence of theft when completing site visits should only apply where the site visit involves specific interaction with the meter. Access to a meter may be restricted where the purpose of the site visit is, for example, for reinstatement or isolation at the road. It was suggested that this requirement in the Energy Theft CoP should state the high level overall requirement and the industry procedures would provide further detail about the type of site visits.
- The incentive on licensed companies to detect energy theft was questioned. There were suggestions that detection should be incentivised through price controls.

Utility Regulator Response

- 2.94. We welcome the support for including requirements for DNOs and suppliers to establish procedures which detail arrangements to carry out activities to detect energy theft. The detailed arrangements should be contained within the industry procedures.
- 2.95. In relation to the suggestion about implementing a centralised telephone number for reporting suspected theft. We welcome innovative ideas from the licence holders and we encourage the DNOs and suppliers to discuss such ideas when developing the industry procedures so that they can reach the most effective and efficient solutions.
- 2.96. A number of responses highlighted the difference in metering responsibilities between the electricity and gas sectors. The differences are reflected in existing licence requirements and market procedures. We are not proposing to change the existing licence requirements with respect to meter reading and inspection responsibilities through this consultation process. The proposed Energy Theft CoP places a requirement on the relevant licensed company to check for evidence of theft when they complete a site visit.
- 2.97. We confirm that we are not proposing to duplicate the meter reading responsibilities in gas by placing a requirement on DNOs to read all meters in addition to the supplier meter reading requirements. However, we understand that gas DNOs have some responsibilities for reading meters as defined in their Distribution Network Code. Therefore the DNOs would have an obligation to check for evidence of theft if they visited a site to take a meter reading in these cases.
- 2.98. We accept that it would not always be appropriate to expect the licensees to check for theft at the meter on a site visit that does not involve interaction with a meter. We have amended the wording in the Energy Theft CoP to reflect this. We note however that checks for theft should not be restricted to

checking a meter, and where appropriate the person on site should check other gas or electricity equipment for evidence of energy theft.

- 2.99. We note that existing business processes and relevant price controls are in place based upon the existing requirements for meter readings, inspections, site visits etc. The licensed businesses should not incur additional cost through the requirement to check for energy theft when already at the site and in fact we would expect that most companies already adopt an approach where they check for energy theft when on site.
- 2.100. Based on the responses to questions 9, our revised proposals for detecting theft are set out in section 5 of this paper. Section 5 includes a brief summary of the key changes from the initial consultation to this second consultation.

Q10. What is your view on the proposals dealing with theft within the Energy Theft CoP?

- 2.101. Overall there was support for the Energy Theft CoP to include requirements in relation to how the licensees should deal with energy theft; however one respondent noted that the 'dealing' section of the Energy Theft CoP was much more detailed than other sections and was too prescriptive. We have summarised the key points from the responses here.
- Many respondents noted that safety is paramount when dealing with energy theft and should be the primary concern. It was also noted that consideration should always be given to vulnerable customers, but the primary concern must be safety.
 - The proposal that customers should be provided with contact details of organisations that can provide further advice and sources of help was welcomed. This was considered beneficial as the organisations listed may be able to provide support to the customer. It was also suggested that where energy theft is identified, the customer should be referred to the third sector and should be treated in the same way as any other debt customer.
 - There were many responses commenting on the proposals in relation to vulnerable customers. One respondent noted that the Energy Theft CoP required the licensees to pay particular attention to identify if the domestic customer or anyone in the property was vulnerable. The respondent noted that all customers are advised of vulnerable customer listed and offered the opportunity to be included on the list. The licensee cannot determine vulnerability. Similarly another respondent stated that it would be inappropriate for staff to identify vulnerability and pass this information on. The identification of vulnerable customers should remain within licence definitions where it is the customer's decision to have their name included on any vulnerable customer list.

- Some respondents highlighted that customers choosing to engage in criminal activity must accept responsibility for doing so and pay all the costs borne from their activities, regardless of their circumstances. However there was also a suggestion that charges should be fair, transparent and appropriate.
- Clarification was requested on the efforts that can be made to identify who the charges should be levied to when seeking payment for theft of energy. There was also a request for the Energy Theft CoP to include clear guidance on the payment options that should be made available to customers that are charged costs associated with theft of energy. It was suggested that the option to pay by instalments should be made available to all customers.
- A concern was raised about the proposal that customers must be provided with an itemisation of the charges associated with energy theft if it has to be presented on the customer's general bill as changes to billing systems are costly and time consuming. They did suggest that itemised information could be provided to customers in an alternative manner such as a supplementary note along with the bill.
- Many responses were related to disconnection issues and the costs to reconnect. A number of respondents noted that, without compromising safety, disconnection should be the last resort, and one response stated that vulnerable customers should never be disconnected. However there were also concerns raised that disconnection, or the threat of imminent disconnection can place an already stressed household into a more difficult position. Further discussions were requested on the scenarios where a supplier can request disconnection to ensure that suppliers correctly interpret the Energy Theft CoP.
- A number of respondents agreed that there needed to be cooperation between suppliers and DNOs when dealing with energy theft. It was noted that a formal procedure is required to cover the period between testing and confirming theft. The respondent suggested that a formal reporting method which concludes whether theft has occurred or not should be incorporated into arrangements. A further suggestion was that a Service Level Agreement (SLA) be adopted with respect to the time it takes to undertake an investigation of a site from the point when DNOs are notified of suspected theft.
- One response noted that the process for dealing with electricity theft in relation to detection, investigation and identification lies with the DNO, while another response noted that several aspects of the Energy Theft CoP were unclear about which licensee (the DNO or supplier) would be responsible for the activity.

- There was a request for procedures make it clear that suppliers are informed of instances where the DNO attempts to complete a site visit to investigate theft. This will assist the supplier in dealing with customer calls as they will need to understand the context of the visit and how to approach the call.
- It was suggested that the Energy Theft CoP should be amended to reflect that the DNOs should have the right to prioritise theft investigations.
- One of the respondents noted that the requirement to record any communication between the licensee and customer was not reasonable given the numerous conversations they may have with a customer on site and elsewhere.
- There was a request for a detailed investigation procedure to be set out where there have been allegations of energy theft and requested that these procedures are made publicly available. However another response stated that it is not appropriate to require the industry procedures to include the detail on how the licensees will confirm if theft did occur as this is highly confidential.
- There were some comments on the proposal that if a DNO cannot gain access to the premises on the first visit, they must make at least one other site visit to try to gain access. One respondent felt that this was too prescriptive for the Energy Theft CoP and the detailed requirement in respect of site visits should be set out in industry procedures, while another respondent noted that on some occasions safety takes precedence and the DNO must enforce access on the first visit. Additionally another respondent stated that normal process is to complete two site visits; however they added that in some circumstances a warrant is required after the first visit, for example where safety risks are identified.
- In order to support the effective detection and investigation of crime the PSNI have stated that they require:
 - a clear point of contact with the relevant distributors and suppliers to obtain the material required to investigate and prosecute where necessary the offences;
 - that the number of points of contact are limited as far as practical so as to reduce confusion and delay regards whom to contact;
 - that the role and responsibilities of each party are specified as clearly as possible so as to assist in understanding and accountability;
 - that there is a consistent and timely response from each distributor and supplier – with the procedures including what is required evidentially, such as an agreed ‘evidence pack’;

- that the procedures consider what ‘fast time’ support can be provided to make safe equipment such as meters where the PSNI have detected damage or tampering either through a pre-planned operation or an unplanned detection to reduce the impact/risk to officers potentially having to remain on site to prevent further tampering.

Utility Regulator Response

2.102. As stated previously the Energy Theft CoP is principle based, however it includes additional detail where we consider it necessary. The section of the CoP that is concerned with investigating and dealing with energy theft includes the most detail as we consider that certain minimum requirements need to be met in this area.

2.103. We accept that safety is a key concern in all aspects of dealing with energy theft and the licensees should consider this when developing the industry procedures. We reiterate that costs associated with disconnection or reconnection of premises are dealt within the DNOs’ Connection Policies.

2.104. We have already responded to some points about vulnerable customers in previous questions. We have amended the definition of vulnerable customers from the initial consultation to ensure that the definition within the Energy Theft CoP is aligned to the definition in licences⁷; The revised definition for vulnerable customers in this consultation is:

Vulnerable Customer: means a domestic consumer who is of pensionable age, disabled or chronically sick

2.105. For clarity, the licensees will be required to identify if a domestic customer is a vulnerable customer, and where a vulnerable customer is identified they must consider the impact of their actions on the occupants of the property and take appropriate measures. The industry procedures required under the Energy Theft CoP will need to include effective arrangements to identify and manage consumer vulnerability.

2.106. In relation to the identification of vulnerable customers, we note that vulnerable customer lists and critical care lists currently exist within the gas and electricity industries. Where a customer is included on such a list then the licensees should consider the customer as vulnerable for the purposes of the Energy Theft CoP and industry procedures.

2.107. In addition to this, the licensees will be required to take account of other customers that may meet the definition of vulnerable customer where obvious signs of vulnerability exist. For example, where a licensee is completing a site visit at a property and one of the occupants of that property approaches the employee and shows obvious signs of being vulnerable then the licensee

⁷ Gas supply licence condition 2.11.5

must consider their actions and the impact of their actions on the occupants of the property.

- 2.108. Where vulnerability is not clear we would expect the energy companies to cooperate and treat the circumstances on a case-by-case basis. The circumstances should include a review of the safety implications of the case, which should take priority.
- 2.109. This means that when developing the industry procedures, licensees must consider steps for identifying vulnerable customers and must also consider how each step of the process would impact vulnerable customers and whether vulnerable customers should be treated any differently in any aspect of the processes for dealing with energy theft. In section 5 of this paper we have provided some examples of situations where we would consider that vulnerable customers should be treated differently and we have amended the Energy Theft CoP to add clarity about the proposals for vulnerable customers.
- 2.110. A number of points were raised in the responses in relation to costs associated with energy theft. We agree that any costs charged to customers for costs associated with energy theft (e.g. unbilled units and administration costs) should be fair, transparent and appropriate. As mentioned previously, we have amended the principle on costs such that it now includes a requirement for any charges for costs associated with energy theft must be fair, transparent and must not exceed the actual costs incurred by the licensees. We have also updated the proposals to include clarification on how licensees can recoup theft costs from customers. These principles and practices are also outlined in the Supplier CoP for customers having difficulty paying their bills and therefore this is entirely reflective of the decisions already made in relation to the minimum standards for supplier codes in relation to payment of bills. The revised proposals are included in section 5.
- 2.111. We note that the Energy Theft CoP includes a requirement for customers to be provided with an itemised statement for costs associated with energy theft. We note that the CoP does not explicitly state that this must be included on the customer's general bill. If it is more efficient to provide this calculation to customers via a separate bill to avoid implementing system changes then this would seem to be the most appropriate approach. Our requirement is that the customer receives the relevant information; it is up to suppliers how they wish to implement new business processes to achieve this.
- 2.112. Further discussions were requested on the scenarios where a supplier can request disconnection. It is impossible to cover all of the scenarios under which supply and network companies will encounter regarding possible disconnection.

- 2.113. However we can clarify that where there is a safety concern, either in electricity or gas, then we consider that the network operator should be notified immediately, if this is appropriate, and that the connection should be made safe. If making the connection safe requires disconnection then this should be carried out including where there is a vulnerable customer identified. As we have noted in the principles section of the code, safety is a primary concern.
- 2.114. We have also considered circumstances where safety is not a concern and the issue relates to the potential disconnection of supplies due to debt arising from energy theft. There are different working practices between the gas and electricity sectors under these circumstances.
- 2.115. For gas, the working practice is that consumers may be disconnected as a result of debt accrued from gas theft. If disconnection has occurred, re-connection may follow if arrangements have been made to pay for the re-connection costs and also for the stolen energy units. It is normal procedure for a pre-payment meter to be installed to facilitate payment for the stolen energy units. The procedures for these circumstances can be found in the relevant supplier and network code documents.
- 2.116. For electricity, working practice is that customers are not disconnected as a result of debt accrued from electricity theft. Arrangements are that customers would be fitted with a pre-payment meter to be installed to facilitate payment for the stolen energy units. Again, the procedures for these circumstances can be found in the relevant supplier and network code documents.
- 2.117. The Energy Theft CoP focuses on the prevention, detection and investigation of energy theft. Reconnection issues are not considered under the Energy Theft CoP as such issues would fall within the scope of the DNO's connection policies.
- 2.118. As highlighted in discussions above, cooperation between all parties is key to delivering successful and efficient industry procedures for energy theft and we welcome the support to achieve this. We note that several respondents included specific comments about detail that will need to be discussed by the licensees when developing the industry procedures. For example, the suggestions about what reporting methods should be used, whether a Service Level Agreement (SLA) should be adopted for investigations, which companies are responsible for dealing with theft investigation and investigations should be prioritised. The Energy Theft CoP is clear that the DNOs and suppliers need to work together to develop the industry procedures and we would expect the companies to discuss these matters when drafting the procedures. We note the mixed responses in relation to the requirement for DNOs to complete at least two site visits to attempt to gain access prior to raising a warrant. We consider this to be an important step in the process and therefore have retained the proposal in this consultation;

however we accept the points raised in relation to safety and have therefore amended the wording to allow for exceptions where safety would be a concern.

- 2.119. We welcome the PSNI's response which will add clarity to their requirements and sets out what they need from industry procedures in order to support the effective detection and investigation of crime. We expect the licensees to engage further with the PSNI when developing the industry procedures.
- 2.120. Based on the responses to questions 10, our revised proposals for dealing with theft are set out in section 5 of this paper. Section 5 includes a brief summary of the key changes from the initial consultation to this second consultation.

Q11. What is your view on the proposals for exchanging information and resolving disputes within the Energy Theft CoP?

- 2.121. The majority of responses agreed that the exchange of information between network operators and suppliers was vital to progress theft cases. The main points from the responses are summarised here.
- Any exchanges of information should be mindful of data protection and customer confidentiality requirements.
 - Information should be shared with third party stakeholders and they could work together to tackle the issues and share best practice and lessons learned.
 - The majority agreed that it was reasonable for disputes to continue to be handled in line with the licensees' existing complaints handling procedures; however a few respondents suggested that more detailed procedures would be required to deal with complaints related to energy theft. There was also a suggestion that complaints that are urgent or relate to vulnerable people should be expedited.
 - Clarity was requested on referring customer complaints to the UR, and it was suggested that the customer should be able to challenge the company if they believe the decision is wrong and this should be considered before any payment is requested. It was also noted that the CCNI is available to handle energy theft complaints in its statutory role as a consumer representative.
 - There was agreement that issues related to a licensee being non-compliant with the Energy Theft CoP should be referred to the Utility Regulator for investigation.

Utility Regulator Response

- 2.122. We welcome the support for the inclusion of a clause in the Energy Theft CoP for exchanging information. We accept the point raised about data

protection legislation needing to be carefully considered in relation to exchanging information. We note that the draft Energy Theft CoP already included a clause which notes that all industry procedures must comply with all relevant legislation.

- 2.123. This section of the CoP was included to deal specifically with information sharing between the DNO and suppliers that will be required to deal with each theft case. In relation to the point about sharing information with third party stakeholders, as mentioned earlier in this paper we are not proposing to mandate that the industry procedures must be made publically available as they may include confidential or sensitive procedural details.
- 2.124. We also received support for the proposed arrangements for dispute resolution. Under the proposed arrangements a customer has the opportunity to raise a complaint through the licensee's complaints procedures. We would clarify that the CCNI has a statutory role as customer representative for energy complaints and therefore if a customer is not satisfied with how the licensed business has dealt with their complaint, then they can seek help from the CCNI.
- 2.125. We note that the licensees should consider whether they need to include specific details in relation to how energy theft complaints are handled within the industry procedures for theft; however any specific process details for energy theft must work in cooperation with the licensee's complaints handling procedures.
- 2.126. Where an issue is identified where a licensee has potentially breached compliance with the Energy Theft CoP or with the industry procedures, then such issues should be referred to the UR for investigation.
- 2.127. Based on the responses to question 11, our proposals for information exchange and dispute resolution are set out in section 5 of this paper. As the comments were supportive we have not made any material changes to the 'Information exchange between licensees' section and the 'Resolving Disputes' section. However we have included a few minor amendments to improve the wording.

Q12. What is your view on the proposed options relating to objections to domestic switches where there is evidence to support the reasonable suspicion of meter tampering or fraud at the property?

Q13. What is your view on the proposal to manage switching objections through existing relevant industry documents, rather than through the Energy Theft CoP?

- 2.128. We have grouped questions 12 and 13 together as they are related to the same issue. The key points from the responses are summarised here.

- Network operators and suppliers were in favour of Option 1 allowing electricity suppliers the same right, as gas suppliers already have, to object to a domestic customer switch request where there is reasonable suspicion of meter tampering or fraud at the property.
- It was noted that the potential impact of this proposal on existing electricity retail market procedures and market systems should be considered carefully in advance of any decision to proceed with this proposal.
- Consumer groups were largely in favour of Option 2 to create alignment between gas and electricity by removing the gas supplier's right to object to a domestic consumer switch where there is reasonable suspicion of meter tampering or fraud at the property. Their concern was that this ability would be open to abuse from suppliers blocking customers from switching and the issue of what would constitute a reasonable suspicion of tampering needs to be considered. It was suggested that this be explored through further engagement with stakeholders and detailed in the industry procedures.
- A number of responses noted that the system works well in gas and that there is no evidence of the procedure being abused by suppliers.
- The majority of respondents were of the opinion that if objections were allowed for electricity theft, then using the electricity market procedures would be the most appropriate means of managing the switching objections.
- It was suggested that industry standards need to be implemented with respect to change of tenancies in instances of energy theft. If a change of tenancy is requested in a premise that is currently under investigation for energy theft, there needs to be a rigorous process in place to deal with requests to change the name on the account. They suggested that, in instances of confirmed theft, the licensees should be allowed to withhold any change of tenancy request until they receive confirmation that the new occupier(s) is unrelated to the previous customer(s) responsible for the theft of energy.
- There was another suggestion that where a customer has switched to a different supplier and energy theft is subsequently proven, suppliers should be allowed to process an erroneous transfer to switch the customer back to a previous supplier.

Utility Regulator Response

- 2.129. There was a clear divide between industry and consumer groups on the proposed options with industry favouring the ability to object to switching and consumer groups not in favour.

- 2.130. We recognise the issues that have been identified by all respondents. However at this stage we can see the benefit of aligning arrangements in electricity to that of gas, but we acknowledge that further discussion is required in this area to ensure any changes in procedure could not be abused by suppliers. We also accept that any proposed changes to electricity switching processes would need to consider the impact on electricity retail market procedures and market systems.
- 2.131. We therefore propose to make no changes to either gas or electricity as part of this consultation process on the Energy Theft CoP. Instead we suggest that the issue is raised as an agenda item at a future electricity industry meeting so that the potential change to the switching process can be fully debated and considered in relation to other market processes and systems. We are of the view that managing switching objections in electricity through the existing market procedures is the most appropriate approach and therefore it seems sensible that the entire issue is discussed at the industry forum.
- 2.132. In relation to the proposal for industry standards in relation to change of tenancies, we will not mandate any changes in the Energy Theft CoP and we would reiterate that it is the licensee's responsibility to ensure that any new procedures they develop are compliant with all relevant legislation.
- 2.133. We do not approve of the proposal to allow the erroneous transfer process to switch a customer back to a previous supplier where energy theft has been proven and therefore we are not incorporating this into the Energy Theft CoP.
- 2.134. Based on the responses to questions 12 and 13, our proposals relating to the issue about whether switching objections should be allowed on the grounds of electricity theft are set out in section 5 of this paper.

Q14. What is your view on the contents of draft Energy Theft Codes of Practice in Appendices 1 & 2? Please provide comments on the relevant sections of the codes giving consideration to any particular strengths and weaknesses. Please provide the supporting reasons for your view.

- 2.135. We received a substantial amount of feedback in response to this question. Some respondents provided feedback through commentary on each section of the Energy Theft CoPs and others provide specific redrafting suggestions for particular sections of the CoPs.
- 2.136. We have already included all this feedback into the responses to the previous questions in this section.

3. Revised proposals for the requirements of, governance arrangements for, and compliance with, the Energy Theft Code

Summary of Key Changes from Initial Consultation

- 3.1. This section sets out our revised proposals in relation to the requirements of the Energy Theft CoP and subsequent governance and compliance arrangements. In determining our revised proposals we have given due consideration to the responses received to the initial consultation.
- 3.2. With respect to this section, the key changes from the initial consultation include in particular:
- Proposal for the gas industry to develop one set of industry procedures for the whole of NI;
 - Proposal to give NIE Networks a principal co-ordinator role in drafting the electricity industry procedures; Proposal for the gas DNOs to share the drafting of the gas industry procedures, with one DNO adopting a principal co-ordinator role;
 - Proposal for the UR to adopt an adjudication role in instances where there are specific issues during the development of the industry procedures;
 - Proposal for licence modifications to be published when the industry procedures are near completion to align the implementation of the industry procedure with the implementation of the new licence conditions; and
 - Proposal for licence compliance to be monitored through submission of a retrospective Energy Theft compliance report by each licensee.
- 3.3. Details of the responses to the initial consultation and our comments on the responses which led to the revised proposals are included in section 2 of this paper. In particular, see questions 3, 4 and 7 within section 2.
- 3.4. The revised draft Codes of Practice for Theft of Electricity and Theft of Gas are included in Appendices 1 and 2.

Industry Procedures resulting from the Energy Theft CoP

- 3.5. The overall objective of the Energy Theft CoPs is to protect domestic and business consumers from safety issues and costs related to energy theft.
- 3.6. The UR is proposing to implement Energy Theft CoPs that will require electricity and gas distribution network companies (DNOs) and suppliers to work together and cooperate with each other to achieve best practice industry procedures for dealing with all aspects of energy theft.

- 3.7. We are proposing to take a largely “principle-based” approach to the Energy Theft CoPs; however where we consider it to be necessary, we will provide additional detail in the CoP to underpin the high level principles.
- 3.8. To comply with the Energy Theft CoPs, the relevant electricity and gas companies will need to establish, implement and comply with detailed industry procedures for electricity and detailed industry procedures for gas, and to work together in doing so to ensure full compliance with the Energy Theft CoP.
- 3.9. Key requirements for the industry procedures will be that they set out best practice processes and work on a continuous improvement basis to ensure the procedures are effective on an ongoing basis. Additionally the industry procedures must clarify the roles and responsibilities for each company in dealing with energy theft to ensure that processes work efficiently and successfully.
- 3.10. For the electricity industry we are proposing that there should be one set of industry procedures covering distribution and supply activities. The electricity DNO and all active electricity suppliers need to be a party to, comply with, and maintain such industry procedures.
- 3.11. For the gas industry we are proposing that all gas distribution network operators and all active gas suppliers will need to work together to develop and establish industry procedures covering distribution and supply activities across NI.
- 3.12. In relation to implementation of the industry procedures in the gas industry, all DNOs and all active suppliers across all Distribution Network Areas will need to be a party to, comply with, and maintain one set of industry procedures for the whole of NI. The procedures could be written to include some differences for each Distribution Network Area but only where the differences are warranted by valid reasons.
- 3.13. For both electricity and gas, we are now proposing that the DNOs will have a principal coordinator role in drafting the industry procedures.
- 3.14. In electricity, as the only DNO, NIE Networks would acquire the principal coordinator role.
- 3.15. In gas, where there are three DNOs⁸ within NI, we propose that the DNOs share the drafting of the industry procedures and that one DNO adopts the principal coordinator role. We suggest that the DNOs decide amongst themselves who adopts the principal co-ordinator role.

⁸ Phoenix Natural Gas Limited (PNGL) is the DNO for the Greater Belfast licensed area, firmus energy (Distribution) Limited is the DNO for the Ten Towns licensed area and SGN Natural Gas Limited is the DNO for the West licensed area.

- 3.16. We are proposing that the industry procedures in gas and electricity would be drafted, agreed and implemented by the relevant licence holders. We propose that the UR would not have a role in approving the industry procedures; however the UR could feed into the development of the industry procedures and attend relevant meetings if requested to do so.
- 3.17. We propose that the industry may seek independent views from other parties such as the Health & Safety Executive for Northern Ireland (HSENI) or the Consumer Council (CCNI) to assist in developing the industry procedures. CCNI has expressed an interest in being part of any industry working groups to develop the procedures.
- 3.18. In addition, if situations arise during the drafting of the procedures where the industry participants cannot reach agreement on certain issues, then the industry can bring issues to the UR for adjudication. It is important to note that the UR will only consider issues that have been brought by the gas or electricity industry collectively as a group, rather than by distribution or supply companies on an individual basis. Where an issue is referred to the UR, the UR will make a decision which will be final and the industry must abide by that decision and implement the UR's decision within the industry procedures.
- 3.19. Although the UR will not have a role in approving the industry procedures, if the UR considers that the industry procedures are not best practice arrangements and/or do not comply with the Energy Theft CoPs, then it may direct the DNOs and suppliers to review and amend the procedures where necessary.
- 3.20. The electricity and gas industry procedures must include a process for ongoing reviews and changes. This will include pre-planned reviews at set timeframes and also an ability to review the procedures on an ad-hoc basis when it is considered necessary to react to changes in the industry and/or environment. The review process must allow for changes to be proposed by any licensee that is party to the procedures or by the UR.
- 3.21. For clarity, where a review of the industry procedures is being undertaken each licensee must continue to comply with the existing industry procedures until such time as any amendments are made.

Compliance with the Energy Theft CoP

- 3.22. We are proposing that compliance with the Energy Theft CoP should be a mandatory licence requirement on all suppliers and DNOs in electricity and gas. This would mean any breach of the CoP will be considered a breach of licence. The UR is proposing licence modifications to all distribution and supply licences within the electricity and gas sectors to place an obligation on the licence holders to comply with the Energy Theft CoPs. Section 6 sets out the proposed licence modifications for gas and electricity licence holders.

- 3.23. The Energy Theft CoPs will state that DNOs and suppliers will need to cooperate to establish industry procedures and to implement and comply with the procedures. Therefore any failure by a licensee to establish and implement such procedures, as required, or to comply with such procedures on an ongoing basis would be considered a breach of this CoP and therefore a breach of licence. These would be dealt with according to the UR Enforcement Procedure⁹
- 3.24. In relation to the timeframes for implementing the licence conditions to require compliance with the Energy Theft CoP, it is our intention to publish a final decision paper which will include the final versions of the Energy Theft CoP. This will include a timeframe for the licensees to develop and implement the necessary industry procedures to comply with the CoP.
- 3.25. Following publication of the final decision paper, the gas and electricity licence holders will be required to commence work immediately on developing the industry procedures. The gas and electricity industry participants will be required, as a group, to provide regular progress updates to the UR on the development of the industry procedures. The progress reports will be required every two months or as requested.
- 3.26. We are proposing that we would publish the statutory consultation notice on the proposed licence condition after publishing our final decision paper. However, we would review the progress reports and when the industry procedures are near completion publish a decision notice on the new licence condition. Our intention therefore would be that we could align the implementation of the new licence condition with the completion and implementation of the industry procedures. This would mean that when the licence condition is implemented, the licence holders will be expected to be compliant immediately.
- 3.27. As an indication of timings, we intend for the licence condition to be in force by 31st March 2018, by which time we expect the industry procedures to be in place.
- 3.28. Each licensee will be required to keep a record of its compliance with its obligations under the Energy Theft CoP and will be required to provide information to the UR to enable it to monitor the licensee's compliance.
- 3.29. We are proposing that compliance reporting will be completed through Retrospective Energy Theft Compliance Reports. This would be accomplished through normal licence compliance monitoring for DNOs and suppliers. This would be annually, through Retail Energy Market Monitoring (REMM) submissions, for suppliers and through normal licence compliance monitoring for DNOs.

⁹ https://www.uregni.gov.uk/sites/uregni.gov.uk/files/media-files/Enforcement_Procedure_Decision_Paper_-_March_2016.pdf

- 3.30. The Retrospective Energy Theft Compliance Reports would most likely require the licensees to self certify that they have been compliant with the Energy Theft CoP and with the industry procedures and may require some supplementary information to be provided to explain how they have been compliant in some aspects. The detail of these submissions and deadlines for same will be communicated to suppliers/DNOs in advance.
- 3.31. The UR may also decide that other reporting on specific metrics is required to assist the UR to monitor theft issues. For clarification, this type of monitoring would allow the UR to monitor the severity of theft issues and progress in dealing with issues, rather than monitoring DNO and supplier compliance. For example this may be as a result of new issues that have arisen in the marketplace. Any such metrics would be agreed informally with licensees (including the detail or what the metrics will require and the frequency of information provision). Informal reporting requirements allows for information to be submitted more frequently when there are specific theft issues that need to be monitored more closely.

Future Reviews of the Energy Theft CoP

- 3.32. The proposals outlined above mean that the electricity and gas industry participants will be able to react to changes in the marketplace by revising their industry procedures.
- 3.33. It is therefore unlikely that procedural changes would require changes to the Energy Theft CoPs. However if a situation did arise where a change to the Energy Theft CoPs may be required, or if the UR considers it necessary to amend the Energy Theft CoPs for other reasons, then we propose that a consultation should be carried out on any potential changes. Examples could include any issues that are raised through UR monitoring activities of compliance, and/or customer complaints.
- 3.34. Any such consultation may be restricted to the electricity and gas industries (i.e. any company holding an electricity or gas licence) and may include key stakeholders (e.g. consumer groups and PSNI) or may be a public consultation, depending on the nature of the changes.

4. Revised proposals for the principles underpinning the Energy Theft Code

Summary of Key Changes from Initial Consultation

- 4.1. This section sets out our revised proposals on the principles which we think should underpin the Energy Theft CoP. We have taken the responses to the initial consultation into consideration when determining our revised proposals.
- 4.2. With respect to this section, the key changes from the initial consultation include in particular:
 - The principle ‘Collect and report data associated with Theft of Energy’ has been removed from the proposals;
 - The principle on ‘costs’ has been redrafted to reflect comments received, and previous UR decisions in relation to Supplier Codes.
 - The principle on ‘Customer vulnerability’ has been redrafted; and
 - The 3D’s terminology (Deterring, Detecting and Dealing) has been amended to Prevention, Detection and Investigation throughout the principles;
 - Minor amendments have been made to the drafting of the other principles.
- 4.3. Details of the responses to the initial consultation and our comments on the responses which led to the revised proposals are included in section 2 of this paper. In particular, see question 6 within section 2.

The revised draft Codes of Practice for Theft of Electricity and Theft of Gas are included in Appendices 1 and 2.

Proposed principles

- 4.4. For the purpose of the Energy Theft CoPs we are proposing to adopt a largely principles-based approach; however we will also include additional detail in the CoP where we consider it is necessary.
- 4.5. The principles will cover both distribution and supply elements of energy theft in both electricity and gas sectors.
- 4.6. In the initial consultation the principles made reference to ‘Deterring’, ‘Detecting’ and ‘Dealing’ with energy theft (the 3D’s). Some of the respondents used different terminology in their responses by referring to ‘Prevention’, ‘Detection’ and ‘Investigation’. It was suggested that the terminology should be changed in the Energy Theft CoP as the law enforcement community and judiciary are familiar with the later terms.
- 4.7. We have taken this on board and therefore all references to the 3D’s throughout the principles have been amended to ‘Prevention’, ‘Detection’ and

'Investigation'.

- 4.8. The revised proposals for the principles are set out below. These principles will be included in the Energy Theft CoPs and licensees will need to comply with, and use best endeavours to deliver these principles when producing and adhering to the detailed industry procedures for dealing with theft.
- 4.9. It is important that each gas and electricity company must be cognisant of the following principles when dealing with all aspects of energy theft. All companies must consider these principles when establishing, implementing and complying with the industry procedures to deal with energy theft to ensure that the industry procedures are compliant with the principles.
1. **Safety** – where any activities are undertaken in accordance with this Code of Practice, safety is a key consideration.
 2. **Costs** – Licensees must have processes in place that are clear for all industry participants in order to make reasonable endeavors to recover the costs associated with Theft of Electricity/Theft of Gas. Any charges for costs associated with Theft of Electricity/Theft of Gas (unbilled units and administration costs) must be fair, transparent and as far as possible must not exceed the actual costs incurred by the licensees. Supplier charges to customers in relation to amounts owed must adhere to the minimum standards in the CoP for Payment of Bills.
 3. **Prevention, Detection and Investigation of Theft of Electricity/Theft of Gas through best practice** – Licensees must ensure that effective procedures are in place to proactively discourage Theft of Electricity/Theft of Gas, identify Theft of Electricity/Theft of Gas and deal with Theft of Electricity/Theft of Gas. The procedures adopted should reflect industry best practice and must clearly define the roles and responsibilities of each licensee in achieving the procedures. Licensees must adopt a continuous improvement approach to the procedure for Theft of Electricity/Theft of Gas.
 4. **Communication and reporting** – Licensees must have clear and transparent reporting processes in place between distribution network operators, suppliers and any relevant third parties. Licensees must also have a reporting mechanism in place to enable any third party to easily and, if necessary confidentially, report suspected Theft of Electricity/Theft of Gas to the relevant Licensees.
 5. **Ensure that customers are treated in an appropriate and consistent manner** – In all interactions with customers in relation to Theft of Electricity/Theft of Gas, each licensee must behave and act towards customers in a manner which is fair, not misleading, appropriate and professional.

6. **Customer Vulnerability** – In all interactions with customers in relation to Theft of Electricity/Theft of Gas, each licensee must take into account whether a domestic customer is a vulnerable customer. Licensees must give appropriate consideration to the needs of Vulnerable Customers.
7. **Investigation by competent individuals** – All responsibilities relating to the Theft of Electricity/Theft of Gas must be carried out by individuals possessing skills, qualifications, experience and authorisation appropriate to the task they are undertaking.
8. **Cooperation.** Licensees should cooperate with the Police Service of Northern Ireland, the Health and Safety Executive for Northern Ireland and the Consumer Council for Northern Ireland regarding the requirements of this code of practice and their respective regulatory and statutory obligations. Licensees should also have consideration of other related bodies in respect of their statutory role.

5. Revised proposals for high level design of the Energy Theft Code of Practice

Summary of Key Changes from Initial Consultation

- 5.1. In addition to the principles which underpin the Energy Theft CoP we have considered the design of the CoP and what should be included within the CoP. This section of the consultation paper sets out further detail on the proposed design on the Energy Theft CoPs.
- 5.2. With respect to this section, the key changes from the initial consultation include in particular:
- The 3D's terminology (Deterring, Detecting and Dealing) has been amended to Prevention, Detection and Investigation throughout the Energy Theft CoP;
 - Clarity has been included on arrangements for identifying and dealing with vulnerable customers;
 - Clarity has been included on how costs associated with energy theft can be recovered from customers; and
 - Drafting of specific requirements in the Energy Theft CoP have been amended to reflect the feedback from the initial consultation.
- 5.3. Details of the responses to the initial consultation and our comments on the responses which led to the revised proposals are included in section 2 of this paper. In particular, see questions 8 to 13 within section 2.

The revised draft Codes of Practice for Theft of Electricity and Theft of Gas are included in Appendices 1 and 2.

Further proposals for design of the Energy Theft CoP

- 5.4. In this section we set out our revised proposals on the design of the Energy Theft CoPs. These proposals have helped us to shape and populate the draft Codes in the Appendices.
- 5.5. In the initial consultation we set out the proposals for the design of the Energy Theft CoP under sub-headings entitled 'Deterring', 'Detecting' and 'Dealing' (the 3D's). As mentioned in section 4, there was a suggestion in the consultation responses that this terminology should be changed to 'Prevention', 'Detection' and 'Investigation'.
- 5.6. We have taken this on board and have therefore now set out the further proposals for the design of the Energy Theft CoP under the sub-headings 'Prevention', 'Detection' and 'Investigation'. We note that the requirements under each of these sub-headings can be matched directly to the previous 3D's headings. Note that this means that all references to the 3D's

terminology throughout the entire Energy Theft CoPs have been amended to 'Prevention', 'Detection' and 'Investigation'.

Prevention

- 5.7. The Energy Theft CoP will need to include requirements for distribution network operators (DNOs) and suppliers to establish detailed and best practice industry processes and procedures to carry out activities that make it difficult for consumers to engage in energy theft, and/or discourage consumers from carrying out energy theft in the first place.
- 5.8. In practice this could be by physical means such as installing tamper-resistant meters. Prevention could also be by educating consumers of the dangers of tampering with meters and equipment and the need to report any suspected or damaged equipment.
- 5.9. In addition, the customer terms and conditions (T&Cs) could act as a deterrent. Licensees are responsible for ensuring that their T&Cs are compliant with all relevant legislation in addition to existing regulatory requirements on the T&Cs. For example the Consumer Rights Act 2015 includes requirements in relation to unfair terms in consumer contracts which may mean that it can be easier for consumers to challenge hidden fees and charges.
- 5.10. The DNOs and suppliers should work together to discuss and plan other methods to prevent the theft of energy. We would expect that the most appropriate and most effective methods for preventing energy theft may change over time.
- 5.11. The Energy Theft CoP should also include a need for cooperation between suppliers and DNOs to deter energy theft.

Detection

- 5.12. The Energy Theft CoP will need to include requirements for DNOs and suppliers to establish procedures which detail arrangements to carry out activities to detect energy theft.
- 5.13. In practice this could be through meter reading and meter inspection programmes, energy usage analysis and having appropriate reporting mechanisms in place.
- 5.14. The DNOs and suppliers should work together to discuss and plan other methods to detect energy theft. We would expect that the most appropriate and most effective methods for detecting energy theft may change over time.
- 5.15. The Energy Theft CoP should also include a need for cooperation between suppliers and DNOs to detect energy theft.

Investigation

- 5.16. The Energy Theft CoP includes the need for the DNOs and suppliers to have procedures and arrangements in place that cover the activities between suppliers, DNOs, customers and other parties from the point where potential theft is detected.
- 5.17. This will include having a procedure in place to set out how they will investigate suspected energy and how they will confirm whether actual theft did occur in each case. The procedures must also be very clear on roles and responsibilities of the various industry parties.
- 5.18. Safety is a key concern in any instance of suspected theft and therefore the Energy Theft CoP will include a need for DNOs to complete site visits to inspect the premises as soon as possible after being notified of suspected theft. The Energy Theft CoP also includes a need for the relevant DNO to make at least two attempts to visit the premises before initiating a process to gain a warrant for entry; however exceptions to this will be allowed where safety is a concern.

The Energy Theft CoP places requirements on licensees in relation to vulnerable customers. Under the Energy Theft CoP, a vulnerable customer means *a domestic consumer who is of pensionable age, disabled or chronically sick*.

- 5.19. This definition is taken from gas supply licence condition 2.11.5. The full drafting within the licence condition refers to a vulnerable customer as a domestic consumer who is of pensionable age, disabled or chronically sick *and having being asked to be included in the register*. However we do not think that it is appropriate to restrict the definition of vulnerability to whether a customer is on a critical care register or not.
- 5.20. We note that vulnerable customer lists and critical care lists currently exist within the gas and electricity industries. Where a customer is included on such a list then the licensees should consider the customer as vulnerable for the purposes of the Energy Theft CoP and industry procedures. Consideration must also be given to any member of the household that is defined as vulnerable. The UR plans to work on the supplier customer care registers as part of the Customer Protection Strategy year 2 projects.
- 5.21. In addition to this, the licensees will be required to identify other customers that may meet the definition of vulnerable customer where obvious signs of vulnerability exist. This includes any member of the household. For example, where a licensee is completing a site visit at a property and one of the occupants of that property approaches the employee and shows obvious signs of being vulnerable then the licensee must consider their actions and the impact of their actions on the occupants of the property.

- 5.22. The proposed Energy Theft CoP requires licensees to identify if a domestic customer is a vulnerable customer, and where a vulnerable customer is identified within the household they must also consider the impact of their actions on all occupants of the property and take appropriate measures. The industry procedures required under the Energy Theft CoP will need to include effective arrangements to identify and manage consumer vulnerability.
- 5.23. This means that when developing the industry procedures, licensees must consider steps for identifying vulnerable customers and must also consider how each step of the process would impact vulnerable customers and whether vulnerable customers should be treated any differently in any aspect of the processes for dealing with energy theft. We have given some consideration to this and we believe that in some circumstances vulnerable customers should be treated differently.
- 5.24. For example, where a vulnerable customer has been identified within the household the licensee may need to tailor their communications appropriately to meet the needs of the customer; or wait at the door for a longer period of time to give the customer time to respond or where circumstances arise that result in a vulnerable customer's property being disconnected, the licensee should provide the customer with an electric heater. We welcome further suggestions on good-practice for the treatment of vulnerable customers. We welcome responses from stakeholders on suggestions of appropriate measures for vulnerable households. When compiled these measures should be added to the industry procedures to promote best practice.
- 5.25. The Energy Theft CoP also includes some specific requirements on how the licensees must deal with all customers, including communications with the customer and provision of information to the customer.
- 5.26. With specific regard to information being provided to the customer, we have proposed that the customers will be provided with contact details for further advice and sources of help. We have also stated that this will include, as a minimum, the Consumer Council's Support and advice in Northern Ireland information sheet. This is an information sheet that the Consumer Council previously developed for the gas industry and we have proposed to extend its use to the electricity industry.
- 5.27. The Energy Theft CoP also includes a need for the licensees to put procedures and arrangements in place to deal with the outcome of each investigation into suspected theft. This includes where an investigation concludes that theft has occurred and cases where the investigation confirms that there has been no theft.
- 5.28. The Energy Theft CoP includes a need for the licensees to have arrangements in place to prevent theft, once it has been detected. On occasions, dealing with proven theft may require disconnection of the premises. The UR's view is that the disconnection of any energy customer

should be a last resort and only after other avenues have been pursued to deal with theft whilst retaining energy supply. We also recognise however the paramount importance of safety issues around meter/asset tampering, and have reflected this in the principles included in the Code.

- 5.29. Where theft is confirmed, the licensees will also have obligations under the Energy Theft CoP to have arrangements in place in relation to interactions with the customer. This will involve identifying the customer responsible for the theft, provision of information to the customer including information on charges relating to theft and making arrangements with the customer for repayment of such charges.
- 5.30. The Energy Theft CoP covers the treatment of costs associated with energy theft. As mentioned previously, any costs associated with energy theft that are charged to customers must be fair, transparent and as far as possible, must not exceed the actual costs incurred by the licensees.
- 5.31. In relation to the collection of costs associated with energy theft (e.g.unbilled units and administration costs) from customers, the Energy Theft CoP requires that suppliers deal with these costs under the principles and procedures established in the minimum standards for the supplier CoP in relation to payment of bills. We reiterate again that costs associated with disconnection or reconnection of premises are dealt within the DNOs' Connection Policies.
- 5.32. We are proposing that there will be a requirement for licensees to consider the customer's ability to pay and to offer payment arrangements through installments, prepayment meters or third party deductions from benefits as appropriate. We consider that it is in the interests of the licensees and the consumers to enter into payment arrangements based on customers' ability to pay as this will enable the licensees to recoup the costs, albeit over a longer timeframe. This was consulted and decided on as part of the consultation on the minimum standards for the Code of Practice on Payment of Bills.The Energy Theft CoP also includes a need for the licensees to have procedures in place setting out arrangements for how the companies will decide if they should proceed with prosecution for each case of theft and to set out the roles and responsibilities of each party, including any interactions with the Police Service for Northern Ireland (PSNI).
- 5.33. The Energy Theft CoP should also include a need for cooperation between suppliers and DNOs when dealing with energy theft.

Information Exchange

- 5.34. The proposed Energy Theft CoP includes a need for the DNOs and suppliers to exchange information where reasonable to do so in order to comply with the requirements of the Energy Theft CoP, their licence and any applicable legislation.

Resolving Disputes

- 5.35. The Energy Theft CoP also includes proposal that the licensee's existing complaints handling processes would be used to deal with customer complaints.
- 5.36. However, where a complaint relates to a licensee being non-compliant with the CoP then this issue should be referred to the UR for investigation.

Additional measures for dealing with energy theft

- 5.37. In the gas industry there are currently arrangements in place that allow a supplier to object to a domestic customer's request to switch supplier where the supplier has 'evidence which supports the reasonable suspicion that meter tampering or fraud in respect of the supply of natural gas has occurred at the property'. This is managed through the Distribution Network Code and the gas supplier's Supply Meter Point Agreement.
- 5.38. This was implemented in the gas industry to prevent a customer from switching to a different supplier in order to avoid having to repay costs associated with the theft. There is no equivalent arrangement in the electricity industry.
- 5.39. We do not propose to make any changes to the existing arrangements in the gas industry at this time.
- 5.40. We are proposing that the electricity industry should raise the issue of whether switching objections should be allowed on the grounds of electricity theft at an electricity industry forum. This needs to be discussed in detail and the potential for supplier abuse of the objections needs to be considered. Any changes to switching objections would be managed through the electricity market procedures.

6. Proposed Licence Condition

- 6.1. Drafts of the proposed new licence conditions are presented below. We are proposing that a new licence condition would be added to all distribution and supply licences in gas and electricity. The conditions for electricity licences and gas licences are both provided below.
- 6.2. As noted in the compliance section in section 3 of this paper, we plan to carry out the statutory 28 day licence modification consultation process following the publication of the final decision paper on the Energy Theft CoP.
- 6.3. Following this the companies will need to develop the industry procedures. However, we propose that we wait until the industry procedures are near completion before publishing a decision notice on the new licence condition.
- 6.4. Our intention therefore would be that we could align the implementation of the new licence condition with the completion and implementation of the industry procedures. This would mean that when the licence condition is implemented, the licence holders will be expected to be compliant immediately.
- 6.5. We seek comments on the proposed licence conditions.

Condition x: Code of Practice for the Theft of Electricity

- 1. The Licensee shall (and shall procure that its agents or sub-contractors shall) comply with the obligations applicable to it under, the Code of Practice for the Theft of Electricity.
- 2. The Authority, following consultation with the Licensee, the General Consumer Council and any other person who in the opinion of the Authority is likely to be interested or affected, may from time to time make such modifications to this condition, as the Authority considers are necessary or expedient.

3. In this Condition:

Code of Practice for the Theft of Electricity means the relevant document of that name, prepared and published from time to time by the Authority, relating to the activities for the prevention, detection and investigation of the theft of electricity

In order to comply with the obligations of the Code of Practice for the Theft of Electricity, the licensee shall establish and comply with procedures to facilitate the prevention, detection and investigation of the theft of electricity

Agent or Sub-contractor means any person directly or indirectly authorised to represent the Licensee in its dealings with electricity customers or other Licensees.

Condition x: Code of Practice for the Theft of Gas

1. The Licensee shall (and shall procure that its agents or sub-contractors shall) comply with the obligations applicable to it under, the Code of Practice for the Theft of Gas.
2. The Authority, following consultation with the Licensee, the General Consumer Council and any other person who in the opinion of the Authority is likely to be interested or affected, may from time to time make such modifications to this condition, as the Authority considers are necessary or expedient.

3. In this Condition:

Code of Practice for the Theft of Gas

means the relevant document of that name, prepared and published from time to time by the Authority, relating to the activities for the prevention, detection and investigation of the theft of gas ;

In order to comply with the obligations of the Code of Practice for the Theft of Gas, the licensee shall establish and comply with procedures to facilitate the prevention, detection and investigation of the theft of gas.

Agent or Sub-contractor

means any person directly or indirectly authorised to represent the Licensee in its dealings with gas consumers or other Licensees.

7. Next Steps

- 7.1. As set out in section 1 the Utility Regulator welcomes comments on the proposals in this paper by Friday 7th April 2017.
- 7.2. Following receipt of comments on this paper we will determine our final decisions on the Energy Theft Codes of Practice, taking the responses into consideration when doing so.
- 7.3. We plan to publish the final decision paper in Summer 2017. In the final decision paper we will include the final versions of the electricity and gas Energy Theft CoP.
- 7.4. The electricity and gas companies will then be required to work together to establish and implement industry procedures by end Q4 2017.
- 7.5. If we conclude in the final decisions paper that we are going to proceed with a mandatory arrangement for compliance then new licence conditions will be required. Any licence modifications will be made in accordance with legislative provisions for modifying gas and electricity licences, which will include a 28 day statutory consultation on the modifications. We expect to publish the statutory consultation after the final decision paper is published, however we would not publish the decision notice for the licence modifications until the development of the industry procedures are near completion.

Appendix 1: Draft Code of Practice for the Theft of Electricity

1. Objective of Code of Practice and obligation to achieve it

- 1.1 The objective of this Code of Practice (CoP) is to ensure that electricity suppliers and distribution network operators work in cooperation with other licence holders where necessary to put industry procedures in place for the:
- (i) Prevention of Theft of Electricity¹⁰;
 - (ii) Detection of Theft of Electricity; and
 - (iii) Investigation of Theft of Electricity.
- 1.2 Compliance with this CoP is a mandatory licence requirement on all electricity suppliers and the electricity distribution network operator (DNO), and therefore any breach of the CoP will be considered a breach of licence. Further, this CoP requires the DNO and suppliers to work together and cooperate to establish industry procedures and to implement and comply with the procedures. Therefore any failure by a licensee to establish and implement such procedures or to comply with such procedures on an ongoing basis would be considered a breach of this CoP and therefore a breach of licence.
- 1.3 The DNO and suppliers shall research and implement best practice arrangements for the theft-related industry procedures. The DNO and suppliers should continue to seek best practice arrangements on an ongoing basis and propose amendments to the industry procedures where appropriate.
- 1.4 Where appropriate, the DNO and suppliers should take opportunities to share best practice ideas, arrangements and information between the electricity and gas industry.
- 1.5 This CoP covers domestic and business electricity premises. Therefore the industry procedures must cover domestic and business electricity premises in order to comply with this CoP.

¹⁰ Theft of Electricity is defined in Section 9 of this CoP

- 1.6 The industry procedures must include distribution and supply activities and the industry procedures must set out the roles and responsibilities of each party in a clear and transparent way.
- 1.7 The electricity DNO will take a principal coordinator role in developing the required industry procedures; however the DNO and all electricity suppliers must take all reasonable steps to cooperate with other licence holders where necessary, to facilitate the development, implementation and compliance with the industry procedures.
- 1.8 In developing the industry procedures, the DNO and suppliers may seek independent views from other parties such as the Health & Safety Executive for Northern Ireland (HSENI) or the Consumer Council (CCNI).
- 1.9 When developing the industry procedures, if situations arise where the DNO and suppliers cannot reach agreement on certain issues for the industry procedures, then the DNO and suppliers can jointly bring issues to the UR for adjudication. The UR will only consider issues that have been brought by the electricity industry as a group, rather than by individual licence holders.
- 1.10 Any issues referred to the UR for adjudication must be accompanied by background information and evidence relating to the different opinions of the industry participants and the impact of the different options. Where an issue is referred to the UR for adjudication, the UR will make a decision which will be final and the industry must abide by that decision and implement the UR's decision within the industry procedures.
- 1.11 The DNO and suppliers must make best endeavors to develop and implement the industry procedures within the timeframes set out by the Utility Regulator (UR). While developing the industry procedures, the DNO and suppliers must provide joint progress reports to the UR every 2 months or as requested to explain the progress being made, highlighting any specific issues that may delay the development and implementation of industry procedures against the timeframes set out by the UR.
- 1.12 The DNO and all active suppliers must be a party to, comply with, and maintain such industry procedures.
- 1.13 The industry procedures must include a process for ongoing reviews and changes. This will include pre-planned reviews at set timeframes and also an ability to review the procedures on an ad-hoc basis when it is

considered necessary to react to changes in the industry and/or environment. The review process must allow for changes to be proposed by any licensee that is party to the procedures or by the Utility Regulator (UR). Note that where the UR considers the industry procedures are not best practice arrangements or do not comply with this CoP it may direct the DNO and suppliers to review and amend the procedures

- 1.14 The obligations in this Code of Practice and any industry procedures that are implemented will apply to each licensee and any representatives of the licensee. For clarity, where a licensed company contracts with a third party for the provision of any services, the licensed company must ensure that the third party complies with all components of this CoP and the industry procedures. Any breaches of this CoP or the industry procedures by a third party will be deemed to be a breach by the licensed company.
- 1.15 Nothing in this Code of Practice is intended to, or should be deemed to, constitute an exemption from existing regulatory requirements and/or obligations under other industry agreements.
- 1.16 Nothing in this Code of Practice is intended to, or should be deemed to, constitute an exemption from each licensee's legal obligation to comply with any and all relevant legislation, statute, statutory instrument, regulation or order (or any provision thereof) or any subordinate legislation. Licensees are responsible for ensuring that the industry procedures they develop are compliant with all relevant legislation.
- 1.17 Where the Utility Regulator considers it necessary to amend this CoP it will consult on any proposed changes. The consultation may be a restricted to the electricity industry (i.e. any company holding an electricity distribution or supply licence) and may include key stakeholders (e.g. consumer groups and PSNI) or may be a public consultation, depending on the nature of the changes.

2. Principles underpinning the Code of Practice

- 2.1 Each licensed company must comply with the following principles when dealing with all aspects of prevention, detection and investigation of Theft of Electricity. When documenting and implementing industry procedures to deal with Theft of Electricity, each licensed company must consider these principles and ensure that the industry procedures comply with these principles.

1. **Safety** – where any activities are undertaken in accordance with this Code of Practice, safety is a key consideration.
2. **Costs** – Licensees must have processes in place that are clear for all industry participants in order to make reasonable endeavors to recover the costs associated with Theft of Electricity. Any charges for costs associated with Theft of Electricity must be fair, transparent and as far as possible must not exceed the actual costs incurred by the licensees. Supplier charges to customers in relation to amounts owed must adhere to the minimum standards in the CoP for payment of bills.
3. **Prevention, Detection and Investigation of Theft of Electricity through best practice** – Licensees must ensure that effective procedures are in place to proactively discourage Theft of Electricity, identify Theft of Electricity and deal with Theft of Electricity. The procedures adopted should reflect industry best practice and must clearly define the roles and responsibilities of each licensee in achieving the procedures. Licensees must adopt a continuous improvement approach to the procedure for Theft of Electricity.
4. **Communication and reporting** – Licensees must have clear and transparent reporting processes in place between distribution network operators, suppliers and any relevant third parties. Licensees must also have a reporting mechanism in place to enable any third party to easily and, if necessary confidentially, report suspected Theft of Electricity to the relevant Licensees.
5. **Ensure that customers are treated in an appropriate and consistent manner** – In all interactions with customers in relation to Theft of Electricity, each licensee must behave and act towards customers in a manner which is fair, not misleading, appropriate and professional.
6. **Customer Vulnerability** – In all interactions with customers in relation to Theft of Electricity, each licensee must take into account whether a domestic customer is a vulnerable customer. Licensees must give appropriate consideration to the needs of Vulnerable Customers.
7. **Investigation by competent individuals** – All responsibilities relating to the Theft of Electricity must be carried out by individuals possessing skills, qualifications, experience and authorisation appropriate to the task they are undertaking.

- 8. Cooperation.** Licensees should cooperate with the Police Service of Northern Ireland, the Health and Safety Executive for Northern Ireland and the Consumer Council for Northern Ireland regarding the requirements of this code of practice and their respective regulatory and statutory obligations. Licensees should also have consideration of other related bodies in respect of their statutory role.

3. Requirements for Prevention of Theft of Electricity

In order to comply with this CoP, the DNO and suppliers must establish, implement and comply with industry procedures which set out detailed roles, responsibilities and best practice processes for each of the following requirements. The arrangements to achieve each of these requirements must be included in the industry procedures.

- 3.1 The DNO and suppliers must take reasonable steps to deter and prevent the Theft of Electricity. The DNO and suppliers are required to work together and to cooperate with each other to achieve this.
- 3.2 The DNO will proactively research electricity meters and equipment to keep up to date with technical advancements in equipment aimed at deterring and preventing Theft of Electricity and where possible the DNO will seek to adopt such technologies in delivery of its metering operations on a continuous improvement basis.
- 3.3 As a means of deterring and preventing Theft of Electricity, the DNO and electricity suppliers should proactively engage with and educate customers, the general public and staff on the dangers and consequences of Theft of Electricity and interference with electricity equipment. They should also publicise the reporting mechanism for reports of any suspected theft, or damaged equipment to the relevant licensee.
- 3.4 Licensees shall ensure that any customer terms and condition (T&C) that it has with a customer include all relevant terms that would be required to discourage and ultimately deal with any issues relating to Theft of Electricity. This may include supplier T&Cs and also DNO T&Cs where relevant. The licensee is responsible for ensuring any T&Cs are compliant with all relevant legislation in addition to regulatory requirements for T&Cs (e.g. the Consumer Rights Act 2015 includes requirements in relation to unfair terms in consumer contract which may mean that it can be easier for customers to challenge hidden charges).

- 3.5 The DNO will keep-up-to-date with the latest methods for preventing energy theft so as to ensure that their existing procedures remain fit-for-purpose on a continuous improvement basis.

4. Requirements for Detection of Theft of Electricity

In order to comply with this CoP, the DNO and suppliers must establish, implement and comply with industry procedures which set out detailed roles, responsibilities and best practice processes for each of the following requirements. The arrangements to achieve each of these requirements must be included in the industry procedures.

- 4.1 The DNO and suppliers must take reasonable steps to detect the Theft of Electricity. The DNO and suppliers are required to work together and to cooperate with each other to achieve this.
- 4.2 When visiting properties the DNO and suppliers must take all reasonable steps to inspect electricity meters and equipment for evidence of any damage or interference with or tampering of the meter or associated installation or Theft of Electricity.
- 4.3 The DNO and suppliers shall ensure that all relevant staff are trained on how to identify potential energy theft or evidence of damage or interference with metering equipment and the associated installation.
- 4.4 Electricity suppliers shall routinely analyse energy usage of their customers to take all reasonable steps to attempt to identify any potential instances of Theft of Electricity.
- 4.5 The DNO and suppliers shall have prompt and appropriate reporting processes in place for reporting suspected Theft of Electricity to include:
- a) reporting processes between the DNO and suppliers; and
 - b) reporting processes to enable individuals to inform the DNO and/or suppliers of suspected interference. This could include a telephone number for reporting such information, which could be widely publicised.
- 4.6 The DNO will keep-up-to-date with the latest methods for detecting energy

theft so as to ensure that their existing procedures remain fit-for-purpose on a continuous improvement basis.

5. Requirements for Investigation of Theft of Electricity

In order to comply with this CoP, the DNO and suppliers must establish, implement and comply with industry procedures which set out detailed roles, responsibilities and best practice processes for each of the following requirements. The arrangements to achieve each of these requirements must be included in the industry procedures.

- 5.1 The DNO and suppliers must take reasonable steps to investigate and deal with the Theft of Electricity. The DNO and suppliers are required to work together and to cooperate with each other to achieve this.
- 5.2 Where an instance of suspected theft is identified the DNO and suppliers must take all reasonable steps to promptly investigate that suspected Theft of Electricity and must have procedures in place setting out the arrangements for such investigations.

Standards for Investigations into Theft of Electricity

- 5.3 The arrangements for carrying out an investigation must include details for how the licensees will confirm whether the suspected theft did actually occur.
- 5.4 When the DNO identifies suspected Theft of Electricity, or is notified of suspected Theft of Electricity by another party, the DNO must take reasonable endeavors to complete a site visit and inspect the appropriate electricity equipment and associated installation as soon as reasonably possible. Where required, the DNO must take steps to ensure the electricity supply arrangements to the premises are made safe. To meet reasonable endeavors, if the DNO cannot gain access to the relevant electricity equipment on the first site visit, the DNO must make at least one other site visit to the premises to attempt to gain access, except where a second or subsequent visit would represent a safety concern.
- 5.5 When visiting premises to investigate Theft of Electricity, the licensee shall provide appropriate identification to the customer and state on whose

behalf they are calling, and shall and act in accordance with their policy on site attendance.

- 5.6 In respect of Theft of Electricity investigations at domestic premises, when either reporting a case of suspected Theft of Electricity or any subsequent visit to a domestic premise, the licensee should pay particular attention to identify if the domestic customer or anyone living in the domestic property is a Vulnerable Customer. Where a Vulnerable Customer is identified by the DNO, the DNO shall report this to the registered supplier for the premises. Likewise, where a Vulnerable Customer is identified by the registered supplier, the registered supplier shall report this to the DNO in advance of the DNO's visit to the premises.
- 5.7 Where reasonably possible, care should be taken to record any communication between the licensee and the customer or others present at the premises, especially where a Vulnerable Customer has been identified.
- 5.8 Where possible, licensees shall gather and consider the relevant information required for the investigation prior to attending premises. Where it is a domestic premises, this shall include checking relevant available information to confirm whether the domestic customer is a Vulnerable Customer.
- 5.9 Where all relevant information is not available to licensees in advance of a visit, it shall be the responsibility of licensees to attempt to obtain such information during or subsequent to the visit.
- 5.10 Where access to the premises has not been gained after reasonable attempts have been made by the DNO to visit the premises and gain access, then a warrant should be sought by the licensees to gain entry to the premises.
- 5.11 Where the DNO visits the premises and confirms on immediate inspection that there is no evidence of any risk of Theft of Electricity, then no further steps are required. However where Theft of Electricity is evident, or where further inspection and/or testing are required to confirm, then the licensees must comply with the requirements set out in the following steps.

- 5.12 While any investigation into suspected theft is ongoing, the licensees must provide in plain language, clear, timely and accurate information and advice to the customer about:
- a) The contact details for the licensee that they should contact in relation to the investigation. Where different companies are responsible for different aspects of the investigation, then additional contact details can be provided that is clear to the customer which company should be contacted for which activity;
 - b) The reason for the investigation being undertaken and, when it becomes available details of the outcome of the site investigation and details of the outcome of the full investigation including confirmation on whether the suspected Theft of Electricity was confirmed, or not;
 - c) Confirmation of any physical work undertaken (e.g. meter exchange etc);
 - d) Details of any actions the customer may need to take (e.g. actions required to be able to use electricity through new meter etc);
 - e) What the customer can expect next and what the customer can do if they feel they have been unfairly treated; and
 - f) Contact details for further advice and sources of help. This will include the Consumer Council's 'Support and advice in Northern Ireland' information sheet and any other sources that the licensee may wish to provide.

Outcome of Investigation into Theft of Electricity

- 5.13 Where an investigation into suspected Theft of Electricity confirms that actual Theft of Electricity has occurred and can be proven, the licensees will be required to comply with the requirements set out in the following steps.
- 5.14 The licensees will take reasonable steps to prevent the Theft of Electricity once detected at the earliest opportunity.
- 5.15 In taking steps to prevent the Theft of Electricity once detected, the licensees shall ensure that:

- a) its Statutory Disconnection Powers¹¹ are only exercised where it reasonably believes that there is sufficient evidence to prove (on the balance of probabilities) that Theft of Electricity has been committed;
 - b) its Statutory Disconnection Powers are only exercised where it reasonably believes that there is sufficient evidence to prove (on the balance of probabilities) that the Theft of Electricity was committed by the current occupier (or owner) of the Premises; and
 - c) it does not mislead customers about the scope of its Statutory Disconnection Powers.
- 5.16 The licensees will identify the person who either intentionally or by culpable negligence is responsible for the Theft of Electricity (referred to as the customer).
- 5.17 All relevant information will be collated relating to the case, including any information obtained during a site visit and information on communication between the licensees and the customer. This may also include evidence relating to any suspected criminal damage associated with the Theft of Electricity. All information will be stored securely and destroyed after a period of time. No information will be retained longer than reasonably required.
- 5.18 The licensees must provide in plain language, clear, timely and accurate information and advice to the customer about:
- a) the contact details for the licensee responsible for dealing with the customer;
 - b) the basis of any assessment made by the licensees that Theft of Electricity occurred;
 - c) the details of any physical work undertaken (e.g. meter exchange, removal of meter);
 - d) the basis for the calculation of any costs associated with the Theft of Electricity made to the customer;
 - e) what steps the customer should take if they wish to dispute that Theft of Electricity occurred;

¹¹ Note that Statutory Powers may be invoked for other reasons such as safety issues.

- f) the steps a customer may take to reinstate supply if the licensee has exercised the Statutory Disconnection Power;
 - g) where legal action is being taken by any licensees, a statement explaining the legal basis for any action taken; and
 - h) contact details for further advice and sources of help. This will include the Consumer Council's 'Support and advice in Northern Ireland' information sheet and any other sources that the licensee may wish to provide
- 5.19 Where the customer is charged by a licensee for the costs associated with the Theft of Electricity, the licensee must ensure the following requirements are met:
- a) where the Theft of Electricity involved units of electricity been stolen, then the customer must be provided with details of the number of units stolen and the calculation of the cost associated with the stolen units;
 - b) any bills relating to Theft of Electricity must include, on or with the bill, an itemised statement to show separately, as a minimum, any costs relating to units of electricity and any administrative costs associated with the investigation;
 - c) where a customer reasonably requests further detail of the bill to be itemised this should be provided on a best endeavours basis;
- 5.20 Where payment is sought by a licensee for Theft of Electricity, reasonable efforts will be made to identify to whom charges should be levied. The licensee will take the circumstances of the Theft of Electricity, the customer's circumstances and the customer's ability to pay into account in deciding what payment arrangements by instalment would be applicable as per the minimum standards for Payment of Bills. Where prosecution is an option, the industry procedures must set out the detail on how the decision is made whether to proceed with prosecution. The industry procedures must also set out the roles and responsibilities and best practice steps that the licensees must take, including with PSNI.
- 5.21 The DNO will keep-up-to-date with the latest methods for investigating energy theft so as to ensure that their existing procedures remain fit-for-purpose on a continuous improvement basis.

6. Information exchange between licensees

- 6.1 The exchange of information between licensees relating to suspected and/or actual Theft of Electricity shall meet the reasonable requirements of the licensees involved so that they may meet the requirements of this code of practice, their licence and applicable law.
- 6.2 Electricity suppliers shall provide information reasonably requested by the DNO for the purpose of enabling it to fulfil its licence obligations to draw up plans for the safe operation, development or maintenance of any electrical system and as it may reasonably request for the purpose of preventing or detecting Theft of Electricity.

7. Resolving Disputes

- 7.1 Where a customer has a complaint related to the Theft of Electricity or suspected Theft of Electricity then they should initially follow the licensee's complaints handling procedure.
- 7.2 Customers must also be informed of their right to seek help from the Consumer Council in the event that the complainant does not feel that their complaint has been resolved.
- 7.3 Where a licensee has evidence of another licensee being non-compliant with this Code of Practice, then the Utility Regulator should be informed. The Utility Regulator shall consider the complaint including any breach of relevant licence conditions.

8. Compliance Reporting

- 8.1 Each licensee must keep (and ensure that any Representative keeps) a record of its compliance with its obligations under this CoP.
- 8.2 Each licensee must provide to the Utility Regulator, in such manner and at such times as the Utility Regulator may reasonably require, such information as the Utility Regulator may require or deem necessary or appropriate to enable it to monitor the licensee's compliance with this CoP.
- 8.3 Each licensee must also cooperate with the UR, as and when required, to

provide information that will assist the UR to monitor the severity of theft issues and progress in dealing with issues.

9. Definitions

Theft of Electricity: means the theft of electricity, or any electricity plant and/or criminal damage to electricity plant, including electricity meters, tampering with the electricity supply and/or electricity meters.

Vulnerable Customer: Means a domestic consumer who is of pensionable age, disabled or chronically sick

Appendix 2: Draft Code of Practice for the Theft of Gas

1. Objective of Code of Practice and obligation to achieve it

- 1.1 The objective of this Code of Practice (CoP) is to ensure that gas suppliers and distribution network operators work in cooperation with other licence holders where necessary to put industry procedures in place for the:
- (iv) Prevention of Theft of Gas¹²;
 - (v) Detection of Theft of Gas; and
 - (vi) Investigation of Theft of Gas.
- 1.2 Compliance with this CoP is a mandatory licence requirement on all gas suppliers and the gas distribution network operators (DNOs), and therefore any breach of the CoP will be considered a breach of licence. Further, this CoP requires the DNOs and suppliers to work together and cooperate to establish industry procedures and to implement and comply with the procedures. Therefore any failure by a licensee to establish and implement such procedures or to comply with such procedures on an ongoing basis would be considered a breach of this CoP and therefore a breach of licence.
- 1.3 The DNOs and suppliers shall research and implement best practice arrangements for the theft-related industry procedures. The DNOs and suppliers should continue to seek best practice arrangements on an ongoing basis and propose amendments to the industry procedures where appropriate.
- 1.4 Where appropriate, the DNOs and suppliers should take opportunities to share best practice ideas, arrangements and information between the electricity and gas industry.
- 1.5 This CoP covers domestic and business gas premises. Therefore the industry procedures must cover domestic and business gas premises in order to comply with this CoP.
- 1.6 The industry procedures must include distribution and supply activities and the industry procedures must set out the roles and responsibilities of each

¹² Theft of Electricity is defined in Section 9 of this CoP

party in a clear and transparent way.

- 1.7 The gas DNOs will share the drafting of the gas industry procedures, with one DNO adopting a principal co-ordinator role in developing the industry procedures; however the DNO with the principal co-ordinator role, other DNOs and all gas suppliers must take all reasonable steps to cooperate with other licence holders where necessary, to facilitate the development, implementation and compliance with the industry procedures.
- 1.8 In developing the industry procedures, the DNOs and suppliers may seek independent views from other parties such as the Health & Safety Executive for Northern Ireland (HSENI) or the Consumer Council (CCNI).
- 1.9 When developing the industry procedures, if situations arise where the DNOs and suppliers cannot reach agreement on certain issues for the industry procedures, then the DNOs and suppliers can jointly bring issues to the UR for adjudication. The UR will only consider issues that have been brought by the gas industry as a group, rather than by individual licence holders.
- 1.10 Any issues referred to the UR for adjudication must be accompanied by background information and evidence relating to the different opinions of the industry participants and the impact of the different options. Where an issue is referred to the UR for adjudication, the UR will make a decision which will be final and the industry must abide by that decision and implement the UR's decision within the industry procedures.
- 1.11 The DNOs and suppliers must make best endeavors to develop and implement the industry procedures within the timeframes set out by the Utility Regulator (UR). While developing the industry procedures, the DNOs and suppliers must provide joint progress reports to the UR every 2 months or as requested to explain the progress being made, highlighting any specific issues that may delay the development and implementation of industry procedures against the timeframes set out by the UR.
- 1.12 The DNOs and all active suppliers must be a party to, comply with, and maintain such industry procedures.
- 1.13 The industry procedures must include a process for ongoing reviews and changes. This will include pre-planned reviews at set timeframes and also an ability to review the procedures on an ad-hoc basis when it is considered necessary to react to changes in the industry and/or

environment. The review process must allow for changes to be proposed by any licensee that is party to the procedures or by the Utility Regulator (UR). Note that where the UR considers the industry procedures are not best practice arrangements or do not comply with this CoP it may direct the DNOs and suppliers to review and amend the procedures

- 1.14 The obligations in this Code of Practice and any industry procedures that are implemented will apply to each licensee and any representatives of the licensee. For clarity, where a licensed company contracts with a third party for the provision of any services, the licensed company must ensure that the third party complies with all components of this CoP and the industry procedures. Any breaches of this CoP or the industry procedures by a third party will be deemed to be a breach by the licensed company.
- 1.15 Nothing in this Code of Practice is intended to, or should be deemed to, constitute an exemption from existing regulatory requirements and/or obligations under other industry agreements.
- 1.16 Nothing in this Code of Practice is intended to, or should be deemed to, constitute an exemption from each licensee's legal obligation to comply with any and all relevant legislation, statute, statutory instrument, regulation or order (or any provision thereof) or any subordinate legislation. Licensees are responsible for ensuring that the industry procedures they develop are compliant with all relevant legislation.
- 1.17 Where the Utility Regulator considers it necessary to amend this CoP it will consult on any proposed changes. The consultation may be a restricted to the gas industry (i.e. any company holding a gas distribution or supply licence) and may include key stakeholders (e.g. consumer groups and PSNI) or may be a public consultation, depending on the nature of the changes.

2. Principles underpinning the Code of Practice

- 2.1 Each licensed company must comply with the following principles when dealing with all aspects of prevention, detection and investigation of Theft of Gas. When documenting and implementing industry procedures to deal with Theft of Gas, each licensed company must consider these principles and ensure that the industry procedures comply with these principles.

1. **Safety** – where any activities are undertaken in accordance with this Code of Practice, safety is a key consideration.

- 2. Costs** – Licensees must have processes in place that are clear for all industry participants in order to make reasonable endeavors to recover the costs associated with Theft of Gas. Any charges for costs associated with Theft of Gas must be fair, transparent and as far as possible must not exceed the actual costs incurred by the licensees. Supplier charges to customers in relation to amounts owed must adhere to the principles in the minimum standards in the CoP for payment of bills.
- 3. Prevention, Detection and Investigation of Theft of Gas through best practice** – Licensees must ensure that effective procedures are in place to proactively discourage Theft of Gas, identify Theft of Gas and deal with Theft of Gas. The procedures adopted should reflect industry best practice and must clearly define the roles and responsibilities of each licensee in achieving the procedures. Licensees must adopt a continuous improvement approach to the procedure for Theft of Gas.
- 4. Communication and reporting** – Licensees must have clear and transparent reporting processes in place between distribution network operators, suppliers and any relevant third parties. Licensees must also have a reporting mechanism in place to enable any third party to easily and, if necessary confidentially, report suspected Theft of Gas to the relevant Licensees.
- 5. Ensure that consumers are treated in an appropriate and consistent manner** – In all interactions with consumers in relation to Theft of Gas, each licensee must behave and act towards customers in a manner which is fair, not misleading, appropriate and professional.
- 6. Customer Vulnerability** – In all interactions with customers in relation to Theft of Gas, each licensee must take into account whether a domestic customer is a vulnerable customer. Licensees must give appropriate consideration to the needs of Vulnerable Customers.
- 7. Investigation by competent individuals** – All responsibilities relating to the Theft of Gas must be carried out by individuals possessing skills, qualifications, experience and authorisation appropriate to the task they are undertaking.
- 8. Cooperation.** Licensees should cooperate with the Police Service of Northern Ireland, the Health and Safety Executive for Northern Ireland and the Consumer Council for Northern Ireland regarding the

requirements of this code of practice and their respective regulatory and statutory obligations. Licensees should also have consideration of other related bodies in respect of their statutory role.

3. Requirements for Prevention of Theft of Gas

In order to comply with this CoP, the DNOs and suppliers must establish, implement and comply with industry procedures which set out detailed roles, responsibilities and best practice processes for each of the following requirements. The arrangements to achieve each of these requirements must be included in the industry procedures.

- 3.1 The DNOs and suppliers must take reasonable steps to deter and prevent the Theft of Gas. The DNOs and suppliers are required to work together and to cooperate with each other to achieve this.
- 3.2 The DNOs will proactively research gas meters and equipment to keep up to date with technical advancements in equipment aimed at deterring and preventing Theft of Gas and where possible the DNOs will seek to adopt such technologies in delivery of its metering operations on a continuous improvement basis.
- 3.3 As a means of deterring and preventing Theft of Gas, the DNOs and gas suppliers should proactively engage with and educate consumers, the general public and staff on the dangers and consequences of Theft of Gas and interference with gas equipment. They should also publicise the reporting mechanism for reports of any suspected theft, or damaged equipment to the relevant licensee.
- 3.4 Licensees shall ensure that any customer terms and condition (T&C) that it has with a customer include all relevant terms that would be required to discourage and ultimately deal with any issues relating to Theft of Gas. This may include supplier T&Cs and also DNO T&Cs where relevant. The licensee is responsible for ensuring any T&Cs are compliant with all relevant legislation in addition to regulatory requirements for T&Cs (e.g. the Consumer Rights Act 2015 includes requirements in relation to unfair terms in consumer contract which may mean that it can be easier for customers to challenge hidden charges).
- 3.5 The DNOs will keep-up-to-date with the latest methods for preventing energy theft so as to ensure that their existing procedures remain fit-for-

purpose on a continuous improvement basis.

4. Requirements for Detection of Theft of Gas

In order to comply with this CoP, the DNOs and suppliers must establish, implement and comply with industry procedures which set out detailed roles, responsibilities and best practice processes for each of the following requirements. The arrangements to achieve each of these requirements must be included in the industry procedures.

- 4.1 The DNOs and suppliers must take reasonable steps to detect the Theft of Gas. The DNOs and suppliers are required to work together and to cooperate with each other to achieve this.
- 4.2 When visiting properties the DNOs and suppliers must take all reasonable steps to inspect gas meters and equipment for evidence of any damage or interference with or tampering of the meter or associated installation or Theft of Gas.
- 4.3 The DNOs and suppliers shall ensure that all relevant staff are trained on how to identify potential energy theft or evidence of damage or interference with metering equipment and the associated installation.
- 4.4 Gas suppliers shall routinely analyse energy usage of their consumers to take all reasonable steps to attempt to identify any potential instances of Theft of Gas.
- 4.5 The DNOs and suppliers shall have prompt and appropriate reporting processes in place for reporting suspected Theft of Gas to include:
 - a) reporting processes between the DNOs and suppliers; and
 - b) reporting processes to enable individuals to inform the DNO and/or suppliers of suspected interference. This could include a telephone number for reporting such information, which could be widely publicised.
- 4.6 The DNOs will keep-up-to-date with the latest methods for detecting energy theft so as to ensure that their existing procedures remain fit-for-purpose on a continuous improvement basis.

5. Requirements for Investigation of Theft of Gas

In order to comply with this CoP, the DNOs and suppliers must establish, implement and comply with industry procedures which set out detailed roles, responsibilities and best practice processes for each of the following requirements. The arrangements to achieve each of these requirements must be included in the industry procedures.

- 5.1 The DNOs and suppliers must take reasonable steps to investigate and deal with the Theft of Gas. The DNOs and suppliers are required to work together and to cooperate with each other to achieve this.
- 5.2 Where an instance of suspected theft is identified the DNO and suppliers must take all reasonable steps to promptly investigate that suspected Theft of Gas and must have procedures in place setting out the arrangements for such investigations.

Standards for Investigations into Theft of Gas

- 5.3 The arrangements for carrying out an investigation must include details for how the licensees will confirm whether the suspected theft did actually occur.
- 5.4 When the DNO identifies suspected Theft of Gas, or is notified of suspected Theft of Gas by another party, the DNO must take reasonable endeavors to complete a site visit and inspect the appropriate gas equipment and associated installation as soon as reasonably possible. Where required, the DNO must take steps to ensure the gas supply arrangements to the premises are made safe. To meet reasonable endeavors, if the DNO cannot gain access to the relevant gas equipment on the first site visit, the DNO must make at least one other site visit to the premises to attempt to gain access, except where a second or subsequent visit would represent a safety concern.
- 5.5 When visiting premises to investigate Theft of Gas, the licensee shall provide appropriate identification to the consumer and state on whose behalf they are calling, and shall and act in accordance with their policy on site attendance.

- 5.6 In respect of Theft of Electricity investigations at domestic premises, when either reporting a case of suspected Theft of Electricity or any subsequent visit to a domestic premise, the licensee should pay particular attention to identify if the domestic consumer or anyone living in the domestic property is a Vulnerable Customer. Where a Vulnerable Customer is identified by the DNO, the DNO shall report this to the registered supplier for the premises. Likewise, where a Vulnerable Customer is identified by the registered supplier, the registered supplier shall report this to the DNO in advance of the DNOs visit to the premises.
- 5.7 Where reasonably possible, care should be taken to record any communication between the licensee and the consumer or others present at the premises, especially where a Vulnerable Customer has been identified.
- 5.8 Where possible, licensees shall gather and consider the relevant information required for the investigation prior to attending premises. Where it is a domestic premises, this shall include checking relevant available information to confirm whether the domestic consumer is a Vulnerable Customer.
- 5.9 Where all relevant information is not available to licensees in advance of a visit, it shall be the responsibility of licensees to attempt to obtain such information during or subsequent to the visit.
- 5.10 Where access to the premises has not been gained after reasonable attempts have been made by the DNO to visit the premises and gain access, then a warrant should be sought by the licensees to gain entry to the premises.
- 5.11 Where the DNO visits the premises and confirms on immediate inspection that there is no evidence of any risk of Theft of Gas, then no further steps are required. However where Theft of Gas is evident, or where further inspection and/or testing are required to confirm, then the licensees must comply with the requirements set out in the following steps.
- 5.12 While any investigation into suspected theft is ongoing, the licensees must provide in plain language, clear, timely and accurate information and advice to the consumer about:

- g) The contact details for the licensee that they should contact in relation to the investigation. Where different companies are responsible for different aspects of the investigation, then additional contact details can be provided that is clear to the consumer which company should be contacted for which activity;
- h) The reason for the investigation being undertaken and, when it becomes available details of the outcome of the site investigation and details of the outcome of the full investigation including confirmation on whether the suspected Theft of Gas was confirmed, or not;
- i) Confirmation of any physical work undertaken (e.g. meter exchange etc);
- j) Details of any actions the consumer may need to take (e.g. actions required to be able to use gas through new meter etc);
- k) What the consumer can expect next and what the consumer can do if they feel they have been unfairly treated; and
- l) Contact details for further advice and sources of help. This will include the Consumer Council's 'Support and advice in Northern Ireland' information sheet and any other sources that the licensee may wish to provide.

Outcome of Investigation into Theft of Gas

- 5.13 Where an investigation into suspected Theft of Gas confirms that actual Theft of Gas has occurred and can be proven, the licensees will be required to comply with the requirements set out in the following steps.
- 5.14 The licensees will take reasonable steps to prevent the Theft of Gas once detected at the earliest opportunity.
- 5.15 In taking steps to prevent the Theft of Gas once detected, the licensees shall ensure that:
- d) its Statutory Disconnection Powers¹³ are only exercised where it reasonably believes that there is sufficient evidence to prove (on the balance of probabilities) that Theft of Gas has been committed;

¹³ Note that Statutory Powers may be invoked for other reasons such as safety issues.

- e) its Statutory Disconnection Powers are only exercised where it reasonably believes that there is sufficient evidence to prove (on the balance of probabilities) that the Theft of Gas was committed by the current occupier (or owner) of the Premises; and
 - f) it does not mislead consumers about the scope of its Statutory Disconnection Powers.
- 5.16 The licensees will identify the person who either intentionally or by culpable negligence is responsible for the Theft of Gas (referred to as the consumer).
- 5.17 All relevant information will be collated relating to the case, including any information obtained during a site visit and information on communication between the licensees and the consumer. This may also include evidence relating to any suspected criminal damage associated with the Theft of Gas. All information will be stored securely and destroyed after a period of time. No information will be retained longer than reasonably required.
- 5.18 The licensees must provide in plain language, clear, timely and accurate information and advice to the consumer about:
- i) the contact details for the licensee responsible for dealing with the consumer;
 - j) the basis of any assessment made by the licensees that Theft of Gas occurred;
 - k) the details of any physical work undertaken (e.g. meter exchange, removal of meter);
 - l) the basis for the calculation of any costs associated with the Theft of Gas made to the consumer;
 - m) what steps the consumer should take if they wish to dispute that Theft of Gas occurred;
 - n) the steps a consumer may take to reinstate supply if the licensee has exercised the Statutory Disconnection Power;
 - o) where legal action is being taken by any licensees, a statement explaining the legal basis for any action taken; and
 - p) contact details for further advice and sources of help. This will

include the Consumer Council's 'Support and advice in Northern Ireland' information sheet and any other sources that the licensee may wish to provide

- 5.19 Where the consumer is charged by a licensee for the costs associated with the Theft of Gas, the licensee must ensure the following requirements are met:
- d) where the Theft of Gas involved units of gas been stolen, then the consumer must be provided with details of the number of units stolen and the calculation of the cost associated with the stolen units;
 - e) any bills relating to Theft of Gas must include, on or with the bill, an itemised statement to show separately, as a minimum, any costs relating to units of gas, and any administrative costs associated with the investigation;
 - f) where a consumer reasonably requests further detail of the bill to be itemised this should be provided on a best endeavours basis;
- 5.20 Where payment is sought by a licensee for Theft of Gas, reasonable efforts will be made to identify to whom charges should be levied. The licensee will take the circumstances of the Theft of Gas, the consumer's circumstances and the consumer's ability to pay into account in deciding whether payment arrangements by instalment would be applicable.
- 5.21 Where prosecution is an option, the industry procedures must set out the detail on how the decision is made whether to proceed with prosecution. The industry procedures must also set out the roles and responsibilities and best practice steps that the licensees must take, including with PSNI.
- 5.22 The DNOs will keep-up-to-date with the latest methods for investigating energy theft so as to ensure that their existing procedures remain fit-for-purpose on a continuous improvement basis.

6. Information exchange between licensees

- 6.1 The exchange of information between licensees relating to suspected and/or actual Theft of Gas shall meet the reasonable requirements of the licensees involved so that they may meet the requirements of this code of practice, their licence and applicable law.
- 6.2 Gas suppliers shall provide information reasonably requested by the DNOs

for the purpose of enabling it to fulfil its licence obligations to draw up plans for the safe operation, development or maintenance of any electrical system and as it may reasonably request for the purpose of preventing or detecting Theft of Gas.

7. Resolving Disputes

- 7.1 Where a consumer has a complaint related to the Theft of Gas or suspected Theft of Gas then they should initially follow the licensee's complaints handling procedure.
- 7.2 Consumers must also be informed of their right to seek help from the Consumer Council in the event that the complainant does not feel that their complaint has been resolved.
- 7.3 Where a licensee has evidence of another licensee being non-compliant with this Code of Practice, then the Utility Regulator should be informed. The Utility Regulator shall consider the complaint including any breach of relevant licence conditions.

8. Compliance Reporting

- 8.1 Each licensee must keep (and ensure that any Representative keeps) a record of its compliance with its obligations under this CoP.
- 8.2 Each licensee must provide to the Utility Regulator, in such manner and at such times as the Utility Regulator may reasonably require, such information as the Utility Regulator may require or deem necessary or appropriate to enable it to monitor the licensee's compliance with this CoP.
- 8.3 Each licensee must also cooperate with the UR, as and when required, to provide information that will assist the UR to monitor the severity of theft issues and progress in dealing with issues.

9. Definitions

Theft of Gas: means the theft of gas, or any gas plant and/or criminal damage to gas plant, including gas meters, tampering with the gas supply and/or gas meters..

Vulnerable Customer: Means a domestic consumer who is of pensionable age, disabled or chronically sick

Appendix 3: Glossary of Terms

CoP: Code of Practice

CCNI: Consumer Council for Northern Ireland

CPS: Consumer Protection Strategy

3Ds: Deterring, Detecting and Dealing

DNO: Distribution Network Operator

FWP: Forward Work Plan

FOIA: Freedom of Information Act

HSENI: Health and Safety Executive for Northern Ireland

IME3: European Union's third legislative package of energy measures

NI: Northern Ireland

PSNI: Police Service of Northern Ireland

REMM: Retail Energy Market Monitoring

RoI: Republic of Ireland

SLA: Service Level Agreement

T&Cs: Terms and Conditions

UR: Utility Regulator