

# Energy Theft Code of Practice

UR Consultation  
18 July 2016



# 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 consultation seeks industry and stakeholder views on 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 consults 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 deter, detect and deal with energy theft.

# Executive Summary

Energy theft 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.

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

This consultation paper introduces the concept of the 3Ds: Deter, Detect and Dealing with energy theft and sets out our proposals for Energy Theft Codes of Practice (Energy Theft CoP). The scope of the CoP covers the electricity and gas industries and includes requirements for distribution network companies and supply companies.

The overall objective of the Energy Theft CoP is to protect consumers from the safety issues and costs related to energy theft. When the Energy Theft CoP is finalised, suppliers and distribution network companies will need to work in cooperation with each other to develop and implement detailed industry procedures which will comply with the requirements set out in the Energy Theft CoP in order to deter, detect and deal with theft and to meet the overall objective.

This paper sets our initial views on the value of principle based Codes of Practice. For the purpose of drafting the Energy Theft CoP for this initial consultation, (included in Appendices 1 & 2) we have assumed that new licence modifications will be introduced to require compliance with the Energy Theft CoP on a mandatory basis. We have proposed that this arrangement applies to each industry sector i.e. a combined distribution and supply code for electricity and a combined distribution and supply code for gas.

The consultation seeks views on the design and proposed compliance arrangements for the Energy Theft Codes of Practice. Draft Energy Theft Codes of Practice are included as appendices for industry comment.

Following this initial consultation we plan to have further engagement with the electricity and gas industries and issue a second consultation on the proposals before deciding upon the final arrangements.

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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. Energy theft is not a new issue; it has always been around and will continue to evolve. In particular, electricity theft is a growing issue in Northern Ireland. Suppliers and NIE Networks have raised concerns about increasing levels of electricity theft on earlier types of key pad meters.
- 1.3. Theft is also an issue in gas however less so compared to electricity. The Utility Regulator works with the electricity and gas industries to seek to reduce energy theft and make sure the energy companies are dealing with theft effectively.
- 1.4. The safety issues and increased energy costs related to energy theft are of significant concern to the Utility Regulator. We have a duty to protect electricity and gas consumers and to promote the efficient use of gas and electricity<sup>1</sup>. In particular we have a duty to protect consumers from the dangers arising from the theft of gas and electricity.
- 1.5. We published our 2016/2017 Forward Work Plan<sup>2</sup> (FWP) in March 2016. The FWP includes the implementation of the five-year Consumer Protection Strategy (CPS). One of the priorities of the CPS in the first year of the strategy is to implement an Energy Theft Code of Practice (“Energy Theft CoP”). It is intended that this new Code will apply to Network companies and Suppliers and cover both the gas and electricity sectors.
- 1.6. The overall objective of the Energy Theft CoP is to protect consumers from the safety issues and costs related to energy theft. To do this we

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1 The principal objective and general duties of the Utility Regulator are set out in Articles 12 and 14 of the Energy (NI) Order 2003.

2 FWP 2016/2017: [http://www.uregni.gov.uk/uploads/publications/Forward\\_Work\\_Programme\\_2016-17.pdf](http://www.uregni.gov.uk/uploads/publications/Forward_Work_Programme_2016-17.pdf)

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 deter, detect and deal with energy theft.

## **Consultation Process**

- 1.7. 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 PSNI.
- 1.8. 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 have also met separately with industry parties to discuss their views on the relevant issues. The discussions at the workshop and separate meetings have fed into our thinking for this consultation.
- 1.9. Feedback at the workshop noted that industry wanted to comment on a draft Energy Theft CoP. This would support a more productive consultation as stakeholders felt it would be difficult to provide meaningful comment without an indication of the contents of the proposed code. This consultation paper therefore sets our initial proposals on the principles and high level design for the Energy Theft CoP. As requested at the workshop a draft Energy Theft CoP for gas and electricity is also included in the Appendices. For the purpose of drafting the Energy Theft CoP for this initial consultation, (included in Appendices 1 & 2) we have assumed that new licence modifications will be introduced to require compliance with the Energy Theft CoPs; however we welcome feedback on the proposal for mandatory compliance.
- 1.10. The purpose of this consultation is therefore to seek industry and stakeholder views on the principles and high level design for the Energy Theft CoP and also to seek views on the detail included in the draft

Energy Theft CoPs included in the Appendices. We have posed some specific questions in this consultation paper and we would appreciate responses with feedback on these questions. We also welcome general feedback on any aspect of the proposals in this paper or on the proposals in the draft Energy Theft CoP included in Appendices.

- 1.11. In relation to next steps for the project. We will consider all responses to this initial consultation and we then intend to have further engagement with stakeholders to discuss the proposed CoPs and the potential related licence modifications that the UR may put into place to make the Energy Theft CoP enforceable. For the purpose of drafting this initial consultation paper and the Energy Theft CoP (included in Appendices 1 & 2) we have proposed that compliance with the Energy Theft CoP would be mandatory for all distribution and supply licence holders in gas and electricity, and that new licence conditions would be introduced to require compliance.
- 1.12. Following the second round of stakeholder engagement, we will then publish a second consultation on the final proposals for the Energy Theft CoPs with the possible proposals for licence modifications.
- 1.13. We will then review and consider responses to the second consultation and will issue a decision paper which will include copies of the final Energy Theft CoPs. Dependent on consultation responses, we will also finalise our decisions in relation to compliance with the Energy Theft CoP and if applicable we will finalise any licence modifications that may be required. Any licence modifications will be made in accordance with legislative provisions for modifying gas and electricity licences.
- 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.
- 1.15. The industry procedures must comply with the requirements set out in the Energy Theft CoP. We note that some theft procedures already exist in 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.

1.16. The proposed key milestones for the Energy Theft CoP consultation process through to implementation of industry procedures is set out in the table below.

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 – September 2016
Publication of second consultation (including proposed licence modifications if applicable)	End November 2016
Publication of final decisions (including decision on licence modifications if applicable)	Q1 2017
Implementation of licence modifications (if applicable)	Q2 2017
Implementation of industry procedures	Q2 2017

### *Structure of this paper*

1.17. The paper has the following sections:

- **Section 2** sets out the current obligations relating to energy theft in Northern Ireland and also a summary of the arrangements in Great Britain
- **Section 3** describes the proposed requirements of the Energy Theft CoP and the proposals for compliance with the CoP.
- **Section 4** contains the proposed principles for the Energy Theft CoPs
- **Section 5** discusses the high level design of the theft code of practice and introduces the concept of the 3Ds: Deter, Detect and Dealing with energy theft.
- **Section 6** provides more detail on the next steps for this project
- **Appendix 1:** contains a draft Energy Theft CoP for electricity
- **Appendix 2:** contains a draft Energy Theft CoP for gas
- **Appendix 3:** sets out the relevant statutory and regulatory provisions
- **Appendix 4:** sets out a summary of the consultation questions

## ***Equality Considerations***

- 1.18. 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.
- 1.19. The UR must also have regard to the promotion of good relations between persons of different religious belief, political opinion or racial groups.
- 1.20. 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.
- 1.21. In order to assist with equality screening of the proposals contained within this 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 proposals. Furthermore, the UR welcomes any comments which respondents might have in relation to the overall equality impact of the proposals.

***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?***

***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.***

## *Responding to this consultation*

- 1.22. The deadline for responses to the issues raised in this paper is 5pm on 12<sup>th</sup> September 2016. 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](mailto:richard.hume@uregni.gov.uk)

- 1.23. The Utility Regulator's preference would be for responses to be submitted by e-mail.
- 1.24. We have posed some specific questions throughout this consultation paper and we would appreciate responses with feedback on these questions. Appendix 4 to this paper provides a summary of the consultation questions. We also welcome general feedback on any aspect of the proposals in this paper or on the proposals in the draft Energy Theft CoP included in appendices.
- 1.25. 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.
- 1.26. 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.

1.27. 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. Current obligations relating to Energy Theft

- 2.1. The relevant legislation, licence conditions and supporting industry agreements and procedures relating to energy theft in Northern Ireland is extensive. We have set out a summary below. Appendix 3 details the requirements more fully.
- 2.2. A summary on the arrangements in GB is also provided as there is similar industry structure and legislative arrangements between the two jurisdictions.

### *Arrangements in Northern Ireland*

- 2.3. This section sets a summary of the existing arrangements in place in Northern Ireland (NI).

#### **Offences**

- 2.4. Consumers that have stolen energy can be prosecuted under one or more areas of law in NI. For example it is an offence under the Theft Act 1969 Section 13, Abstracting Electricity for a person to dishonestly use without due authority or dishonestly cause waste or divert any electricity and also to damage electrical equipment under the Electricity (NI) Order.
- 2.5. Similarly for gas it is an offence to damage or allow to be damaged any gas plant or alter the index of a meter measuring the quantity under the Energy Act (NI) 2011. There is no specific reference to extracting gas illegally but the offence falls under the basic definition of theft in Section 2 of the Theft Act.
- 2.6. Other (non-exhaustive) legal references to theft are: Theft Act: Section 20 handling of stolen goods, Criminal Damage Order: Section 3 Destroying or Damaging property, Fraud Act 2006: Section 11 Obtaining services dishonestly. We have noted these references for information only as they are offences under criminal law and not something that we regulate.

#### **Legal power of energy companies: Electricity**

- 2.7. It is an offence to damage or intentionally damage an electricity meter under Schedule 6 of The Electricity Order. It is also an offence to interfere with meters under Schedule 7 of the Electricity Order.
- 2.8. Detection and prevention of these offences are reflected in Condition 17 b and 17c of electricity suppliers' licences. Condition 17 requires the licensee to take all reasonable steps to detect and prevent the theft of electricity, damage to any electrical plant, line or meters or interference with any electrical meter at premises which it supplies. The licencees must also inform the NIE Networks that their asset has been damaged or interfered with.
- 2.9. There is no licence condition on NIE Networks (NIEN) to detect and prevent metering theft. However Schedule 6 and 7 of the Electricity Order allows for the network operator to disconnect supply and enter premises and remove meters where an offence had occurred. These powers are reflected in NIEN's Revenue Protection Code of Practice. Suppliers have similar powers but NIEN's Revenue Protection Unit carry out these activities on behalf of the suppliers.

#### **Legal power of energy companies: Gas**

- 2.10. It is an offence under the Energy Act (NI) 2011 to damage any gas plant provided by a gas conveyor; alter the index of any meter used for measuring the quantity of gas or preventing a meter from registering the quantity of gas supplied or conveyed.
- 2.11. Network operators also have the power to enter premises for the purpose of inspecting the gas system or fittings, removing, inspecting or re-installing gas meters. Additionally under legislation, where authorised a network operator may disconnect any premises and remove the gas meter.
- 2.12. Similar to electricity there is no obligation within the gas distribution licences for the prevention, detection and investigation of theft. The only reference to theft in gas distribution licences is to keep suspected meters in safe keeping.
- 2.13. However within their network codes the gas distribution companies have

requirements on the 'registered user', i.e. the supplier, to take all reasonable steps to ensure that no person tampers with the meter and to report any evidence of meter tampering. There are also a number of agreements which set out the revenue protection procedures and guidance to suppliers on meter inspections.

- 2.14. Gas suppliers do not have a specific licence obligation to prevent, detect and investigate theft as contained in electricity supply licences. There are however licence obligations on gas suppliers to use reasonable endeavours to ensure that meters are inspected at intervals of not more than two years. As noted above the supplier is required to report any evidence of meter tampering to the relevant gas distribution company following inspection.

### **Arrangements in GB**

- 2.15. Ofgem recognised that the existing licence conditions and industry code were insufficient to ensure that energy suppliers or Distribution Network Operators (DNO) undertake sufficient activity to detect and deter energy theft and to protect honest paying customers.
- 2.16. Ofgem implemented measures to address theft firstly in the gas sector in 2012/13. The electricity sector followed in 2013/14 and where possible the measures consulted and decided upon mirrored those of the gas sector. This ensured consistency and facilitated a more efficient approach.
- 2.17. Two broad principles were adopted to establish the new arrangements:
- clear definition of roles and responsibilities and;
  - enhanced cooperation between the parties involved.
- 2.18. These principles led to policies to enable greater clarity about suppliers' and DNOs' obligations, encouraging better communication between parties, and addressing the commercial disincentive to increase theft investigation, detection and prevention. The following measures were adopted:

### **Standard Supply Licence Condition**

- 2.19. Ofgem introduced a new electricity and gas supply standard licence

condition to strengthen suppliers' obligations to detect the theft of gas/electricity, investigate suspected theft and to prevent theft of gas/electricity once detected. The change to gas supply licences took effect in Jan 2013 and electricity supply licences in July 2014.

- 2.20. The licence condition required that the licensee take all reasonable steps to meet the obligations relating to the detection, investigation and prevention of theft. In meeting the obligation the licensee should take into account whether domestic customers are of pensionable age, disabled or chronically sick or have difficulty in paying all or part of the charges relating to theft.
- 2.21. The licence also sets out standards for theft investigations. These require the licensee to identify whether the domestic customer falls into the categories noted above. If this is the case, the licensee must take into account the ability of the domestic consumer to pay installments and to consider the total value of all of the charges to be paid through prepayment meters. Further requirements relate to information provision and around disconnection.

### **GB Theft Risk Assessment Service (TRAS)**

- 2.22. Ofgem also gave a direction for suppliers to establish a dual fuel Theft Risk Assessment Service (TRAS) to facilitate industry actions to tackle theft. The aim of the TRAS is to assist suppliers' efforts to detect theft by using data to profile the risk of theft at premises.
- 2.23. Ofgem's direction required all gas and electricity supply licence holders to have the TRAS in place by February 2016. The suppliers' have tendered the TRAS out to an external body. The TRAS does not include DNOs, however DNOs may also benefit from the service and may join it in the future.

### **GB Incentive Scheme**

- 2.24. Ofgem set out proposals to add impetus to industry led reform with the aim of developing an incentive scheme to address the commercial disincentive suppliers face to increase theft detection. Such incentive measures are to be introduced by industry code modifications and approved by Ofgem.

- 2.25. An incentive based scheme was adopted for gas theft in October 2015. The approach sets a target for the number of thefts to be detected per year. This is administered through the Supply Point Administration Agreement.

### **GB Distribution Network Operators**

- 2.26. Ofgem set out their approach to new obligations for DNOs to tackle theft in circumstances where it is not the responsibility of suppliers. DNOs already carried out revenue protection activities for detecting theft in circumstances when it is not the responsibility of the supplier. However Ofgem considered that the existing regulatory framework for DNOs did not provide enough clarity over their obligations and what they can do when they detect theft.
- 2.27. The new framework for electricity theft was considered as part of the RIIO-ED1 price control. This introduced a new licence obligation for DNOs to detect theft when it is not the responsibility of a supplier and introduced a mechanism to allow DNOs to share the recovered value of electricity stolen with customers.
- 2.28. For gas DNOs Ofgem decided that the current gas theft arrangements should stay in place for the remainder of the current price control period (RIIO-GD1 until 2021). The current obligation requires that gas transporters must investigate cases of theft and, subject to the outcome of the investigation, use reasonable endeavours to recover the value of gas taken.
- 2.29. Ofgem proposed a change to encourage transporters to proactively investigate theft. Rather than the current requirement for gas DNOs to remain revenue-neutral, the new arrangements proposed that any overspend or underspend would be shared between licensees and their customers.
- 2.30. However the majority of industry disagreed with the proposal noting that that the money recovered as a result of investigations rarely outweighed the investigation costs. Ofgem decided to gather more information in order to develop a more appropriate incentive for the next price control.

## GB Additional measures and initiatives

- 2.31. Ofgem also proposed additional measures to enhance theft detection (for example a 24-hour tip-off line, a forum for sharing best practices and a stolen meters register). Industry was encouraged to take action to implement such effective measures as soon as possible.
- 2.32. A CoP for electricity theft was also developed under the Distribution Connection and Use of System Agreement (DCUSA). Similarly on the gas side a theft of gas CoP was developed under the Supply Point Administration Agreement (SPAA).
- 2.33. The DCUSA and SPAA are both contractual multi-party documents between distribution and supply companies. They set out the CoP principles and procedures to be taken by all parties. Industry parties are responsible for maintaining the CoP in order to reflect best practice. We have reviewed these documents and considered them in the draft Energy Theft CoPs.

## Points we take from the above

- 2.34 We note here briefly some key points we take from the above discussion for going forward in the development of the theft Code arrangements in NI. We welcome feedback on these as part of the general responses to this consultation.
  - 1) Energy theft matters appear to be amply covered in various pieces of legislation that already exist in NI;
  - 2) GB experience of ensuring clarity of roles/responsibilities need echoed in the NI arrangements
  - 3) Enhanced co-operation between suppliers and DNOs should be sought and delivered when and where possible.
  - 4) GB has clear definition of roles and responsibilities and these are documented and processed into the industry arrangements.
  - 5) GB's use of mandatory licence requirements to underpin the theft issues reflect the seriousness of the matters and the need for the Regulatory Authorities to be able to regulate the mandatory industry

practices where necessary

- 6) The GB licence requirements on DNOs and suppliers form the basis for detailed industry arrangements and procedures which deliver on the best-practice, cohesive and cooperative requirements around tackling energy theft
- 7) DNOs, as well as energy suppliers, have responsibilities to ensure adequate theft deterrence and detection, rather than just one or other party.

### **3. Requirements of, and Compliance with, the Energy Theft Code**

- 3.1. The overall objective of the Energy Theft CoPs is to protect domestic and business consumers from safety issues and costs related to energy theft.
- 3.2. The Utility Regulator (UR) is proposing to implement Energy Theft CoPs that will ensure transparency in relation to the roles and responsibilities for 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. A draft Code of Practice for Theft of Electricity is included in Appendix 1 and a draft Code of Practice for the Theft of Gas is included in Appendix 2 of this paper (collectively these are referred to as the Energy Theft CoP in this paper).
- 3.3. The UR is also considering 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. For the purpose of drafting the Energy Theft CoP for this initial consultation, (included in Appendices 1 & 2) we have assumed that new licence modifications will be introduced to require compliance with the Energy Theft CoP.

#### ***Industry Procedures resulting from the Energy Theft CoP***

- 3.4. 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.
- 3.5. 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.

- 3.6. 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.
- 3.7. 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.
- 3.8. In relation to implementation of the industry procedures in the gas industry we have considered two options:

OPTION 1: The relevant DNO and all active suppliers within each Distribution Network Area will need to be a party to, comply with, and maintain an individual set of industry procedures for each Distribution Network Area. For this option the procedures must be consistent across all distribution network areas, except where valid reasons exist that warrant differences in some aspects of the procedures.

OPTION 2: 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. For this option the procedures could be written to include some differences for each Distribution Network Area but only where the differences are warranted by valid reasons.

For the purpose of the draft CoP for theft of gas (included in Appendix 2) we have proposed to adopt option 1.

- 3.9. 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 Utility Regulator (UR).

- 3.10. We are proposing that the industry procedures in gas and electricity would be drafted, agreed and implemented by the relevant licence holders. We do not envisage that the UR would have a role in approving the industry procedures. However we would note that where the UR considers that the industry procedures are not best practice arrangements or do not comply with the Energy Theft CoPs, then it may direct the DNOs and suppliers to review and amend the procedures.

### ***Compliance with the Energy Theft CoP***

- 3.11. In relation to compliance, this consultation seeks views on whether 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.
- 3.12. 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 by a specific date.
- 3.13. Each licensee will be required to keep a record of its compliance with its obligations under the Energy Theft CoP and may be required to provide information to the UR to enable it to monitor the licensee's compliance.
- 3.14. Irrespective of whether compliance is mandatory or not the UR will monitor performance therefore we consider a number of potential options for compliance monitoring below. The options are not stand alone and could be implemented alongside each other.

RESULTS BASED REPORTING - One way to determine that the Energy Theft CoP is taking effect is to monitor the metrics related to theft. Under this approach supply and distribution companies would provide statistics on energy theft to the Utility Regulator and industry to gauge the effectiveness of their arrangements. For example, statistics on the number of prosecutions, warrants raised, numbers of properties visited, meters tested for theft etc.

REGULAR REPORTS - Suppliers and distributors could provide reporting submissions at regular intervals – monthly, quarterly or annual as deemed appropriate. This could also be incorporated into the companies Retail Energy Market Monitoring (REMM) submissions for gas and electricity suppliers and monitored through licence compliance for distribution companies.

COMPLIANCE PLAN - supply and distribution companies could be required to submit a compliance plan to the Utility Regulator setting out the practices, procedures, systems and rules of conduct that the licensee has adopted or intends to adopt, together with the timescales for adoption to ensure its compliance with the Energy Theft CoP. This could be a voluntary arrangement or more formally implemented through a licence requirement. The Compliance Plan could set out what the licensee intends to do.

RETROSPECTIVE COMPLIANCE REPORT - which outlines what the licensee has carried out to ensure compliance with its respective Energy Theft CoP and industry procedures. The Compliance Report could be provided at regular intervals and include the metrics that are noted under results based reporting. This could also form part of the REMM submission for gas suppliers and monitored through licence compliance for distribution companies. Again this could be voluntary or through a licence requirement.

### ***Future Reviews of the Energy Theft CoP***

- 3.15. 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.
- 3.16. 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.

- 3.17. Any such consultation may be restricted to the electricity and gas industries (i.e. any company holding an electricity or gas conveyance or supply licence) or may be a public consultation, depending on the nature of the changes.

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

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

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

## 4. Principles underpinning the Energy Theft Code

- 4.1. 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.
- 4.2. This section provides the proposed principles which we think should underpin the Energy Theft CoP. These principles are intended to cover both distribution and supply elements of energy theft. We also consider that the principles set out below are applicable to both electricity and gas sectors.
- 4.3. In developing the principles we have considered the discussions at the workshop and also the arrangements in place in GB. Due to the nature of their contents the GB theft CoPs are not publically available. GB industry were concerned that publication of the documents would allow people who are engaging in theft to monitor the way in which theft is being monitored and reported upon. As such we have not published the GB theft CoPs alongside this consultation paper and kept the principles and detail within the draft codes at a high level.

### *Proposed principles*

- 4.4. The proposed 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.
- 4.5. It is important that each gas and electricity company must be cognisant of the following principles when dealing with all aspects of deterring, detecting and dealing with 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 concern.
2. **Costs should be borne by those that steal** – Once theft is proven, the appropriate licensee(s), as defined by the eventual industry procedures, shall use reasonable endeavours to pursue the Perpetrator, and to recover from the Perpetrator (or other beneficiary) the Relevant Costs.
3. **Seek to deter, detect and deal with Theft of Energy through best practice** – Licensees must ensure that effective procedures are in place to proactively discourage Theft of Energy, identify Theft of Energy and deal with Theft of Energy. 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 Energy.
4. **Collect and report data associated with Theft of Energy** – Data relating to the Theft of Energy should be collected and collated in to usable reports so that it can be shared throughout the industry and to the Utility Regulator, as and when required. This should include trend data and management information relating to types of energy theft. It must also include data which allows clarity on the performance of the DNOs and suppliers in relation to deterring, detecting and dealing with theft.
5. **Communication and reporting** – Licensees must have clear and transparent reporting processes in place between distribution network operators, suppliers and any other 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 Energy to the relevant Licensees.
6. **Ensure that customers are treated in an appropriate and consistent manner** – In all interactions with customers in relation to Theft of Energy, each licensee must behave and act towards customers in a manner which is fair, transparent, not misleading, appropriate and professional.
7. **Customer Vulnerability** – In all interactions with customers in relation to Theft of Energy, each licensee must take into account whether domestic customers and/or the occupants of domestic premises are of pensionable age, disabled, or chronically sick and/or domestic

customers at domestic premises will have difficulty in paying all or part of the Relevant Costs resulting from Theft of Energy. Licensees must give appropriate consideration to the needs of these customers.

- 8. Investigation by competent individuals** – All responsibilities relating to the Theft of Energy must be carried out by individuals possessing skills, qualifications, experience and authorisation appropriate to the task they are undertaking.
- 9. Cooperation.** Licensees should cooperate with the Police Service of 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.

***Q6. What is your view on the proposed principles underpinning the Energy Theft Code of Practice?***

## 5. High level design of the Theft Code of Practice

- 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.
- 5.2. In April 2016 we held an industry workshop to initiate discussions on the Energy Theft CoPs and at this workshop we asked attendees to consider some aspects of the design to assist the UR to form proposals for this consultation.
- 5.3. In this section of the consultation paper we provide an overview of the discussions from the industry workshop and our proposals following the workshop. We then also set out further detail on the design on the Energy Theft CoPs. A draft Code of Practice for Theft of Electricity is included in Appendix 1 and a draft Code of Practice for the Theft of Gas is included in Appendix 2 of this paper (collectively these are referred to as the Energy Theft CoP in this paper).

### *Industry Workshop*

- 5.4. At the industry workshop we sought views on the following specific aspects for how the Energy Theft CoP should be designed:
  - Sector codes or one code across electricity and gas;
  - Combined codes (for DNOs and suppliers) or separate codes;
  - Principle-based codes or a detailed “rule book” approach; and
  - Mandatory codes or voluntary codes.
- 5.5. The workshop provided good feedback on each of these areas. We have summarised the feedback below and for each aspect we have explained our proposed approach for how the Energy Theft CoPs are designed.

### **Sector codes or one code across electricity and gas**

- 5.6. We proposed at the industry workshop that electricity and gas should have separate Sector Codes to reflect the differences between the two

industries. We received positive feedback at the workshop supporting this position and have concluded that this was the most appropriate arrangement.

- 5.7. We have included two draft Sector Codes for the purposes of this consultation but we note that there are very few differences between the draft sector codes for electricity and gas. This is unsurprising as they are fairly high-level and principles-based in nature. However we would expect that there could be more differences between the subsequent detailed industry procedures for electricity and gas.

### **Combined codes (for DNOs and suppliers) or separate codes**

- 5.8. At the industry workshop we also discussed the option to have a combined CoP for each sector or separate CoPs.
- 5.9. A Combined CoP would cover the arrangements for both network operators and suppliers. This would cover arrangements between the gas network companies (PNG, firmus distribution, SGN), all of the gas supply companies (firmus, SSE, Vayu, Electric Ireland, Flogas and Go Power) and their consumers.
- 5.10. Similarly on the electricity side there could be a Combined CoP for NIE Networks and electricity suppliers. Therefore under this arrangement there would be two codes – a gas CoP and an electricity CoP.
- 5.11. Separate Codes would cover the arrangements for suppliers and network operators separately. i.e. a separate CoP would be required for electricity network operators, gas network operators, gas suppliers and electricity suppliers. Under this arrangement there would be four codes – a gas suppliers CoP, a gas network operators CoP, an electricity suppliers CoP and an electricity network operator CoP.
- 5.12. Discussions at the workshop indicated some support for a Combined Code. Arguments for this arrangement were that the vast majority of theft issues in a given sector could be captured under a combined code and that it would support a uniform approach across the industry's DNOs and suppliers.

- 5.13. One attendee suggested a variation on this could be to have a Combined Code but with two separate chapters – one for suppliers and one for networks. This way there would be transparency for both supply companies and network operators which would set clear expectations.
- 5.14. Other delegates at the workshop were relaxed on the number of codes as this was less important than the codes being effective. Their main concern was that companies adhere to the code and that it is consistently applied across industry.
- 5.15. Some attendees noted that it was difficult to comment on this issue without knowing what level of detail would be included in the Energy Theft CoP.
- 5.16. The arrangements in Great Britain are based upon a Combined Code for each sector. The GB electricity theft CoP is contained in the Distribution and Connection Use Systems Agreement (DCUSA). The Gas Theft CoP is contained within the Supply Point Administration Agreement (SPAA).
- 5.17. Having listened to discussions at the pre-consultation workshop we consider that a Combined Energy Theft CoP that covers both distribution and supply is the most appropriate arrangement at this stage. We consider that a Combined CoP offers the opportunity to provide a consistent approach across the two areas and could clarify the roles and responsibilities of parties involved at each stage of effectively dealing with theft.

#### **Principle-based codes or a detailed “rule book” approach**

- 5.18. Another design issue that was discussed at the industry workshop is whether the Energy Theft CoP is “principle-based” or whether it adopts more of a detailed “rule book” approach. A principle based approach is considered more flexible and allows companies to apply principles consistently but adapt to their particular business and industry needs.
- 5.19. Whereas with a prescriptive rule book approach it may be more difficult to apply consistent rules to reflect different business arrangements. However a rule book arrangement may be easier to regulate as there

would be less room for different interpretations on the requirements of the Energy Theft CoP.

- 5.20. Most workshop participants favoured principle-based arrangements as this would offer the most flexibility and could dovetail with existing arrangements where these are considered to be working well. Some attendees noted there are many different scenarios that the CoP needs to be able to deal with and that it would not be possible to capture all of these circumstances with a detailed code. Principles offer flexibility which would be more future proof as the method of theft can change over time. Some delegates also thought that a rule based approach could take a long time to agree with all parties.
- 5.21. Some noted that a principles based approach may be better than a rule book approach, but that the CoP should be supplemented with indicative best practice. Others referenced that the trend in GB is towards a principle based approach to regulation but a mixture of principles and rules may be more appropriate to ensure a positive outcome for consumers and industry.
- 5.22. Consumer groups raised the point that if a principle based approach is adopted the Utility Regulator would need to have adequate arrangements in place to ensure that it was enforced. Also that the Energy Theft CoP should have a principle of protecting customers but that there should also be some mandatory 'must dos' within the supporting arrangements. Additionally the Energy Theft CoP should also consider the impact of energy theft on the whole household not just the arrangements to deal with the person responsible for energy theft.
- 5.23. Some of the proposals at the workshop therefore suggested a hybrid approach with a mixture of principles and detailed arrangements where appropriate. However by including more detailed arrangements we should be mindful that they do not reduce the flexibility of the code to respond to changes.
- 5.24. At this stage we are minded to adopt 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. Our reasoning is that gas and

electricity companies may need to react quickly to changes in the method or nature of theft over time and therefore a principle based approach would provide the flexibility for companies to change the industry procedures without a need for the UR to update the Energy Theft CoPs itself. This approach also allows for some flexibility regarding the existing processes in the gas and electricity industry. Where the companies consider the existing processes are robust and working well they may choose to build on these existing processes to develop the required industry procedures. However there may be specific elements within the theft CoPs where the UIR consider a specific issue is important enough to merit a specific inclusion in the Code itself. Otherwise we expect the subsequent accompanying detailed industry procedures to deal with specific matters.

### **Mandatory codes or voluntary codes**

- 5.25. A further design principle discussed at the workshop was whether we adopt a mandatory or voluntary approach to enforcing the codes. In other words, should the UR be able to regulate and enforce the new Code obligations; or should they be voluntary arrangements pursued by the industry players? Discussions at the workshop were mixed, but indicated a slight preference towards mandatory arrangements – especially amongst the consumer bodies.
- 5.26. Arguments for a mandatory arrangement were that it could be consistently applied across all DNOs and suppliers in gas and electricity. However a potential downside for a mandatory regime was that it would need to have supporting licence conditions which may reduce its flexibility to cope with changes if any were required.
- 5.27. Those in favour of a voluntary approach noted that there may be less cost involved and that these have worked well in the past. Also a voluntary CoP could give industry more flexibility as they thought that minor changes would not have to go through formal licence or code modification process.
- 5.28. However discussions highlighted the potential weaknesses of a voluntary regime, in that there was no “enforcement” incentive to adhere to the code

and that the only sanction would be the reputational impact to the companies for not operating in line with the code.

- 5.29. Some thought that a voluntary code could be trialed initially to see if it provided the desired outcome. Also some expected for there to be changes in the early days of a code so it might be better to have voluntary arrangements in the beginning before switching to a mandatory regime.
- 5.30. A hybrid approach was also suggested where some elements of the Energy Theft CoP would be compulsory and others could be on a 'best endeavours' basis.
- 5.31. We have considered the discussions at the workshop in developing our view. However we accept that it was difficult for stakeholders to provide proper feedback at the workshop on the question of 'mandatory versus voluntary' before seeing any proposals for the detail or contents of the Energy Theft CoP.
- 5.32. Based on the feedback received to date, at this stage we can see the value of adopting a mandatory regime. Our thinking is that the UR should have powers to force the industry to identify, deliver and comply with good practice arrangements to manage energy theft given the seriousness of the issues involved. A mandatory approach would need to include licence modifications to implement the arrangements and facilitate enforcement of the Energy Theft CoPs. For the purpose of the draft Energy Theft CoP in this initial consultation we have therefore proposed that compliance with the Energy Theft CoP would be mandatory, through the introduction of new licence modifications; however, as noted previously we welcome views on this.

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

## *Further proposals for design of the Energy Theft CoP*

- 5.33. In this section we set out further proposals on the design of the Energy Theft CoPs. These proposals have helped us to shape and populate the draft Codes in the Appendices.
- 5.34. There are a number of aspects to energy theft. These range from deterring the occurrence of theft in the first place; detecting energy theft and once detected, dealing with the consequences. The Energy Theft CoP will need to address all of these aspects of energy theft and the responsibilities: Deterring, Detecting and Dealing, (the “3Ds”). We discuss our thoughts on what we mean by each of the 3Ds further below.
- 5.35. At the workshop we also presented what we considered to be out of scope for the Energy Theft CoP. We do not plan to address water theft as it is not a pressing issue, and with no domestic billing any assessment of water theft would be limited to business premises.
- 5.36. We plan to consider arrangements to financially incentivise companies to pursue debt related to energy theft as part of the price control process rather than through the Energy Theft CoP. The GD17 price control draft determination<sup>3</sup> published in March 2016 considers gas theft under network shrinkage costs and consideration will also be given to losses on the electricity network within RP6<sup>4</sup>.
- 5.37. The proposed scope of work does not include incidents of non-payment i.e. circumstances where there is no meter tampering but the consumer simply refuses to pay for the energy units used (debt that has accrued due to nonpayment). We understand that the business processes are in place and working well for this type of incident. For clarity, the scope does include debt accrued due to the theft.
- 5.38. We now set out further detail on our proposals for the design of the Energy Theft under the 3Ds.

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<sup>3</sup> Price Control for Northern Ireland’s Gas Distribution NetworksGD17, Draft Determination, 16 March 2016: [http://www.uregni.gov.uk/uploads/publications/2016-03-16\\_GD17\\_Draft\\_Determination\\_-\\_Final.pdf](http://www.uregni.gov.uk/uploads/publications/2016-03-16_GD17_Draft_Determination_-_Final.pdf)

<sup>4</sup> Final Approach Document for NIEN Price Control (RP6): [http://www.uregni.gov.uk/uploads/publications/2015-12-22\\_RP6\\_Final\\_Approach\\_Document\\_-\\_final.pdf](http://www.uregni.gov.uk/uploads/publications/2015-12-22_RP6_Final_Approach_Document_-_final.pdf)

## Deterring

- 5.39. 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.
- 5.40. 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.
- 5.41. 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.
- 5.42. The Energy Theft CoP should also include a need for cooperation between suppliers and DNOs to deter energy theft.

***Q8. What is your view on the proposals deterring theft within the Energy Theft Code of Practice?***

## Detecting

- 5.43. 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.
- 5.44. In practice this could be through meter reading and meter inspection programmes, energy usage analysis and having appropriate reporting mechanisms in place.

- 5.45. The Energy Theft CoP should also include a need for cooperation between suppliers and DNOs to detect energy theft.

***Q9. What is your view on the proposals detecting theft within the Energy Theft Code of Practice?***

**Dealing**

- 5.46. The Energy Theft CoP will need to include 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.
- 5.47. 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.
- 5.48. 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.
- 5.49. The Energy Theft CoP will include some further information on how the licensees must deal with customers, including communications with the customer and provision of information to the customer.
- 5.50. 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 in Northern Ireland. The information sheet contains a list of organizations that could provide advice and or assistance to consumers in difficulty following

- energy theft and/or meter tampering (e.g. debt advice). We consider this can be a useful resource to some customers and therefore we have proposed to extend its use to the electricity industry as well as the gas industry.
- 5.51. 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.
  - 5.52. The Energy Theft CoP includes a need for the licensees to have arrangements in place to prevent the 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.
  - 5.53. 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.
  - 5.54. 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).
  - 5.55. Other relevant activities could relate to the exchange of information between all licensees and the collection and retention of evidence.
  - 5.56. The Energy Theft CoP should also include a need for co-operation between suppliers and DNOs when dealing with energy theft.

***Q10. What is your view on the proposals dealing with theft within the Energy Theft Code of Practice?***

### **Information Exchange**

- 5.57. 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**

- 5.58. The proposed Energy Theft CoP also includes a need in relation to dispute resolution. The proposal is that the licensee's existing complaints handling processes would be used and where a complaint relates to a licensee being non-compliant with the CoP it should be referred to the Utility Regulator.

***Q11. What is your view on the proposals for exchanging information and resolving disputes within the Energy Theft Code of Practice?***

### ***Additional measures for dealing with energy theft***

- 5.59. 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.
- 5.60. 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.

- 5.61. Through this project we are considering whether we should create alignment between gas and electricity on this particular arrangement. We are considering the options set out below:

OPTION 1: Create alignment between gas and electricity by adding allowing electricity suppliers the same right to object to a domestic customer switch where there is reasonable suspicion of meter tampering or fraud at the property;

OPTION 2: Create alignment between gas and electricity by removing the gas supplier's right to object to a domestic customer switch where there is reasonable suspicion of meter tampering or fraud at the property;

OPTION 3: Make no changes if there are valid reasons for the electricity and gas industries to retain different arrangements.

- 5.62. One of the key points that must be considered is how we can ensure that suppliers would not abuse any such objection reason for suspicion of meter tampering or fraud by objecting to switches where there are not reasonable grounds to do so.

- 5.63. As mentioned above, in gas this is managed through Distribution Network Code and the gas supplier's Supply Meter Point Agreement. If a decision was made to introduce the same or a similar objection reason into the electricity market then we propose that this would be managed through the electricity market procedure in relation to objections. We therefore have not included any direct provision for this within the draft Energy Theft CoPs attached as appendices to this paper.

***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?***

## ***Summary - Draft Energy Theft CoP***

- 5.64. A draft Code of Practice for Theft of Electricity is included in Appendix 1 and a draft Code of Practice for the Theft of Gas is included in Appendix 2 of this paper (collectively these are referred to as the Energy Theft CoP in this paper).
- 5.65. The Energy Theft CoP set out principles and some additional detail on the requirements that DNOs and suppliers will need to fulfill when establishing industry procedures for electricity and gas.
- 5.66. It is important to reiterate that the DNOs and suppliers will be responsible for ensuring the industry procedures comply with all aspects of the Energy Theft CoP, including the principles which underpin the CoP.
- 5.67. The DNOs and suppliers will also be responsible for ensuring the industry procedures entail best practice arrangements which should be reviewed and amended on a continuous improvement basis.
- 5.68. The industry procedures must also provide clarity on the roles and responsibilities of each licensee. This is important as feedback from the electricity industry has indicated that in some areas the current roles and responsibilities of various parties are not clear.
- 5.69. The Energy Theft CoP should not weaken any current arrangements where it is considered that these are working well as the DNOs and suppliers could opt to use their existing arrangements as a starting point for developing the required industry procedures.

***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.***

## 6. Next Steps

6.1. As set out in section 1 the Utility Regulator welcomes comments on the proposals in this paper by 12 September 2016.

6.2. Following receipt of comments on this paper we will summarise our conclusions on the Energy Theft Code of practice(s) with the intention of publishing a second consultation on a final “conclusions” paper at the end of November 2016. We expect that this will include revised electricity and gas theft codes of practice and will set out timelines for implementation and compliance arrangements. Any feedback received in response to the second consultation will be considered when producing the final decisions paper and final Energy Theft CoPs.

6.3. If we conclude that a mandatory arrangement is the most appropriate arrangement then licence conditions will be required. This will require further engagement with the network and supply companies, including consultation on the proposed licence amendments. We expect any licence modifications would be consulted on as part of the second consultation published in November 2016.

6.4. In Q1 2017 we intend to publish our final decisions on the Energy Theft CoP, including the final Codes of Practice for gas and electricity and licence modifications, if applicable. The electricity and gas companies will then be required to work together to establish and implement industry procedures by end Q2 2017. If a decision is made to implement the Energy Theft CoP on the basis of voluntary arrangements then the industry procedures could be completed earlier.

# 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 to:
- (i) Deter Theft of Electricity<sup>5</sup>;
  - (ii) Detect Theft of Electricity; and
  - (iii) Deal with Theft of Electricity.
- 1.2 Compliance with this CoP will be a mandatory licence requirement on all suppliers and the 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 by such date as the UR may direct. Therefore any failure by a licensee to establish and implement such procedures by the required date, 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.
- 1.6 The industry procedures must set out the roles and responsibilities of each party in a clear and transparent way.
- 1.7 Each licensee must take all reasonable steps to cooperate with other licence holders where necessary, to facilitate the development, implementation and compliance with the industry procedures.

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<sup>5</sup> Theft of Electricity is defined in Section 9 of this CoP

- 1.8 The distribution network operator and all active suppliers must be a party to, comply with, and maintain such industry procedures.
- 1.9 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
- 1.10 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 licenced company contracts with a third party for the provision of any services, the licenced company must ensure that the third party complies with all components of this CoP. Any breaches of this Code by a third party will be deemed to be a breach by the licenced company.
- 1.11 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.
- 1.12 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.
- 1.13 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) or may be a public consultation, depending on the nature of the changes.

## **2. Principles underpinning the Code of Practice**

- 2.1 Each licenced company must comply with the following principles when dealing with all aspects of deterring, detecting and dealing with Theft of Electricity. When documenting and implementing industry procedures to deal with Theft of Electricity, each licenced 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 concern.

- 2. Costs should be borne by those that steal** – Once theft is proven, the appropriate licensee(s), as defined by the eventual industry procedures, shall use reasonable endeavours to pursue the Perpetrator, and to recover from the Perpetrator (or other beneficiary) the Relevant Costs.
- 3. Seek to deter, detect and deal with Theft of Energy through best practice** – Licensees must ensure that effective procedures are in place to proactively discourage Theft of Energy, identify Theft of Energy and deal with Theft of Energy. 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 Energy.
- 4. Collect and report data associated with Theft of Energy** – Data relating to the Theft of Energy should be collected and collated in to usable reports so that it can be shared throughout the industry and to the Utility Regulator, as and when required. This should include trend data and management information relating to types of energy theft. It must also include data which allows clarity on the performance of the DNOs and suppliers in relation to deterring, detecting and dealing with theft.
- 5. Communication and reporting** – Licensees must have clear and transparent reporting processes in place between distribution network operators, suppliers and any other 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 Energy to the relevant Licensees.
- 6. Ensure that customers are treated in an appropriate and consistent manner** – In all interactions with customers in relation to Theft of Energy, each licensee must behave and act towards customers in a manner which is fair, transparent, not misleading, appropriate and professional.
- 7. Customer Vulnerability** – In all interactions with customers in relation to Theft of Energy, each licensee must take into account whether domestic customers and/or the occupants of domestic premises are of pensionable age, disabled, or chronically sick and/or domestic customers at domestic premises will have difficulty in paying all or part of the Relevant Costs resulting from Theft of Energy. Licensees must give appropriate consideration to the needs of these customers.
- 8. Investigation by competent individuals** – All responsibilities relating to the Theft of Energy must be carried out by individuals possessing skills, qualifications, experience and authorisation appropriate to the task they are undertaking.

- 9. Cooperation.** Licensees should cooperate with the Police Service of 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 Deterring 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 Distribution Network Operator (DNO) and suppliers must take reasonable steps to deter 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 advancements in equipment and where possible the DNO will seek to install tamper resistant meters.
- 3.3 As a means of deterring electricity theft, the DNO and electricity suppliers should proactively engage with and educate customers, the general public and staff on the dangers and consequences of electricity theft 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).

### **4. Requirements to Detecting 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 to carry out any maintenance work, inspections, meter reading or other site visits the DNO shall, where accessible, 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 analyse energy usage 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.

## **5. Requirements for Dealing with 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 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. This may include testing of electricity meters and/or other equipment.

- 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 of the appropriate electricity equipment and associated installation as soon as reasonably possible. Where required, the DNO must take steps to ensure 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.
- 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 When visiting domestic premises, 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 the DNO shall report this to the registered supplier for the premises.
- 5.7 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 account information to confirm whether the domestic customer is a Vulnerable Customer.
- 5.9 Where all relevant information is not available to a particular licensee in advance of a visit, it shall be the responsibility of that licensee 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 following requirements.
- 5.12 While any investigation into suspected theft is ongoing, the licensee 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) Details of 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 was confirmed as actual theft, 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 not occurred, the customer should be advised if further visits are required or the investigation is complete. Any faulty metering equipment identified should be exchanged or replaced as soon as practical.
- 5.14 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 following requirements.
- 5.15 The licensees will take reasonable steps to prevent the Theft of Electricity once detected at the earliest opportunity.
- 5.16 In taking steps to prevent the Theft of Electricity once detected, the licensees shall ensure that:
  - a) its Statutory Disconnection Powers<sup>6</sup> 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

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<sup>6</sup> Note that Statutory Powers may be invoked for other reasons such as safety issues.

- c) it does not mislead customers about the scope of its Statutory Disconnection Powers.
- 5.17 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).
- 5.18 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.
- 5.19 The licensee 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 Relevant Charges 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;
  - 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
- 5.20 Where the customer is charged by a licensee for the Relevant 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

- b) and the calculation of the cost associated with the stolen units;  
any bills relating to Theft of Electricity must be itemised to show separately, as a minimum, any costs relating to units of electricity, costs of repairing or replacing equipment, and any other 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;
- 5.21 Where payment is sought for Theft of Electricity, reasonable efforts will be made to identify to whom charges should be levied. Licensees will take the circumstances of the Theft of Electricity, the customer's circumstances and the customer's ability to pay into account in deciding whether payment arrangements by instalment would be applicable.
- 5.22 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 licensee must take, including with PSNI.

## **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 pipe-line 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 company'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

- 8.1 Compliance with this CoP is a licence requirement for the DNO and suppliers. Therefore a breach of this CoP will be considered a breach of licence.
- 8.2 This CoP requires the DNO and suppliers to cooperate to establish industry procedures and to implement and comply with the procedures by such date as the UR may direct. Therefore any failure by a licensee to establish and implement such procedures by the required date, or to comply with such procedures on an ongoing basis would be considered a breach of this CoP and therefore a breach of licence.
- 8.3 Each licensee must keep (and ensure that any Representative keeps) a record of its compliance with its obligations under this CoP.
- 8.4 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.

## 9. Definitions

**Perpetrator:** means the person who has committed the theft of energy

**Relevant Costs:** means the value of electricity supply stolen, the costs of repairing or replacing any equipment as a result of the Theft of Electricity (including any equipment installed to prevent Theft of electricity) and the costs of investigation associated with the Theft of Electricity.

**Theft of Energy:** means the Theft of Electricity

**Theft of Electricity:** means the theft of electricity equipment, or the theft of energy supplied through electricity equipment, or criminal damage to electricity equipment, or supply tampering, or stolen meters.

**Vulnerable Customer:** means where a domestic customer and/or the occupants of domestic premises are of pensionable age, disabled, or chronically sick and/or domestic customers at domestic premises.

# 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 to:
- (i) Deter Theft of Gas<sup>7</sup>;
  - (ii) Detect Theft of Gas; and
  - (iii) Deal with Theft of Gas.
- 1.2 Compliance with this CoP will be a mandatory licence requirement on all suppliers and DNOs, and therefore any breach of the CoP will be considered a breach of licence. Further, this CoP requires DNOs and suppliers to work together and cooperate to establish industry procedures and to implement and comply with the procedures by such date as the UR may direct. Therefore any failure by a licensee to establish and implement such procedures by the required date, 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 industry procedures put in place must be consistent across all gas distribution network areas except where valid reasons exist that warrant differences in some aspects of the procedures.
- 1.4 The DNOs and suppliers shall research and implement best practice arrangements for the theft-related industry procedures. DNOs and suppliers should continue to seek best practice arrangements on an ongoing basis and propose amendments to the industry procedures where appropriate.
- 1.5 Where appropriate, the DNOs and suppliers should take opportunities to share best practice ideas, arrangements and information between the gas and electricity industry.
- 1.6 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.
- 1.7 The industry procedures must set out the roles and responsibilities of each party in a clear and transparent way.

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<sup>7</sup> Theft of Gas is defined in Section 9 of this CoP

- 1.8 Each licensee must take all reasonable steps to cooperate with other licence holders where necessary, to facilitate the development, implementation and compliance with the industry procedures.
- 1.9 The relevant distribution network operator and all active suppliers within that Distribution Network Area must be a party to, comply with, and maintain such industry procedures.
- 1.10 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
- 1.11 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 licenced company contracts with a third party for the provision of any services, the licenced company must ensure that the third party complies with all components of this CoP. Any breaches of this Code by a third party will be deemed to be a breach by the licenced company.
- 1.12 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.
- 1.13 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.
- 1.14 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 conveyance licence or gas supply licence) or may be a public consultation, depending on the nature of the changes.

## **2. Principles underpinning the Code of Practice**

- 2.1 Each licenced company must comply with the following principles when dealing with all aspects of deterring, detecting and dealing with Theft of Gas. When documenting and implementing industry procedures to deal with Theft of Gas,

each licenced 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 concern.
2. **Costs should be borne by those that steal** – Once theft is proven, the appropriate licensee(s), as defined by the eventual industry procedures, shall use reasonable endeavours to pursue the Perpetrator, and to recover from the Perpetrator (or other beneficiary) the Relevant Costs.
3. **Seek to deter, detect and deal with Theft of Energy through best practice** – Licensees must ensure that effective procedures are in place to proactively discourage Theft of Energy, identify Theft of Energy and deal with Theft of Energy. 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 Energy.
4. **Collect and report data associated with Theft of Energy** – Data relating to the Theft of Energy should be collected and collated in to usable reports so that it can be shared throughout the industry and to the Utility Regulator, as and when required. This should include trend data and management information relating to types of energy theft. It must also include data which allows clarity on the performance of the DNOs and suppliers in relation to deterring, detecting and dealing with theft.
5. **Communication and reporting** – Licensees must have clear and transparent reporting processes in place between distribution network operators, suppliers and any other 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 Energy to the relevant Licensees.
6. **Ensure that customers are treated in an appropriate and consistent manner** – In all interactions with customers in relation to Theft of Energy, each licensee must behave and act towards customers in a manner which is fair, transparent, not misleading, appropriate and professional.
7. **Customer Vulnerability** – In all interactions with customers in relation to Theft of Energy, each licensee must take into account whether domestic customers and/or the occupants of domestic premises are of pensionable age, disabled, or chronically sick and/or domestic customers at domestic premises will have difficulty in paying all or part of the Relevant Costs resulting from Theft of Energy. Licensees must give appropriate consideration to the needs of these customers.

- 8. Investigation by competent individuals** – All responsibilities relating to the Theft of Energy must be carried out by individuals possessing skills, qualifications, experience and authorisation appropriate to the task they are undertaking.
- 9. Cooperation.** Licensees should cooperate with the Police Service of 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 Deterring Theft of Gas**

In order to comply with this CoP, 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 Distribution Network Operators (DNOs) and suppliers must take reasonable steps to deter the Theft of Gas. DNOs and suppliers are required to work together and to cooperate with each other to achieve this.
- 3.2 DNOs will proactively research gas meters and equipment to keep up to date with advancements in equipment and where possible DNOs will seek to install tamper resistant meters.
- 3.3 As a means of deterring gas theft, DNOs and gas suppliers should proactively engage with and educate customers, the general public and staff on the dangers and consequences of gas theft 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).

### **4. Requirements to Detecting Theft of Gas**

In order to comply with this CoP, 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 DNOs and suppliers must take reasonable steps to detect the Theft of Gas. DNOs and suppliers are required to work together and to cooperate with each other to achieve this.
- 4.2 When visiting properties to carry out any maintenance work, inspections, meter reading or other site visits the DNO shall, where accessible, 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 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 analyse energy usage to attempt to identify any potential instances of Theft of Gas.
- 4.5 DNOs and suppliers shall have prompt and appropriate reporting processes in place for reporting suspected Theft of Gas to include:
  - a) reporting processes between DNOs and suppliers; and
  - b) reporting processes to enable individuals to inform the relevant DNOs and/or suppliers of suspected interference. This could include a telephone number for reporting such information, which could be widely publicised.

## **5. Requirements for Dealing with Theft of Gas**

In order to comply with this CoP, 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 DNOs and suppliers must take reasonable steps to deal with the Theft of Gas. 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 DNOs 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. This may include testing of gas meters and/or other equipment.
- 5.4 When a 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 of the appropriate gas equipment and associated installation as soon as reasonably possible. Where required, the DNO must take steps to ensure 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.
- 5.5 When visiting premises to investigate Theft of Gas, 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 When visiting domestic premises, 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 the DNO shall report this to the registered supplier for the premises.
- 5.7 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 account information to confirm whether the domestic customer is a Vulnerable Customer.
- 5.9 Where all relevant information is not available to a particular licensee in advance of a visit, it shall be the responsibility of that licensee 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 following requirements.
- 5.12 While any investigation into suspected theft is ongoing, the licensee 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) Details of 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 was confirmed as actual theft, 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 gas 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 Gas***

- 5.13 Where an investigation into suspected Theft of Gas confirms that actual Theft of Gas has not occurred, the customer should be advised if further visits are required or the investigation is complete. Any faulty metering equipment identified should be exchanged or replaced as soon as practical.
- 5.14 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 following requirements.
- 5.15 The licensees will take reasonable steps to prevent the Theft of Gas once detected at the earliest opportunity.
- 5.16 In taking steps to prevent the Theft of Gas once detected, the licensees shall ensure that:
  - a) its Statutory Disconnection Powers<sup>8</sup> 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;

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<sup>8</sup> Note that Statutory Powers may be invoked for other reasons such as safety issues.

- 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 Gas 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.
- 5.17 The licensees will identify the person who either intentionally or by culpable negligence is responsible for the Theft of Gas (referred to as the customer).
- 5.18 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 Gas. All information will be stored securely and destroyed after a period of time. No information will be retained longer than reasonably required.
- 5.19 The licensee 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 Gas occurred;
  - c) the details of any physical work undertaken (e.g. meter exchange, removal of meter);
  - d) the basis for the calculation of any Relevant Charges associated with the Theft of Gas made to the customer;
  - e) what steps the customer should take if they wish to dispute that Theft of Gas occurred;
  - 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
- 5.20 Where the customer is charged by a licensee for the Relevant Costs associated

with the Theft of Gas, the licensee must ensure the following requirements are met:

- a) where the Theft of Gas involved units of gas 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 Gas must be itemised to show separately, as a minimum, any costs relating to units of gas, costs of repairing or replacing equipment, and any other 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;

5.21 Where payment is sought for Theft of Gas, reasonable efforts will be made to identify to whom charges should be levied. Licensees will take the circumstances of the Theft of Gas, the customer's circumstances and the customer's ability to pay into account in deciding whether payment arrangements by instalment would be applicable.

5.22 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 licensee must take, including with PSNI.

## **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 DNO for the purpose of enabling it to fulfill its licence obligations to draw up plans for the safe operation, development or maintenance of any pipe-line system and as it may reasonably request for the purpose of preventing or detecting Theft of Gas.

## **7. Resolving Disputes**

7.1 Where a customer has a complaint related to the Theft of Gas or suspected Theft of Gas then they should initially follow the company'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**

- 8.1 Compliance with this CoP is a licence requirement for all DNOs and suppliers. Therefore a breach of this CoP will be considered a breach of licence.
- 8.2 This CoP requires DNOs and suppliers to cooperate to establish industry procedures and to implement and comply with the procedures by such date as the UR may direct. Therefore any failure by a licensee to establish and implement such procedures by the required date, or to comply with such procedures on an ongoing basis would be considered a breach of this CoP and therefore a breach of licence.
- 8.3 Each licensee must keep (and ensure that any Representative keeps) a record of its compliance with its obligations under this CoP.
- 8.4 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.

## **9. Definitions**

**Perpetrator:** means the person who has committed the theft of energy

**Relevant Costs:** means the value of gas supply stolen, the costs of repairing or replacing any equipment as a result of the Theft of Gas (including any equipment installed to prevent Theft of gas) and the costs of investigation associated with the Theft of Gas.

**Theft of Energy:** means the Theft of Gas

**Theft of Gas:** means the theft of gas equipment, or the theft of energy supplied through gas equipment, or criminal damage to gas equipment, or supply tampering, or stolen meters.

**Vulnerable Customer:** means where a domestic customer and/or the occupants of domestic premises are of pensionable age, disabled, or chronically sick and/or domestic customers at domestic premises.

## Appendix 3: Relevant Statutory and Regulatory Provisions

### Relevant Legislation

<i>ELECTRICITY</i>		
<b>Legislation</b>	<b>Title</b>	<b>High level summary</b>
The Electricity (Northern Ireland) Order 1992 provides for the following:		
Schedule 6, paragraph 2	Electricity supply code	Supplier may cut off supply in the event of non-payment
Schedule 6, paragraph 4	Supplies of Electricity Illegally Taken	Distributor is entitled to recover the value of electricity taken illegally from conveyance
Schedule 6, paragraph 5	Restoration of connection without consent	Restoration of connection requires consent of supplier or distributor
Schedule 6, paragraph 6	Damage to Electrical Plant	It is an offence to damage any electric line, electric plant or meter. If an offence has been committed the supplier may disconnect the premises and may remove the meter
Schedule 6, paragraphs 7	Entry during continuance of supply	Supplier or distributor may enter premises to which it supplies electricity or maintains a connection.
Schedule 6, paragraph 8	Entry on discontinuance of Supply	Supplier or distributor may enter the premises to disconnect or remove meter.
Schedule 6, paragraph 10	Exercise of Powers of Entry	Power of entry requires consent of occupier or under the authority of a warrant.
Schedule 6, paragraph 11	Warrant to Authorise Entry	A warrant may be granted by Justice of the Peace
Schedule 7, paragraph 11	Meters to be kept in proper order	Customers and suppliers are required to keep meters in proper order for correctly registering the quantity of electricity supplied.
Schedule 7, paragraph 12	Interference with meters	It is an offence to alter the register of a meter or prevent a meter from recording the quantity of electricity supply

**Appendix 3:**  
**Relevant statutory and regulatory provisions**

Schedule 7, paragraph 13	Prepayment meters	A customer
Theft Act (NI) 1969: Section 13	Abstraction of electricity	Sets out the term for imprisonment for illegal abstraction of electricity.
<b>GAS</b>		
<b>Legislation</b>	<b>Title</b>	<b>High level summary</b>
The Energy Act (Northern Ireland) 2011 provides the following:		
Section 10	Damage to gas plant	It is an offence to damage gas plant, alter the index of a meter or prevent a meter from registering the quantity of gas conveyed or supplier. Where an offence has been committed, the gas conveyor may disconnect the premises and remove the meter.
Section 14	Powers of entry	A gas conveyor may enter the premises to which it conveys gas to inspect gas fittings or meter, or to remove and re-install a meter.  Power of entry to be exercised under conditions relating to circumstances.
The Gas Order (Northern Ireland) 1996: Schedule 5	Power of entry	The department may make provisions for powers of entry for authorised party.  Power of entry requires consent of occupier or under the authority of a warrant unless in an emergency situation.
Theft Act (Northern Ireland) 1969: Section 1	Basic definition of theft	A person is guilty of theft if he dishonestly appropriates property belonging to another.
<b>ELECTRICITY and GAS</b>		
<b>Legislation</b>	<b>Title</b>	<b>Summary of legislation</b>
Theft Act (Northern Ireland) 1969: Section 21	Handling of stolen goods	Sets out definition of stolen goods and the term for imprisonment.

**Appendix 3:**  
**Relevant statutory and regulatory provisions**

Criminal Law Act (Northern Ireland) 1967: Section 4	Assisting offenders	Sets out the penalties for assisting offenders.
Criminal Law Act (Northern Ireland) 1967: Section 5	Concealing offences	Sets out the penalties for concealing offences.
Criminal Damage (Northern Ireland) Order 1977: Section 3	Destroying or Damaging property	It is an offence to destroy or damage property belonging to another.
The Criminal Attempts and Conspiracy (Northern Ireland) Order 1983: Section 9	The offence of conspiracy	Sets out what constitutes the offence of conspiracy.
Fraud Act 2006: Section 11	Obtaining services dishonestly	It is an offence to obtain services by a dishonest act.

**Relevant Licence Conditions and related industry documents**

<b>ELECTRICITY</b>		
<b>Requirement</b>	<b>Title</b>	<b>Summary</b>
Retail Market Procedures	Market Registration Code	The Market Registration Codes sets out the business processes between suppliers and NIE Networks for handling issues relating to reporting and investigations of theft of electricity.
Electricity Suppliers Licence	Condition 17: Procedures for the Detection and Prevention of Theft, Damage and Meter Interference	Requires that the supplier takes all reasonable steps to detect and prevent: the theft of electricity at premises which are supplied by it; damage to electrical equipment; and interference with any electricity meter. The supplier must also inform NIE Networks if such damage has occurred.
Supplier/customer agreement	Domestic Customer Terms & Conditions	The Supplier terms and conditions for domestic customers include terms in relation to tampering.
Distribution/supplier agreement	Distribution Connected System Agreement	The Distribution Connected System Agreement set out the arrangements between NIE Networks and electricity suppliers for use of the distribution network including revenue protection arrangements.

<b>GAS</b>		
<b>Requirement</b>	<b>Title</b>	<b>Summary</b>
Distribution Licence Condition	Safe Custody of Meters	Licensee to provide the safe custody of meters that have been returned due to suspected tampering or any meters relating to alleged theft investigations.
Distribution Network Code	Metering Section	Supplier must take reasonable steps to ensure no person tampers with meter and to report any meter tampering or theft of gas
Supplier/distribution agreements	Numerous documents between	Various agreements in place including: guidance to suppliers on meter inspections; revenue protection procedures; policies on stolen meters

**Appendix 3:**  
**Relevant statutory and regulatory provisions**

	gas suppliers and distribution companies	
Distribution/customer agreements	Gas Connection Agreements	New customers must sign a Gas Connection Agreements which includes terms in relation to tampering.
Gas Supplier Licence	Obligation to Inspect	The Licensee shall use all reasonable endeavours to ensure that meter is inspected at intervals of not more than 2 years.
Gas Supplier Licence	Inspection Requirements	Requires that an inspection is carried out by a person possessing appropriate expertise and shall include inspecting the meter for evidence of any damage or tampering of the meter.
Gas Supplier Licence	Provision of Information	Requires that the supplier shall provide information reasonably requested by any relevant licence holder as it may reasonably request for the purpose of preventing or detecting theft of gas.
Gas Suppliers Supply Meter Point Agreement	Schedule 6 - SMP Objection Code for Domestic Consumers	Suppliers are allowed to object to a domestic switch if there is reasonable suspicion of tampering.
Supplier/customer agreement	Domestic Customer terms and conditions	The Supplier terms and conditions for domestic customers include terms in relation to tampering.

## **Appendix 4: List of consultation questions**

We have posed some specific questions, listed below, in this consultation paper and we would appreciate responses with feedback on these questions.

We also welcome general feedback on any aspect of the proposals in this paper or on the proposals in the draft Energy Theft CoP included in Appendices.

- 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?
- 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.
- Q3. What is your view on the proposed arrangements for the industry procedures resulting from the Energy Theft CoP?
- Q4: What is your view on the proposed arrangements compliance with the Energy Theft CoP?
- Q5: What is your view on the proposed arrangements for future reviews of the Energy Theft CoP?
- Q6. What is your view on the proposed principles underpinning the Energy Theft Code of Practice?
- Q7. What is your view on the proposal for mandatory compliance with the Energy Theft CoP through the introduction of new licence modifications?
- Q8. What is your view on the proposals deterring theft within the Energy Theft Code of Practice?
- Q9. What is your view on the proposals detecting theft within the Energy Theft Code of Practice?

- Q10. What is your view on the proposals dealing with theft within the Energy Theft Code of Practice?
- Q11. What is your view on the proposals for exchanging information and resolving disputes within the Energy Theft Code of Practice?
- 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?
- 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.