



GAS ILLEGALLY TAKEN – REASONABLE ENDEAVOURS

1. Introduction

This document has been prepared by Wales & West Utilities Limited as required under Condition 7 (Provision of Information Relating to Gas Illegally Taken) of the Standard Conditions of Wales & West Utilities Limited Gas Transporters' Licence.

The document defines the circumstances in which a supplier shall be presumed for the purposes of Standard Conditions 7(5) and 7(7) to have used its reasonable endeavours to recover charges in cases of gas taken illegally.

If reasonable endeavours have been used, but the supplier has failed and cannot reasonably be expected to recover some or all of the supplier's charges, as referred to in Standard Condition 7(5)(a)(ii), to which it is entitled under a contract or deemed contract or otherwise, then the Wales & West Utilities Limited will, in addition to treating the amount of gas to which the supplier's charges relate as not having been taken out of its pipeline system for the relevant shipper for the purposes of calculating and claiming charges to be paid to it by that shipper in pursuance of arrangements between them, reduce the shipper's charges by an amount equal to an allowance to the relevant shipper in respect of:

- i. the reasonable cost to the supplier concerned of complying with a request or requirement to investigate gas illegally taken and using its reasonable endeavours to recover its charges; and
- ii. an amount calculated in accordance with principles set out in a scheme designated by the Authority for the purposes of standard licence condition 7.

2. Reasonable Endeavours Description

Without prejudice to Standard Condition 7(10), the supplier concerned shall be presumed to have used its reasonable endeavours if, following an investigation into a situation of gas taken illegally:

- (i) in the case of a Gas Act offence, action (1) listed in paragraph 3 has been completed,
- (ii) in all cases, action (2) listed in paragraph 3 has been completed and,
- (iii) where the whereabouts of the gas user are known, actions (3) - (7) listed in paragraph 3, (so far as applicable), have been completed.

3. Reasonable Endeavours Actions

- (1) In the case of an offence under paragraph 10(1) or 11(1) of Schedule 2B to the Gas Act 1986 (as amended), a report of the investigation, including an estimate of the amount of gas taken illegally and supported by any appropriate evidence and statements from witnesses, has been presented to the police and a crime number requested.

- (2) In all cases, efforts have been made to determine the identity and whereabouts of the person, or a representative in the case of an organisation, with whom the supplier has a contract or deemed contract.

These efforts are to use where relevant, and not to the exclusion of any other source which the supplier might consider appropriate, information which the supplier has established:

- (i) from any contract in its possession, and / or
- (ii) following enquiries which should be made by the supplier to such local authorities, landlords or owners/occupiers of any neighbouring properties as may reasonably be able to assist.

Additional actions to be taken when the whereabouts of the person with whom the supplier has a contract or deemed contract is known:

- (3) The person with whom the supplier has a contract or deemed contract has been furnished with a demand for payment for the supplier's charges (that is the charges to which it is entitled, in respect of the supply of gas taken as mentioned in Standard Condition 7(4), including any sum to which it is entitled in connection with the taking of the gas or by way of costs incurred in investigating or pursuing the matter). This requirement is irrespective of any action which the supplier might have taken either at the time of discovery of the illegal taking, or subsequently, to cut off the supply or to disconnect the premises of the person offending with whom the supplier has a contract or deemed contract.

- (4) Arrangements have been made available to the person identified in action (3) above to make payment to the supplier in accordance with one or more of the methods identified in Conditions 43, 35(2)(b), 35(2)(d), 35(2)(e) and 35(2)(f) of the Standard Conditions of Gas Suppliers' Licences. Such arrangements shall be designed so that the agreed sum will be recovered within a maximum period of 24 months from agreement of the arrangements. A sum less than the whole of the supplier's charges may be agreed where, having due regard to the means available to the person (and the importance of securing that the supplier's charges are paid), this would not provide an opportunity for the person to avoid any part of the payment which could reasonably be made.

Where appropriate, a prepayment meter should be installed to assist recovery of the charges.

- (5) If no arrangements can be agreed under action (4) above or if such arrangements, having been agreed, have failed to result in completion of the agreed payments to the supplier, the supply to the person identified in action (3) above has been cut off, or the premises of the person have been disconnected, and so remain for a period of not less than 28 days, in either case in so far as the supplier has the power to do so and may do so without causing it to be in breach of its licence or statutory obligations.
- (6) Where an individual has become bankrupt or has had an interim order made in respect of his affairs or the company has gone into liquidation, administrative receivership or entered into a voluntary agreement, a claim has been filed with the official receiver, interim receiver, liquidator, administrative receiver as appropriate or, in the case of voluntary arrangements, with the nominee.

Additional actions to be taken in certain other cases of gas illegally taken:

- (7) In cases where the person in 3 above, taking into account any gas taken illegally, is not a 'domestic customer' as defined in SC1(1) of the Gas Suppliers Licence, civil proceedings have been issued and served to secure payment for any amount due unless it can be demonstrated that there is good reason for not doing so.



GAS ILLEGALLY TAKEN – ACTION LIST TO ACCOMPANY REASONABLE ENDEAVOURS

**These Notes are for guidance only and do not form part of
Reasonable Endeavours**

The following refer to the relevant actions set out in paragraph 3 of the “Wales & West Utilities Limited - Gas Taken Illegally - Reasonable Endeavours” document.

Action (1)

In the case of an offence under paragraph 10(1) or 11(1) of Schedule 2B to the Gas Act 1986 as amended by the Gas Act 1995 and incorporating stand-alone provisions of the Utilities Act 2000 (“the Act”), it is necessary to provide a report to the police and this must give full details of all the statutory offences (with reference to the Act, Theft Act and any other appropriate Act) which are believed to have taken place. A crime number should be obtained.

In cases where the police have refused to provide a crime number, evidence should be provided to Wales & West Utilities Limited to support this.

Action (2)

This is especially relevant in situations of gas taken illegally where the person with whom the supplier has a contract or deemed contract has gone away and not left a forwarding address. An attempt to locate the relevant person must be made from information which the supplier has or which is reasonably available to them.

It should be noted that where a person has gone away without paying outstanding charges, but a contract other than a deemed contract exists and no offence under paragraph 10(1) or 11(1) of Schedule 2B to the Act has taken place, this does not constitute gas taken illegally as defined in Standard Condition 7 of Wales & West Utilities Limited Gas Transporters’ Licence.

Action (3)

‘Costs incurred’ includes those associated with the replacement of damaged meters and gas fittings, isolation and restoration of the supply, investigation and debt recovery insofar as the supplier is entitled (whether by contract, deemed contract or otherwise) to recover the amounts.

The demand should clearly show how the charges have been calculated.

Action (4)

Terms of payment should take into account the person's ability to pay and must not provide an opportunity for the person to avoid any part of the payment which could reasonably be made.

Action (5)

When an offence under paragraph 10(1) or 11(1) of Schedule 2B to the Act has been committed, the supply can be discontinued or isolated in accordance with paragraph 10(2) or 11(2) of the Schedule respectively.

Action (6)

A claim for refund of charges and payment of the allowance cannot be made until the supplier has a reasonable expectation of the amount of the distribution that is to be made.

Action (7)

Civil action is required in those cases where the person in 3(3) of the Reasonable Endeavours Document (RED), taking into account any gas taken illegally, is not a 'domestic customer' as defined in SC1(1) of the Gas Suppliers Licence, unless it can be demonstrated that there are good reasons not to do so. Such reason would include situations where the cost of the action is likely to outweigh considerably any amount recovered. If a civil action is not taken, then the information used to arrive at this decision must be retained and produced on request.

On the same basis, civil action may also be taken in cases against a 'domestic customer' as defined in SC1(1) of the Gas Suppliers Licence where this is thought appropriate.

Claim for Refund of Charges and Payment of the Allowance

To qualify for a refund of charges and payment of the allowance, a shipper must confirm to Wales & West Utilities Limited that the supplier has completed all the appropriate actions of Reasonable Endeavours and has failed and cannot reasonably be expected to recover some or all of the charges to which it is entitled under a contract or deemed contract or otherwise.

Contractual records of end-customers and records of all actions taken to investigate illegal takings of gas and the pursuit of charges, including copies of reports presented to the police, must be kept by the supplier for a period of 3 years from the date of the claim having been made to Wales & West Utilities Limited for the purposes of any audit which Ofgem and / or Wales & West Utilities Limited may at their discretion wish to make.