

Smart Metering Implementation Programme – Roll-Out Team
Department of Energy & Climate Change
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Smart Metering Implementation Programme – Consultation on draft Licence Conditions for a Code of Practice for the installation of gas and electricity smart meters

EDF Energy would like to thank DECC for the opportunity to respond to the questions raised in your consultation on draft Licence Conditions for a Code of Practice and we hope you will find our input of use.

We support the development and implementation of a Code of Practice designed to create a positive consumer response to smart meters which is critical to delivering the objectives of the Smart Metering Programme. However, we are currently unable to accept the regulatory framework that supports the Code as proposed within this consultation. The current draft licence condition places obligations on suppliers over and above those required for the development and implementation of a robust approved Code of Practice that all suppliers are required to comply with. This would appear to go beyond the Government's overall approach as set out in the Response to Prospectus Consultation.

We believe a code of practice is the ideal vehicle to establish the rules to both protect customers and for all suppliers to follow at the installation of the smart metering system. We have worked with industry and stakeholders to develop collaboratively the Smart Metering Installation Code of Practice (SMICoP) and to put SMICoP into voluntary operation in advance of any licence conditions taking effect.

We believe that the Code sitting within the licence is the wrong vehicle for regulatory enforcement. A better approach, which has been proven industry practice, would be for the licence to create an obligation to develop an approved Code, set out high level objectives for the Code and for suppliers to be required to comply with such Code. The licence conditions currently set out Objectives which suppliers have a duty to achieve. However, an obligation to take "all reasonable steps to achieve" these Objectives is not discharged by fully complying with an approved Code of Practice. In addition, the drafting of the Objectives itself includes a number of subjective terms such as "reasonable expectations" and "unwelcome sales". Together, this would make ensuring compliance with the licence condition extremely difficult, thereby introducing significant regulatory risk.

We would make the following points about the draft as it stands-

- EDF Energy believes that it is suppliers who are best placed to fulfil the requirement for developing a code, given our day to day experience of installing meters and managing and maintaining relationships with our customers.
- The relationship between 'Objectives' as drafted in the licence conditions and the code fails to provide comfort that following the Code of Practice constitutes taking 'all reasonable steps' and is sufficient to discharge the licence condition.
- Some of the requirements will not work. We simply do not believe that prior written consent is workable, cost effective, or the best means of generating uptake by our customers.
- EDF Energy strongly believes that the measures detailed in the sales and marketing sections of the current draft of the code offer appropriate and robust protection for customers from any "unwelcome" sales but further clarification is required around permissible marketing activity with and without customer consent.

We believe that there is much about the rollout still to be understood, and as a result there is much to learn about the installation experience for our customers. There will no doubt be numerous improvements to the code of practice in the future as our, and other supplier's, experiences unfold.

EDF Energy believes that the approach must be in keeping with the 2010 Ofgem Code Governance Review which states that licence drafting for codes of practice should simply set out a requirement to "act consistently with the Code of Practice".

Please find our responses to the 10 questions raised in the attachment to this letter.

We look forward to continuing to work with the Programme and providing further input into the many present and future discussions.

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Attachment

Smart Metering Implementation Programme – Consultation on draft Licence Conditions for a Code of Practice for the installation of gas and electricity smart meters

EDF Energy's response to your questions

Q1 Are the overall objectives set out in the draft licence conditions appropriate?

EDF Energy believes that the Code of Practice must be developed to reflect the objectives and outcomes detailed in the Prospectus Response and this should be underpinned by a licence obligation. The outcomes detailed in the Prospectus Response would protect the consumer experience of the smart meter installation and ensure the rollout of smart meters is successful. We believe that the SMICoP should be promoted alongside any national campaign and also referenced in suppliers' materials made available to customers prior to the installation visit taking place.

The 'Objectives' as drafted in the licence conditions fail to provide confirmation that developing and complying with an approved Smart Metering Installation Code of Practice (SMICoP) constitutes taking 'all reasonable steps' and that this would be sufficient to securing the achievement of the overall objectives.

We are concerned that setting the objectives/outcomes as licence conditions themselves is a regulatory step too far, and is not wholly appropriate. Many of the objectives from the Prospectus Response now appear as requirements in the licence conditions. We believe that this adds unnecessary licence conditions on Suppliers and a corresponding degree of complexity.

Notwithstanding the above, EDF Energy has concerns at the wording used in the licence conditions as drafted as they are subjective and do not provide regulatory certainty. We believe greater definition and clarification is required in order to provide regulatory certainty and avoid potential compliance issues for both suppliers and the Authority.

Q2 Would the licence conditions as drafted effectively underpin: the respective roles of Ofgem and suppliers in establishing and reviewing Code(s) of practice for domestic and micro-business sites?

We believe that the proposal for a licence condition that obligated suppliers to produce the SMICoP is appropriate. Suppliers are best placed to fulfil the requirement given their day to day experience of installing meters and managing and maintaining relationships with customers. We also agree that Ofgem would be the appropriate authority to

approve the SMICoP. The requirement to submit the code for approval within one month of the conditions taking effect would seem to be both reasonable and achievable. In order for Ofgem to approve the SMICoP it is necessary for the criteria against which Ofgem will approve the code to be specified. To date, EDF Energy does not believe this criteria has been developed and this is an area of concern. We are unclear whether Ofgem is expected to approve the SMICoP on the proviso that it meets the objectives set out in Section 1, whether it ratifies the provisions detailed in sections 5 – 11, or both? EDF Energy believes it is essential to remove such ambiguity otherwise it will make it very difficult for Ofgem to confidently make an approval decision.

EDF Energy believes that the licence obligation underpinning the SMICoP should have a sunset clause that facilitates it being removed once the rollout has been completed. Installations of smart metering equipment after this date should be considered a Business as Usual activity which does not require specific licence obligations.

an appropriate on-going governance regime for the Code(s) of Practice?

EDF Energy believes the licence conditions as drafted would underpin on-going governance for the Code of Practice but we do not think that the governance itself should be contained within the licence conditions. The rollout of smart metering will take many years to complete and therefore we must put a mechanism in place to ensure that both the code and governance can be adapted and modified efficiently and effectively to accommodate unplanned changes. We believe that the most appropriate way to ensure this is for the Code governance to be an integral part of the Code itself.

EDF Energy is currently working with other Suppliers on drafting the appropriate governance regime and further development of this framework is one of the key deliverables of the Code of Practice voluntary adoption steering group. This group comprises membership of not just suppliers but also Consumer Focus, DECC, and Ofgem and we believe that this will ensure that all the key stakeholders are able to input into the governance regime to ensure it is fit for purpose.

We have concerns that the proposed condition as drafted may allow Ofgem to impose that changes are to be made to the code without there being some form of basis for them to do so. Any changes to the Code should only be made where it has been demonstrated that the amendment better meets the relevant objective or outcome.

the intended arrangements for monitoring and compliance with Code(s)?

EDF Energy believes that suppliers should be responsible for establishing the arrangements for monitoring performance and compliance against the Code. We will proactively identify areas in procedures that may require amending and take the opportunity to remedy these rather than wait for a third party to identify these on our behalf.

As mentioned above, EDF Energy is currently working with other Suppliers on drafting the appropriate governance regime and further development of the enduring process for

monitoring and compliance is one of the key deliverables of the Code of Practice voluntary adoption steering group. This group comprises membership of not just suppliers but also Consumer Focus, DECC, and Ofgem and we believe that this will ensure that all the key stakeholders are able to input into the governance regime to ensure it is fit for purpose. Monitoring and auditing is addressed within the Enduring Code Governance section of the ERA draft Code of Practice.

With these points in mind, EDF Energy does not believe that an explicit licence obligation in respect of performance monitoring arrangements is necessary.

Q3 Should the licence conditions underpinning a domestic Code also be applied to smart-type meters, or should the Government work with suppliers to secure voluntary application of Code provisions?

EDF Energy believes that both 'smart-type' and compliant smart meters should be covered by the Code. We see 'smart-type' metering as being Advanced Domestic Meters (ADM) that are not compliant with the EU Technical Specification. We do not see the installation of AMR metering in the micro-business sector being covered by SMICoP or a licence condition.

We see the voluntary SMICoP as an ideal opportunity to become familiar with installations according to the Code. In addition, we do not envisage customers distinguishing a compliant meter from a non-compliant meter. Customers must receive a consistent and high standard of service and have a positive experience of the end-to-end installation process.

The latest version of the Code denotes this position and we believe that it should remain within the Code and not as a licence condition.

Q4 Would the licence conditions as drafted effectively underpin the policy intention that the costs of the installation of smart meters should be reflected over time in customer's energy bills, with no upfront or one-off charges?

The Prospectus Response clearly set out DECC's policy decision that suppliers should not charge domestic customers up front for the installation of smart metering equipment. This requirement has been included as a clause in the Code of Practice as one of the objectives to be measured against. We would question the need for an explicit licence condition in its own right.

EDF Energy believes that the costs incurred in relation to the installation of smart meters will be equally smeared across all customers.

In a competitive marketplace, a supplier wanting to levy any form of upfront cost for the installation of a smart meter would highly likely to lead to customer dissatisfaction, poor consumer engagement, low access rates and an increase in customer churn. These are all outcomes that no supplier would want to see.

Q5 Do you agree with our definitions of sales and marketing?

EDF Energy has significant concerns with the current drafting of the licence conditions in respect of sales and marketing.

Sales

We do not believe that the draft definition is aligned with the existing standard licence conditions (SLC 25) or with the definitions of Sales and Marketing that DECC set out in the Prospectus Response. EDF Energy believes that the appropriate definition of 'sales' should be 'a purchase or commitment to purchase (e.g. by contract) a good or service'. Such a definition clearly sets out what a sale is and the actions installers would undertake to deliver the activity.

Marketing

We are encouraged and fully supportive of DECC's position that suppliers should be free to leave written marketing materials at consumers' premises without restriction. However, we believe that there is significant uncertainty around face to face marketing activity.

EDF Energy believes that the appropriate definition of 'marketing' should be 'activity by a supplier designed to lead to sale of goods or services'. We are concerned that the line between offering advice/guidance and marketing is one that could be open to interpretation unless there is clear guidance given to suppliers by DECC. We would not want to fall foul of the Code, or our licence obligations, due to regulatory uncertainty.

We do not believe the licence condition as drafted supports the sentiment of paragraph 15 on page 22 of the consultation document. DECC's position in this matter appears to be somewhat unclear as the consultation states '*...may lead into discussions around areas in which the supplier offers other products. Such approaches would not necessarily constitute marketing, depending on the nature of the discussion.*' This suggests that DECC recognises there may be occasions where discussions with consumers around products and services a supplier might offer would not be construed as marketing activity.

However, the licence condition 9a(i) states '*...ensure that any Marketing is not undertaken during a visit to install Smart Metering Equipment without the consent of the Domestic Customer which is given in advance of the date of the installation visit and in Writing.*' The tones of these statements do not complement one another and does not provide the regulatory certainty needed.

There are products and services that EDF Energy offers to consumers free of charge as part of our existing obligations such as CERT. In addition, there are a variety of help schemes

and grants that consumers might benefit from. It is not at all clear whether we would need prior consent from consumers to discuss these with them at the installation visit.

In addition, it is not clear how we are to deal with customer initiated questions around products and services at the point of installation. It is unclear from the consultation whether we are to seek consent from the customer before undertaking what might be construed as marketing activity.

We see marketing activity as an important tool to help raise the awareness of our customers to measures that can be taken around energy efficiency, to reduce consumption and facilitate the desired behavioural change. We believe that such activity supports the outcomes of the Prime Minister's recent summit held with suppliers and consumer groups.

EDF Energy uses the installation of meters today to raise our customers' awareness of appropriate and relevant products and services. If a consumer expresses an interest, and requests further detail, the installer will direct the customer to one of our call centre agents and the fulfilment process is undertaken outside of the installation. Many thousands of EDF Energy consumers are now benefiting in one way or another following this type of interaction with our meter installers.

We believe there needs to be further collaborative work between the Government, industry and stakeholders to establish more appropriate definitions and define permissible marketing activity.

Q6 Do you agree that prior written consent should be required for any face-to-face marketing and sales activity during the installation visit?

EDF Energy believes that the smart meter installation visit presents a unique, once in a lifetime opportunity to engage with all of our customers in respect of energy efficiency measures.

We are encouraged that DECC recognises the need for energy efficiency advice to be given at the installation visit, and that energy efficiency assessments as part of the installation visit may lead into discussions about products and services. We believe that further discussion is needed in this area to clearly understand and define the lines between energy efficiency advice and marketing.

If DECC are minded that prior consent from customers is definitely required, we believe that verbal consent (which is legally recognised as a positive acceptance) should be sufficient – on the understanding that there are appropriate measures in place to record and store such consent. This level of consent is sufficient in many differing industries where informed consent is considered paramount – including insurance, finance and banking.

We simply do not believe that prior written consent is workable, cost effective, or the best means of generating uptake by our customers.

EDF Energy believes that our customers are able to distinguish what is marketing and what is sales activity and we therefore believe that different regulatory regimes could be applied. EDF Energy does not believe that sales activity, based on the definition referenced above, should be undertaken as standard at the point of installation.

We do, however, believe that there should be permissible marketing activity to allow EDF Energy to engage customers with energy efficiency products and services that will benefit them. Raising awareness of energy efficiency at the installation visit is a key facilitator in the delivery of the benefits listed in the Impact Assessment.

The current clauses in the SMICoP have been developed in conjunction with a number of stakeholders. These include Green Alliance and Energy Saving Trust who both firmly believe that installing the smart meter alone will not necessarily promote a lasting consumer behavioural change and that there is the need to raise customers' awareness of other energy saving products and services to compliment the real-time consumption information smart meters bring. This view has been echoed in the recent Consumer Engagement workshops that EDF Energy has contributed to.

Q7 Are any other measures required to protect consumers' interests in relation to sales and marketing during the installation visit?

EDF Energy believes that the measures detailed in the sales and marketing sections of the current draft of the code offer appropriate and robust protection for customers from any "unwelcome" sales and marketing activity.

In addition, we would draw DECC's attention to the following existing regulations that EDF Energy must abide by;

Consumer Protection (Distance Selling) Regulations 2000

Cancellation of Contracts Made in a Consumer's Home or Place of Work etc. Regulations 2008

Unfair Contract Terms Act 1977

Q8 Would the licence conditions as drafted and/or existing rules deliver the policy intentions on customer information and advice, vulnerable consumers, avoiding undue inconvenience and complaint-handling?

EDF Energy consider the needs of the fuel poor and vulnerable customers to be critical during the rollout of smart meters as the identification and contact with these consumers will be on a greatly accelerated level because of the proposed timeframe for mandated roll-out.

We will ensure that communications and consumer engagement strategies are appropriate for these customers to ensure they are able to participate in the benefits that smart metering is expected to bring.

As with other licence conditions proposed, EDF Energy believes that it would be more appropriate, particularly as we are only in the Foundation Stage of the rollout, to have such obligations around vulnerability contained within the Code itself as this will allow any early learning and experiences during the rollout to be easily applied at a later date.

Q9 Do you agree that, for the purposes of the non-domestic code, the sites to be covered should be defined as business with no more than 10 employees or their full-time equivalent, an annual turnover that does not exceed €2 million, or consumes less than 50MWh of electricity a year or less than 200MWh of gas a year?

EDF Energy agrees with the definition of micro businesses as proposed. We are mindful that we will need to use the EU definition when set out by Agency for the Cooperation of Energy Regulators (ACER).

Q10 Would the licence conditions as drafted effectively underpin the policy intentions with respect to non-domestic consumers on customer information and advice and undue inconvenience?.

EDF Energy believes the draft conditions do underpin the policy intentions regarding information, advice and undue inconvenience.

**EDF Energy
November 2011**

Appendix 1 – EDF Energy Comments to Draft Licence Conditions

Objectives	Text	Comment
1(a)	the licensee and any Representative provides and maintains a standard of service which helps to ensure that Domestic Customers' experience of the installation of Smart Metering Equipment at their premises meets their reasonable expectations ;	This is redundant because there is no frame of reference to determine what "reasonable expectations" might mean. The point of the installation code of practice is to create those expectations. This wording therefore needs to be removed in order to avoid a tautology in the licence condition.
1(b)	all activities undertaken by the licensee and any Representative in relation to the installation of Smart Metering Equipment are conducted in a fair, transparent, appropriate and professional manner;	The terms 'fair, transparent, appropriate and professional' are subjective and very difficult to comply with
1(c) i.	is complete and accurate;	How complete is "complete"?
1(c) iii.	informs that Domestic Customer about the benefits of the Smart Metering Equipment and about what to expect in relation to the installation process ;	Is this not the most important bit, and should come first?
1(d)	Domestic Customers are not subject to unwelcome sales or face-to-face marketing activities during any visit to their premises for the purposes of installing Smart Metering Equipment.	Sales is not defined in the section on "definitions" and "unwelcome" is very difficult to comply with
The Code	Text	Comment
3	prepare and submit for approval to the Authority a document to be known as the Domestic Installation Code of Practice (Domestic Installation Code).	The criteria against which Ofgem makes a decision on the acceptability of a code of practice are not specified, and it is uncertain as to where the locus exists in statute. As currently drafted, it is unclear whether Ofgem would approve a code of practice on the basis that it meets the objectives (section 3, paragraph 1), whether it enshrines the provisions laid out in sections 5 – 11, or both. Without such a frame of reference, it would seem to be extremely difficult for Ofgem to be able to make a decision with confidence.

4	the Authority may designate a Domestic Installation Code which shall apply for the purposes of this Condition.	On what basis would it designate such a code i.e. does it meet the objectives set out in paragraph 1?
Code Content	Text	Comment
7	The circumstances described in this paragraph are that costs are borne by the licensee's Domestic Customers generally as an increment of charges for electricity supplied to them.	Is there any precedent for such wording? It would make more sense to simply state that up-front or one-off charges are not permitted, or perhaps that the costs need to be accounted for within the unit price of energy?
8	The circumstances described in this paragraph are that:	Is the inference that costs under these circumstances can be recovered through one-off charges? If so it is not clear either here or in 6(c)
8(a), (b) & (c)	(a) the Smart Metering Equipment installed at Domestic Premises exceeds the minimum requirements of the SME or IHD Technical Specification ('enhanced equipment'); (b) the Domestic Customer at the premises has first been given the option of having installed at his premises Smart Metering Equipment which is in conformity with but does not exceed the minimum requirements of the Technical Specification; and (c) the Domestic Customer has, prior to the Smart Metering Equipment being installed, expressly requested the installation of enhanced equipment.	These do not cater for early movers because the Technical Specification does not yet exist.
9 b	Undue inconvenience	Very subjective, we will have difficulties complying with this
9(c) i.	the installation, purpose, features and advantages of Smart Metering Equipment ;	Does this happen before or during the event? Does it matter?
9(c) ii	the use of Smart Metering Equipment, including such information as will enable Domestic Customers to make informed judgments about the way in which they can improve the efficiency with which they use the electricity and/or gas supplied to them;	It is not possible to guarantee that information "will enable". Perhaps change to "be reasonably expected to enable"?
11(b)	a requirement to obtain the approval of the Authority	On what basis does the Authority approve i.e. does it better meet

	to proposed revisions to the Domestic Installation Code;	the objectives set out in paragraph 1?
11(c) i	at any time to require the licensee, together with all other licensed gas and electricity suppliers of Domestic Premises, to review such features of the Domestic Installation Code as it may specify ('the specified features');	This cannot be left carte blanche. The Authority should only be able to require a review should it believe that the specified features are not meeting the objectives.
11(c) ii	following such a review, to issue a direction requiring the licensee and all other licensed gas and electricity suppliers of Domestic Premises to make such modifications to any of the specified features as it may direct.	Provided that such modifications meet the objectives.
Consultation	Text	Comment
12(b)	in carrying out any review of the Domestic Installation Code, consult with, and consider any representations made by, the National Consumer Council and any other person or body likely to be affected .	How do they know all the parties likely to be affected? Can it just go up on the website?
Compliance	Text	Comment
13	The licensee must take such steps and do such things as are within its power to comply with the Domestic Installation Code approved or designated (as the case may be) by the Authority.	It must be stated that doing this would constitute 'reasonable steps' to meet the objectives.
14	The licensee must maintain a record of its performance against and compliance with the requirements of the Domestic Installation Code.	Is there any precedent for a licence condition giving suppliers a duty for suppliers to police their own performance against other licence conditions? Does not seem like a good regulatory principle. Unclear what exactly we are to 'record'
Review	Text	Comment
15(a)	take steps to obtain the views of Domestic Customers about the licensee's and its Representatives' activities and conduct relating to the installation of Smart Metering Equipment	This seems to be unspecific. Perhaps the purpose should be delineated in the wording.
15(b)	together with all other licensed gas and electricity	On what basis should revisions be made?

	suppliers of Domestic Premises, review the Domestic Installation Code and the manner in which it has been operated with a view to determining whether any revisions should be made to it.	
16(a)	its approval in Writing to the proposed revisions;	Distinction is required between approval of revisions to the code and their effective date. It is vital that suppliers are provided with appropriate timescales to implement any major changes to processes that arise out of any changes to the SMICoP.
Interpretations & Definitions	Text	Comment
16	Marketing	No distinction between sales and marketing in definitions. This is understood to be contrary to Ofgem's drafting precedent.