

CONSULTATION RESPONSE



Department of Energy & Climate Change
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DATE: - 30th November 2011
TO: - Smart Metering Implementation Programme Roll-out Team

Licence Conditions for a Code of Practice for the installation of smart electricity and gas meters consultation

Which? Consultation Response

Please find below the response on behalf of Which? to DECC's consultation on the Licence Conditions for a Code of Practice¹. Which? is supportive of the central objective of the consultation - to underpin the Code of Practice for the smart meter installation with licence conditions enforceable by Ofgem. This response supplements our submission to the Energy Retail Association's consultation on the Smart Meter Installation Code of Practice (SMICoP)², a copy of which is included in the annex.

The response is split into two sections, the first setting out our general comments followed by responses to the specific questions set out in the consultation.

¹ <http://www.decc.gov.uk/assets/decc/11/consultation/smart-metering-imp-prog/2545-smip-licence-conditions-consultation.pdf>
² SMICoP Public Consultation, <http://www.energy-uk.org.uk/publication/finish/37-smart-meters/423-smart-metering-installation-code-of-practice-smicop.html>

**For all
consumers**

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About Which?

Which? is an independent, not-for-profit consumer organisation with around 1 million subscribers and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and is funded through the sale of Which? consumer magazines, online services and books. Which? is a consumer champion working to make things better for consumers. Our campaigns make people's lives fairer, simpler and safer.

Which? approach to smart metering

Which? supports the outcomes that smart meters can bring to consumers, including an end to estimated energy bills and the opportunity for people to better understand their energy use, which could help lower bills and cut carbon. Which? is concerned that the current plans for the roll-out could leave consumers vulnerable to mis-selling and possible problems relating to switching. We are also in the process of looking into whether this billion-pound rollout will deliver for consumers, questioning whether the roll-out is being carried out in the most cost-effective way, and whether these outcomes could be achieved through other processes.

General Comments

We are supportive of the overall ambition of the proposals set out in this consultation - to protect consumers' interests by underpinning the Code of Installation ("the Code") with licence conditions. This should ensure that the installation visit is a positive experience for consumers, but this will rely on effective governance of the Code and the licence conditions.

The approach of underpinning supplier activity with licence conditions should be extended to the Privacy Charter. This will help ensure it is developed and governed with the interests of consumers at the heart of the programme.

There are two elements which are not reflected in these proposals - post installation follow-up and interoperability. Post installation follow-up is covered in the Smart Metering Installation Code of Practice (SMICoP) consultation³ and should be underpinned in these licence conditions. Interoperability is not addressed in either and is not adequately addressed in the Ofgem Spring Package⁴ and subsequent licence condition modifications⁵. As we set out in our response to the

³ Smart Metering Installation Code of Practice (SMICoP) consultation, Energy UK, August 2011

⁴ *Smart Metering Spring Package - Addressing Consumer Protection Issues*, Ofgem, February 2011:
<http://www.ofgem.gov.uk/Sustainability/SocAction/Publications/Documents1/Smart%20Metering%20Spring%20Package%20-%20Addressing%20Consumer%20Protection%20Issues.pdf>



Spring Package, whether a consumer has a smart meter or not, the switching experience and journey should be the same. We are increasingly hearing of consumers who have a meter and are impaired in their ability to switch supplier for a number of reasons, such as being told that a supplier will not accept new customers with smart meters. This does not improve consumer confidence in the energy market and we believe it will not help give consumers confidence in the roll-out programme. As there are suppliers who have gone early to install increasing numbers of smart meters, this issue will grow and it should be addressed now. Given the emphasis by the Secretary of State that consumers should be switching:

“I want to give Ofgem more teeth and customers more rights, including a faster switching time and better information from suppliers.”⁶

“In combination with our plans to reform the electricity market and introduce the Green Deal for home and businesses, the rollout of smart meters will help us keep the lights on while reducing emissions and getting the best possible deal for the consumer.”⁷

Which? believes that anything which prevents people from switching to a better deal should be dealt with urgently.

Consultation Questions

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

Objectives

We support the policy objective to protect the interests of consumers during the smart meter installation. All licence conditions relating to this should be specific, setting out clearly what the suppliers should and should not do. Experience from the Energy Supply Probe and the Retail Market Review has demonstrated that overarching objectives do not always result in the best practice.

Responsibility for Code Development

Which? does not agree that suppliers are best placed to develop the Code(s)⁸. Consumers have low levels of trust in suppliers and are not confident that suppliers act in their best interests⁹. Furthermore Which? investigations¹⁰ have demonstrated that across a number of areas, the

⁵ Modification of the Standard Conditions of Gas Supply Licences granted under Section 23(3) of the Gas Act 1986 and the Electricity Supply Licences granted under Section 11(A) of the Electricity Act 1989: Decision Letter, September 2011: <http://www.ofgem.gov.uk/Sustainability/SocAction/Publications/Documents1/Modification%20Direction.pdf>

⁶ Chris Huhne's statement on Ofgem announcement about energy billing, 14 October 2011

http://www.decc.gov.uk/en/content/cms/news/ch_stmt_prices/ch_stmt_prices.aspx

⁷ Secretary of State for Energy and Climate Change, Chris Huhne, speech at the SmartLIFE training centre, Cambridge, 30 March 2011, http://www.decc.gov.uk/en/content/cms/news/pn11_032/pn11_032.aspx



consumers' experience of the suppliers repeatedly fails to demonstrate that suppliers place consumers' interests first.

Provision of the Code to Consumers

Which? supports the requirement on suppliers to inform their customers of the Code¹¹. In such circumstances the Code should be provided in accessible and consumer-friendly language and format. Experience with bills has shown that often suppliers produce materials that are difficult for consumers to understand and navigate¹². ***Which? recommends that suppliers are required to work with organisations such as the Plain English Campaign in the development of consumer versions of the Code.***

2. Would the licence conditions as drafted effectively underpin:

- a) the respective roles of Ofgem and suppliers in establishing and reviewing Code(s) of practice for domestic and micro-business sites?**
- b) an appropriate ongoing governance regime for the Code(s) of Practice?**
- c) the intended arrangements for monitoring and compliance with Code(s)?**

Review and Relevance of the Code

Which? agrees that the Code must remain fit for purpose. In order to achieve this the Code must be regularly reviewed to ensure that it remains relevant and reflects consumer experiences and of the stage of the programme. Which? does not agree that the suppliers should be responsible for reviewing and proposing amendments¹³. ***Which? recommends that Ofgem be the responsible agency for ensuring the Code is relevant***, as the Code is underpinned by licence conditions and suppliers interests and those of consumers may not always be aligned.

The ability to submit evidence and recommendations for amendments to the Code should not be limited to suppliers and Consumer Focus, or future statutory organisations. Other consumers organisations will continue to engage with the smart metering programmes and may undertake their own research into the experience, we believe it would be short sighted to limit the ability

⁸ Paragraph 6, Chapter 2, Licence Conditions for a Code of Practice for the installation of smart electricity and gas meters consultation, Smart Metering Programme, DECC, August 2011

⁹ A quarter of the general public consider energy companies to be trustworthy, a third of consumers trust suppliers to sell them the right tariff to meet their needs, 2,003 member of the UK public were surveyed online between 20th April and 3rd of May 2011.

¹⁰ 'It's time for simple energy deals' Which?, October 2011, 'Kept in the dark' Which?Money, November 2011.

¹¹ Paragraph 8, Chapter 2, Licence Conditions for a Code of Practice for the installation of smart electricity and gas meters consultation, Smart Metering Programme, DECC, August 2011

¹² 'Money to burn' Which?, October 2009



of these organisations to ensure the Code is as effective as possible. ***Which? recommends Ofgem take on board the views of all interested parties when reviewing and amending the Code.***

Governance and Compliance

In order for the Code to be effective there must be adequate Governance and Compliance arrangements.

Governance

As we have previously set out the governance arrangements should be objective and independent of suppliers interests. Experience to date of the ERA Billing Code that has not served to improve the quality of consumers bills adds further weight that the governance is independent. ***Which? recommends that Ofgem and the suppliers should be required to establish a independent governance arrangements.***

Compliance

Compliance should be underpinned with effective monitoring and penalty arrangements. We do not believe that alone supplier monitoring of compliance is adequate as there is an inherent conflict of interest. As such, ***Which? recommends that Ofgem undertake mystery shopping to test compliance with the Code.*** This will ensure an additional independent quality assurance of the compliance.

The monitoring should sit along side strong incentives to comply. ***As part of the Governance arrangements, Ofgem should develop a strong penalty based regime that truly incentivises compliance.***

3. 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?

Yes. Research has shown that consumers do not differentiate between smart meters and clip-on electricity monitors, and so are unlikely to distinguish between the installation of a fully smart meter and a smart-type meter. Therefore, in order to ensure the positive consumers experience these conditions should be applied to the installation of smart-type meters.

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

¹³ Paragraph 10, Section 2.2, Chapter 2, Licence Conditions for a Code of Practice for the installation of smart electricity and gas meters consultation, Smart Metering Programme, DECC, August 2011



No, the terms ‘generally’ and ‘increment’¹⁴ are ambiguous. The condition should clearly set out that suppliers can not recover the full cost in an up-front or one-off charge. Furthermore the supplier should set out in its billing communications to its customers what percentage of their bill is attributed to the cost of the programme, as with existing metering costs.

4. Do you agree with our definition of sales and marketing?

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

6. Are any other measures required to protect consumers’ interests in relation to sales and marketing during the installation visit?

Definitions of sales and marketing

There should be consistent use of terminology and definitions across the license conditions and the SMICoP to prevent any ambiguity.

Sales and marketing during the installation visit

Which? does not believe that the smart meter installation visit should be used for sales, whether they are completed during the visit or ‘initiated’. Which? does not believe that smart meter installers should be required to generate any sales leads during the installation and should not receive any sales-related commission. This is due to concerns of sales practices by energy suppliers on the doorstep and the views of consumers when they deal with energy sales representatives while at home. Which? believes that an ambition to make the smart meter installation a positive experience which consumers at the heart of the roll-out should be a priority, where the smart meter is installed safely, effectively and the customer is left with sufficient information.

In reflection of our position, Which? launched a ‘No selling, just installing’ smart meter challenge in the early summer¹⁵. Seven suppliers have signed up to make this promise so far.

Sale of tariffs

Which? does not support the sale of any tariffs during the installation - whether they are the existing tariff type or time of use tariffs.

Energy suppliers have a poor reputation in the sale of tariffs, particularly in a door-step environment¹⁶. There is no evidence that would indicate the experience would be any different

¹⁴ Paragraph 7 of the proposed Electricity and Gas licence conditions, it sets out ‘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/ gas supplied to them.’

¹⁵ <http://www.which.co.uk/campaigns/energy-and-environment/smart-meter-campaign/>



during a smart meter installation and so ***we recommend that the Code sets out that sale of tariffs during the visit should not be allowed.***

As Which? set out in previous communications to DECC and Ofgem¹⁷, time of use tariffs should not be offered to consumers for at least 12 months following the installation of the smart metering system. This time frame should enable the householder to better understand their consumption pattern and make an informed decision as to the appropriateness or not of a time of use tariff. While the Marking Licence Condition 25.1 part (a) sets out that no inappropriate products should be marketed, as there will be limited understanding of whether or not time of use tariffs are appropriate this creates an unhelpful ambiguity and the impact could potentially lead to confusion or mis-selling. In reflection of this, we do not believe that the current proposals¹⁸ or licence conditions are adequate and ***recommend that supplementary conditions, perhaps with a sunset clause, are introduced.***

Leaving marketing materials

Which? does not object to the installers leaving marketing materials for the householder to review in their own time. This could be followed up with a telephone call from the supplier at a later date.

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

Avoiding inconvenience to customers

What a supplier and a consumer may view as undue inconvenience may not be the same and a high-level condition as proposed¹⁹ will not remedy this. ***Which? recommends a maximum two hour window for the installation visit and that this be set out in the Code.***

**Which?
November 2011**

¹⁶ http://www.ofgem.gov.uk/Media/PressRel/Documents1/Misselling_Press%20Release%20Sept.pdf

¹⁷ Which? response to the Prospectus and Spring Package

¹⁸ Para 18, Section 2.3, Chapter 2, Licence Conditions for a Code of Practice for the installation of smart electricity and gas meters consultation, Smart Metering Programme, DECC, August 2011

¹⁹ Para 21, Section 2.3, Chapter 2, Licence Conditions for a Code of Practice for the installation of smart electricity and gas meters consultation, Smart Metering Programme, DECC, August 2011