

2 September 2014

By email to smartmetering@decc.gsi.gov.uk

Response to consultation on New Smart Energy Code Content (Stage 4) and consequential/associated changes to licence conditions

The Citizens Advice service in England, Wales and Scotland welcomes the chance to comment on the latest content added to the Smart Energy Code (SEC). Citizens Advice has a particular interest in this programme having taken on the statutory duty to protect and promote the needs of energy consumers formerly held by Consumer Futures. This response is not confidential and can be published on your website.

Citizens Advice is pleased to see the progress being made towards an industry arrangement that protects consumers' interests and delivers the smart meter benefits they have been promised. Much of our interest in this stage of SEC is in the area of security and data privacy. We are very keen to see strong audit and scrutiny measures that are in the best interests of consumers, and to avoid any possibility of the industry 'marking its own homework' in this respect. In addition, it is vital that the possible fallout for consumers is considered even in decisions that relate to apparently inward-looking industry party relationships, as many in SEC do.

Q.8 Do you agree with the proposed approach and legal drafting in relation to installation and maintenance of Communications Hubs?

We agree that any representative of the DCC obliged to visit a consumer's premises should be subject to the same regulations as a representative of the supplier. It is important, however, to consider how this can work in practice. For example, how will the provision that the supplier should ensure that any consent required to access the premises is obtained on behalf of the DCC be put into effect and enforced? There would in this case need to be a penalty that can be imposed by Ofgem on both the supplier and the DCC if this is not adhered to.

This arrangement also raises the question of whether the DCC's representatives will be sufficiently trained to provide a good level of service to consumers, and how they will be held accountable. If this exception is to be made to the general guideline that the DCC will not be consumer facing, then the further exception of a phone line for queries and complaints about these visits will also be needed.

Q.9 Do you agree with the proposed approach and legal drafting in relation to removal and returns of Communications Hubs?

Yes, so long as the CHMSM in due course sets out a clear procedure and code of practice for communicating with the consumer, managing the removal visit, explaining the problem and setting expectations of next steps. It is of some concern that this document is being left up to the DCC, given its lack of consumer-facing experience. It may be useful to take previous similar codes governing consumer interaction such as SMICoP as a model.

Q.10 Do you agree that there should be an obligation for the first installing supplier in a dual fuel premises to take all reasonable steps to install a communications Hubs that would work with both the smart meter that it is installing and the smart meter of the other fuel type?

Yes, we support this proposal. Needing to change the communications hub when the smart meter for the second fuel type was installed would not only be inconvenient for consumers but also perceived as very poor coordination.

Q.15 Do you agree with the legal drafting in relation to Security Governance?

No. The proposed membership of the SSC is extremely industry-heavy, and would be liable to result in a light touch when it came to security requirements and a cavalier attitude to consumers' data. We propose that Citizens Advice should have the ability to nominate a further two independent members of the committee, subject to discussion and clearance with DECC.

We are, however, supportive of the proposal that SSC members should act independently of their nominating organisation and are content for the existing provisions in place for SEC Panel members to be replicated for the SSC membership.

Q.16 Do you agree with our proposed approach and legal text for SEC in relation to Privacy Assessments?

Not fully. Even with the proposed audit arrangements, the requirement on Users to obtain a consumer's consent before accessing his or her data, whilst welcome, may not go far enough, since some Users may continue to abuse this system by laxness or on purpose even if accredited. In addition, we suggest the precaution that consumers should have the ability to opt out direct to the DCC, in a form that cannot be circumvented by Users.

In addition, we have reservations about the proposal to appoint a single body to act as both Competent Independent Organisation and Independent Privacy Auditor. Over time this might

entail a risk that this body audits in one capacity what it has recommended in the other. In order to avoid this, we would recommend keeping the two functions separate and ensuring that they are carried out by distinct bodies that can be wholly independent of the rest of the process.

Q.17 Do you agree with the specific proposals for undertaking random sample compliance assessments?

This depends on the frequency of the compliance assessments agreed by the Panel, which are described in paragraph 150 as 'limited in scope'. If suitably frequent these could be an effective deterrent to data breaches, but if not then some Users still might not have enough incentive to respect proper data privacy. The deterrent for Users failing a compliance assessment also needs to be established from the outset. Simply agreeing future steps with the Panel will not be sufficient. If the spot checks are to be meaningful they should be backed up at least with a system of fines, and also with publication of breaches as per q.19.

Q.19 What are your views on potential future changes to the SEC to provide for reporting the results of privacy assurance assessments bodies such as Ofgem, DECC, ICO and Parties generally?

There should be reporting on privacy assessments not only to regulatory bodies and other Parties, but also to consumers in general. In the event of a failed assessment, and even more so in the event of a breach, consumers should be informed so that they know what is happening to their data and can form an accurate opinion about the relative performance of DCC Users in keeping it safe. Public reporting of assessments and breaches would be fairer and more transparent, and would produce better results by offering a stronger incentive.

In particular, it is essential that individual consumers are informed if their data is lost or compromised. If this situation could put them at risk, for example from fraud, then they need to be warned. Consumers should be able to assume that their data is safe unless they hear otherwise.

Q.20 Do you agree that the proposed legal drafting reflects the position reached in the SMETS2 consultation response, that Users should be required obtain consent and to verify the identity of the energy consumer from whom they have obtained the consent prior to pairing a CAD?

The proposed drafting appears to support the objective of providing equal security assurance across remote and local CAD pairing. This is a positive step for consumers, but it should also be borne in mind that any obstacle that makes local pairing more difficult and complicated should be minimized. A large part of the function of locally-paired CADs will be to put consumers more in control of their own data, independent of any intermediary parties. It should therefore be considered whether the extension of the requirement to verify consent

and compliance to local pairing might lead to a greater intrusion by the relevant User into pairing in the home and a more convoluted process than is necessary.

Q.39 Do you agree with the proposed approach of not requiring any User to offer a transparency service to consumers at this stage?

No. The proposed transparency service based on the 'read profile data' and 'retrieve daily consumption log' service requests would be highly beneficial, but under the proposed approach there is a clear risk that it may never be offered, or only be offered too late, after the key transition period early in the rollout when consumers might be expected to have most need for it. The proposed approach would also leave open the possibility that this service would be offered but only on a paid-for basis, whereas consumers should be able to check who is accessing their data without having to pay. A User should be appointed or established to provide this function reliably, objectively and for free, or else the DCC should perform this function itself.

Q.42 Do you agree with the proposed approach and legal drafting in relation to provision of market share information to the CDB including Ofgem determining disputes between the CDB and the DCC?

We support this proposal as a reasonable and efficient approach. Our understanding is that the data to be shared would not include any personal data of consumers. If this were to be the case then the same protections and restrictions should apply when it is held by the CDB as would when held by the DCC.

Q.47 Do you agree with the proposed amendments to the legal drafting which introduce a new controlled category of DCC data, set out guidelines for types of data which may be marked as confidential or controlled and limit liability for breach of the latter category?

We welcome the restrictions on the data that the DCC can mark as confidential, but it is not clear that the 'controlled' category is necessary. To promote transparency and efficient competition, in accordance with the Government's Open Data programme, it would be preferable to keep data marked as confidential to a minimum and make the rest available for public release. This equally applies to q.49, in that SEC parties other than the DCC should not need a 'controlled' category either.

When marking data as confidential (or controlled), an exception should be made to ensure that any data needed by consumers for dispute resolution is either not marked or automatically released when required.

Q.56 Do you agree with the proposed approach and legal drafting regarding power outage alerts?

Providing consumers with information about outages as part of a more reliable, better managed service is an important benefit and one that smart meters should be delivering, so we welcome the proposed approach to require the DCC to pass this message on to suppliers and DNOs. In due course, those parties should also be required to pass a warning on to consumers to inform them about the extent and likely duration of the problem.

Q.57 Do you agree with the proposed approach and legal drafting in relation to the testing of shared systems?

If allowing one party an exemption to User Entry Process Testing on the grounds that it shares systems with another that has already passed it, it will be necessary to seek assurance that the overlap between systems is complete enough to give confidence. The possibility that different parties might share systems but use them differently, or have distinct organisational cultures, should not be overlooked. It might be preferable to require a stripped back alternative testing system in this situation rather than excepting the User from any testing whatsoever.

Q.61 Do you have any views on the operation of SMETS 2 meters that are opted out of DCC services in light of:

- *the conclusions on SMKI set out above; and*
- *any other matters, including GBCS, that may affect two-way communications with an opted-out meter?*

A guiding principle should be that the choice by non-domestic suppliers to opt out of DCC services should not be allowed to cause detriment to their existing customers or complicate the switching process between opted-out and opted-in suppliers, in either direction. With this in mind, maintaining the requirement that SMETS2 meters operated by opted-out suppliers have full SMKI certificates, as per the minded-to position, seems to be the best option.

Q.62 Do you agree with the proposed legal text with respect to the DCC's, Subscriber and Relying Party obligations and associated liabilities?

In addition to the liabilities set out in the consultation document, liability should also be assigned in the case where issues related to the certificate result in outages or other problems. In this situation, consumers should be reimbursed by the supplier, who should be able to recover this cost from the DCC or other parties where appropriate following accessible and easy to understand procedures.

Yours sincerely,