

Proposed variation:	<b>CR024A – Addition to ‘Scope’ to Cover Smart Meters Installed Under Warrant</b>		
Decision:	The Authority <sup>1</sup> has decided to withhold approval of CR024A		
Target audience:	SMICoP Governance Board, SMICoP Members, all interested parties		
Date of publication:	08 January 2016	Implementation Date:	N/A

**Authority decision on proposed Change Request CR024A, “Addition to ‘Scope’ to Cover Smart Meters Installed Under Warrant”, produced under Section B2 of the Smart Meter Installation Code of Practice (“SMICoP”)**

**Background to the Change Request**

Where:

- a standard credit meter consumer has fallen into debt, and
- the Member has been unable to establish a dialogue with the consumer or find means for the consumer to repay the outstanding charges

a supplier is permitted, under the Gas Act 1986 and the Electricity Act 1989<sup>2</sup>, to seek a court order to obtain a warrant to enter the premises and replace the credit meter with a pre-payment meter.

Change Request 024A (“CR024A”) was raised by EdF Energy on 24 September 2015. The aim of the proposed Change Request was to clarify whether, and how, SMICoP applies where a Smart Metering System (“Smart Meter”) is installed under warrant.

The SMICoP Members<sup>3</sup> considered that there are occasions where it may not be safe or appropriate for an installer to carry out all of the obligations required by the SMICoP. For example, it may not be safe for the installer to remain on site for any longer than absolutely necessary; the consumer may not be present to be engaged; or the consumer may be distressed and as such not in a state of mind to be engaged. SMICoP Members were uncertain whether the SMICoP as currently drafted caters for such situations.

**The Change Request**

On 22 October 2015 a draft Change Request was presented to SMICoP Governance Board (“SGB”).

The Final Change Report (“FCR”) for CR024A was issued to us on 2 November 2015.

We provided Notice to the licensee and the SGB under paragraph 2.7.5 of Section B that we were unable to reach a decision on whether to approve or withhold approval within the 30 working day period, but that we would provide a decision on or before 8 January 2016.

In the FCR, SGB proposed to add a new clause to Section 1.2 “Not in scope” of the SMICoP. The proposed legal text attempted to clarify suppliers obligations where installing a Smart Meter when a warrant of entry has been executed. It provided:

1 The terms ‘the Authority’, ‘Ofgem’ and ‘we’ are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

2 Electricity Act 1989, Schedule 6, Sections 2 and 10; Gas Act 1986, Schedule 2B, Section 7 and 28; Rights of Entry (Gas and Electricity Boards) Act 1954

3 “Member” means an organisation signed up to adhere to SMICoP

“For Smart Metering Systems installed when a Warrant of Entry is executed, Members should take the circumstances of that installation into consideration when determining which clauses are safe and appropriate to follow, with a presumption in favour of compliance. Where the Member deems it inappropriate or unsafe to follow SMICoP in these circumstances it will use all reasonable endeavours to comply with the relevant clauses outside of the installation visit and must maintain auditable records.”

### **The SGB recommendation**

On 29 October 2015 SGB voted unanimously to accept the FCR for CR024A.

### **Our decision**

We have considered the issues raised by CR024A, the details set out in the FCR and the votes of the SGB to accept the FCR for CR024A and Change Advisory Group’s response and comments which are in Appendix B attached to the FCR. We also considered these factors in light of whether CR024A would better facilitate the achievement of the objectives set out in standard conditions 41.2 and 42.1 of the Electricity Supply Licence and standard licence conditions 35.2 and 36.1 of the Gas Supply Licence (“SMICoP Objectives”). We have concluded that implementation of CR024A would have a broadly neutral or possibly a negative impact on the achievement of the SMICoP Objectives.

We have decided to withhold approval of CR024A.

In coming to our decision we have also considered our wider statutory duties, including particularly our principal objective to protect the interests of existing and future energy consumers.

### **Reasons for our decision**

#### Consideration against the SMICoP objectives

We have considered the impact of CR024A against the SMICoP objectives, with a specific focus on objectives relevant to domestic installations as these are most relevant when considering meters installed under warrant. Our analysis against each objective is set out below.

#### **Objective (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 Systems at their premises meets their reasonable expectations**

We consider that CR024A would have a neutral impact on this objective. It is very difficult to predict what a consumer’s “reasonable expectations” would be in the exceptional situation of having a meter installed under warrant. As such it is difficult to determine whether CR024A would generally help to meet those reasonable expectations or not. Where a consumer is very distressed, they may not reasonably expect, for example, an installer to offer energy efficiency advice (CR024A would enable the supplier not to offer that advice where it is “inappropriate” to do so). But the SMICoP places other obligations on suppliers that the consumer may reasonably expect the supplier to comply with. For example, they might reasonably expect the premises to be left in a similar state “as found”.

**Objective (b): all activities undertaken by the licensee and any Representative in relation to the installation of Smart Metering Systems are conducted in a fair, transparent, appropriate and professional manner**

We consider that CR024A would have a neutral impact on this objective. Arguably it may not be “appropriate” or “professional” to, for example, insist on demonstrating the in home display and providing energy efficiency advice where the consumer is very distressed or if the installer does not consider it safe to continue. On the other hand, CR024A could potentially give suppliers reasons for not complying with any requirements in SMICoP (if they considered it “inappropriate” to do so), so the supplier could act in a way that was detrimental to the achievement of this objective.

**Objective (c): Domestic Customers are given information about, and during, the installation of Smart Metering Systems which:**

**(i) is complete and accurate;**

**(ii) does not mislead them; and**

**(iii) informs them about the benefits of Smart Metering Systems and about what to expect in relation to the installation process;**

We consider that CR024A would have a negative impact on the achievement of this objective. Specifically, subparagraph (iii) requires that during the installation the supplier informs the consumer about the benefits of the Smart Meter. CR024A would explicitly permit a supplier to, for example, not demonstrate the in home display or provide energy efficiency advice during the visit where it is not appropriate to do so. This objective would not be achieved in those circumstances. Despite the negative impact on this SMICoP objective, we recognise that there may be situations when it is in a consumer’s interest not to carry out these activities during the installation visit. This is because if the consumer is, for example, very distressed, they may not be receptive to being informed of the benefits of the Smart Meter. Attempting to engage with the consumer at that point in time may actually be detrimental to the consumer and a better outcome may be achieved if that engagement were delayed until the consumer is more receptive to it. Such situations would be case specific and not as a blanket rule based on an installation being made under warrant.

**Objective (d): Domestic Customers are not subject to unwelcome Marketing during any visit to their premises for the purposes of installing Smart Metering Systems.**

We consider that CR024A would have a neutral impact on the achievement of this objective. There may be an argument that CR024A could give suppliers reasons for not complying with any requirements in SMICoP (if they considered it “inappropriate” to do so). However, it is difficult to foresee a scenario in which that argument could be applied to not subjecting the consumer to unwelcome marketing.

Consideration against our principal objective

We also considered the impact of CR024A against our principal objective and general duties. Our principal objective is to protect the interests of existing and future energy consumers. We do not have any particular concerns with what SGB is broadly trying to

achieve with this change request. That is, we consider that when installing a Smart Meter under warrant, suppliers should have some discretion in either deferring when they carry out those obligations or, possibly for a limited number of obligations and situations, in not complying with them at all. However, we do not consider that the proposed legal text achieves that aim and the drafting would introduce complexity into the arrangements.

Any obligation should represent a high bar in terms of requiring the supplier to use all reasonable endeavours to ensure consumers get an experience as close to that as would be achieved during an installation that isn't carried out under warrant. However, we consider that the legal drafting should avoid being overly prescriptive as this could either result in suppliers being able to exploit loopholes or compliance becoming a tick box exercise. The onus should be on suppliers to strive to offer the best installation experience for every installation.

Our key concerns with the proposed legal text are:

1. It allows a supplier to not comply with the SMICoP where they consider it "inappropriate" to do so. This could be interpreted too broadly and suppliers may technically be compliant even where the consumer outcome is not achieved.
2. It places a different, and potentially stronger, emphasis on complying with the SMICoP outside of the installation visit rather than during the installation visit. It says that Members must use "all reasonable endeavours to comply with the relevant clauses outside of the installation visit". Whereas it states that during the installation visit the Member should take the circumstances of that installation into consideration when determining which clauses to comply with "with a presumption in favour of compliance". These represent two different bars for compliance. We consider that there should be a single strong requirement that requires suppliers to use all reasonable endeavours to comply with the SMICoP when installing a meter under warrant. We agree that the obligation to use all reasonable endeavours to comply with SMICoP should continue after an installation visit held under a warrant where compliance during that installation visit was not possible due to it being inappropriate.

The legal text also notes that Members "must maintain auditable records". The licence already requires suppliers to "maintain a record of its performance against and compliance with the requirements of the [SMICoP]", so we do not consider it necessary to include this additional obligation.

### **Decision notice**

In accordance with the Section 2.7 of SMICoP, we hereby withhold our approval.

**Rob Salter-Church**

**Partner, Consumers and Competition**

Signed on behalf of the Authority and authorised for that purpose