

# Consultation on extending the existing smart meter framework for data access and privacy to Smart-Type Meters and Advanced Meters

## Consultation

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### Overview:

Gas and electricity suppliers will be required by their licence to rollout smart meters to all their domestic and smaller non-domestic customers by the end of 2020. Some suppliers moved early and have already installed, or are installing, 'Smart-Type Meters' (to domestic premises) and 'Advanced Meters' (to non-domestic premises). Such meters have some similarities with smart meters, but they do not meet the same detailed technical specification. There are some licence obligations that apply to suppliers in respect of smart meters but do not apply to suppliers in respect of Smart-Type Meters and Advanced Meters.

This document sets out, for consultation, Ofgem's proposals to introduce new licence obligations to ensure that domestic and micro business consumers are more fully in control of the energy consumption data on their Smart-Type Meters and Advanced Meters.

## Context

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Since April 2011, the Department of Energy and Climate Change (DECC) has been directly responsible for managing the implementation phase of the Smart Metering Programme. We have been engaging with the government by providing independent regulatory advice, to help ensure that changes to the regulatory framework are managed efficiently and effectively, and that the new rules operate in the interests of consumers.

Ofgem is responsible for regulating the new framework on an ongoing basis as it is introduced. An important part of this role involves monitoring and, where appropriate, enforcing compliance with new regulatory obligations put in place by the government to regulate access and privacy related to the energy consumption data held on smart meters. This runs in parallel to our work with the government in considering the opportunities and issues associated with the development of a smart grid. This activity contributes to promoting value for money for all consumers, which is one of the four key themes set out in Ofgem's Forward Work Programme for 2013-14.

## Associated documents

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- DECC, August 2011, a call for evidence on data access and privacy  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/43113/2547-smip-call-for-evidence-180811.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43113/2547-smip-call-for-evidence-180811.pdf)
- Ofgem, October 2011, response to DECC's call for evidence  
<https://www.ofgem.gov.uk/ofgem-publications/41909/ofgem-response-decc-call-evidence-data-access-and-privacy.pdf>
- DECC, April 2012, consultation on data access and privacy  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/43043/4933-data-access-privacy-con-doc-smart-meter.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43043/4933-data-access-privacy-con-doc-smart-meter.pdf)
- Ofgem, May 2012, response to consultation on data access and privacy  
<https://www.ofgem.gov.uk/publications-and-updates/ofgem%E2%80%99s-response-decc%E2%80%99s-consultation-data-access-and-privacy>
- DECC, December 2012, government response to consultation on data access and privacy  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf)

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## Executive Summary

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### Purpose

This document sets out, for consultation, Ofgem’s proposals to introduce additional gas and electricity supply licence obligations. These would ensure that all domestic and micro business consumers have greater control of the energy consumption data on their Smart-Type Meters (for domestic consumers) and Advanced Meters (for micro business consumers). We include, for consultation, the licence changes required to implement our proposals. These obligations would complement similar provisions already contained in suppliers’ licences in respect of smart meters.

### Background

Gas and electricity suppliers will be required, by their supply licences, to use all reasonable steps to ensure that all their domestic and smaller non-domestic customers have smart meters (or in some cases Advanced Meters) by the end of 2020. Smart meters are capable of storing energy consumption data at much higher granularity than traditional meters and are capable of being read remotely. They are expected to lead to significant benefits for consumers and the energy retail markets more widely.

Some suppliers have already installed, or are installing, Smart-Type Meters and Advanced Meters. These meters have some similarities with, and offer some of the benefits of, smart meters, but do not meet the same detailed technical specification.

When accessing data from a consumer’s meter, suppliers are required to comply with general privacy laws, including the Data Protection Act 1998<sup>1</sup>. The Department of Energy and Climate Change (DECC) introduced supplier licence obligations (‘Privacy Requirements’) that go beyond the Data Protection Act, to ensure domestic and micro business consumers have greater control of the energy consumption data held on their smart meters. Due to the different privacy concerns for domestic premises compared with micro businesses, DECC introduced tighter controls over access to smart meter consumption data from domestic premises.

The licence conditions introduced by DECC do not apply in respect of energy consumption data stored on Smart-Type Meters and Advanced Meters. This means that domestic and micro business consumers with such meters may not have the same level of control over the consumption data stored on their meters as domestic and micro business consumers with smart meters.

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<sup>1</sup> The Data Protection Act places legal obligations on companies that handle personal information about individuals. It is enforced by the Information Commissioner’s Office.

## Extending the 'Privacy Requirements'

In Chapters 2 and 3 we propose to extend the licence obligations (ie the Privacy Requirements) in full for Smart-Type Meters and Advanced Meters at domestic and micro business premises respectively.

However, for domestic consumers, we recognise that where the Smart-Type Meter is already installed, introducing a new approach to controlling access to data could have both positive and negative impacts on the customer experience. We discuss these impacts and seek evidence from stakeholders on the likelihood and potential magnitude of them. If there is evidence that this could result in consumer inconvenience we will consider whether the arrangements should be more flexible where a Smart-Type Meter is already installed.

Due to the different Privacy Requirements for domestic and micro business premises (in terms of the type of consent you need from the consumer before accessing data), these concerns do not necessarily apply to micro businesses.

## The Smart Metering Installation Code of Practice ('SMICoP')

This consultation also considers whether other elements of the regulatory framework for smart meters should be extended to Smart-Type Meters and Advanced Meters. For example, we are considering the coverage of rules underpinning supplier actions and behaviour during the smart meter installation process (ie the SMICoP).

## Next Steps

This consultation will be nine weeks in duration and will end on 19 February 2014. Details on how to respond are in Appendix 1. We intend to publish our decision letter in spring/summer 2014.

# 1. Introduction and background

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1.1. The Department of Energy and Climate Change (DECC) is leading the implementation of smart metering and has placed new obligations on gas and electricity suppliers to rollout smart meters. Suppliers will be required, by their supply licences, to use all reasonable steps to ensure that all their domestic and smaller non-domestic customers have smart meters (or in some cases Advanced Meters) by the end of 2020. The smart meter roll-out will affect every home and smaller business in Great Britain, with the replacement of around 53 million gas and electricity meters in less than a decade.

1.2. Smart meters are expected to lead to significant benefits for consumers and the energy retail markets more widely. Consumers will be provided with more information about their energy consumption, which should help them to manage their usage more effectively. There will be improved customer service, such as accurate billing; easier and quicker switching between different methods of payment (credit or prepayment) and a wider range of payment options, for example top-ups to prepayment meters over the internet. Smart meters will also help to deliver cost savings for industry and, ultimately, consumers.

1.3. Some suppliers have already installed, or are installing, Smart-Type Meters (at domestic premises) and Advanced Meters (at non-domestic premises). Such meters have some similarities with smart meters, for example they are capable of being read remotely and store energy consumption data at much higher granularity than traditional meters, but they do not meet the same detailed technical specification as smart meters. Suppliers will be required to replace all Smart-Type Meters and most Advanced Meters at small non-domestic premises with smart meters by the end of 2020<sup>2</sup>.

1.4. Ofgem agrees with DECC that it is important for consumers to have control over the consumption data on their meters. To facilitate this, DECC introduced a regulatory framework for data access and privacy for smart meters only, including new supplier licence obligations (the 'Privacy Requirements'<sup>3</sup>) as well as obligations in the Smart Energy Code (SEC)<sup>4</sup>.

1.5. The Privacy Requirements sets out the circumstances in which suppliers are able to collect consumption data from smart meters and the extent to which prior consent from consumers is required. They allow, in limited circumstances, suppliers to access

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<sup>2</sup> Note that there is an exception to this obligation where a supplier has installed (or contracted for the installation of) an Advanced Meter at a small non-domestic (including micro business) premise by a certain date.

<sup>3</sup> The broad framework for data access and privacy regarding as captured in the Privacy Requirements is summarised at the start of chapters 2 and 3.

<sup>4</sup> The Smart Energy Code is a new industry code. It is a multiparty agreement which defines the rights and obligations between the Data and Communications Company (DCC) and the users (suppliers, network operators and other users) of its services.

energy consumption data from consumers without their consent; for example they are able to obtain a meter read required to issue an accurate bill.

1.6. In other situations, consumer consent is necessary for suppliers to access consumption data. The framework requires:

- opt-in consent<sup>5</sup>: from domestic consumers to obtain and use data at greater than daily granularity ('Detailed Data') or to use any granularity of consumption data for marketing purposes
- opt-out consent<sup>6</sup>: from micro business consumers for access to consumption data at greater than monthly granularity; and from domestic consumers for access to consumption data up to daily granularity.

1.7. When accessing consumption data, suppliers are required to comply with general privacy laws, including the Data Protection Act 1998.<sup>7</sup> However, the Privacy Requirements do not currently apply in respect of consumers with Smart-Type Meters and Advanced Meters.

## Structure of document

1.8. In Chapter 2 we consider what obligations should be placed on suppliers with domestic customers with Smart-Type Meters.

1.9. In Chapter 3 we consider what obligations should be placed on suppliers with micro business customers with Advanced Meters.

1.10. In Chapter 4 we consider various issues regarding the introduction of new obligations, such as whether similar requirements should apply to network companies.

1.11. We have considered the wider smart meter regulatory framework introduced by DECC to see if any other supplier obligations should be extended. In Chapter 4 we also consider the coverage of rules underpinning supplier actions and behaviour during the smart meter installation process.

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<sup>5</sup> The consumer must give explicit consent to the supplier.

<sup>6</sup> The supplier is required to notify the consumer of the data they plan to take and must not take the data if the consumer so requests.

<sup>7</sup> Additionally, under consumer protection law, suppliers offering smart meters, Smart-Type Meters or Advanced Meters must provide consumers with all relevant information about new terms and conditions, the data which the supplier will collect and any rights which consumers have to opt-out of that data collection. Suppliers must ensure consumers can make well-informed decisions in this regard. We understand that most, if not all, suppliers are giving consumers some form of choice over access to their data, regardless of meter type.

1.12. At Appendices 2 and 3, we set out for comment four sets of licence drafting that reflect the different levels of obligations discussed in Chapters 2 and 3.

### Who this consultation is aimed at

1.13. This consultation is likely to be of interest to suppliers, consumers and their representatives, privacy groups, DECC and the Information Commissioner's Office.

### Next Steps

1.14. Please address any questions regarding this consultation to Colin Down, Senior Policy Manager ([colin.down@ofgem.gov.uk](mailto:colin.down@ofgem.gov.uk), 020 7901 7327). Responses should be sent to [smartermarkets@ofgem.gov.uk](mailto:smartermarkets@ofgem.gov.uk), copying [colin.down@ofgem.gov.uk](mailto:colin.down@ofgem.gov.uk), or by post addressed to the Smarter Metering Team using the address below. It will be nine weeks in duration, and will end on 19 February 2014.

Smarter Metering Team  
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1.15. We will publish any responses we receive on our website, except those marked as confidential. We intend to publish our decision letter in spring/summer 2014. If we decide following this consultation to introduce new licence obligations, we expect them to be in place in summer 2014.

### Impact assessment

1.16. Section 5A of the Utilities Act 2000 places a duty on the Authority to carry out Impact Assessments where the Authority is proposing to do anything for the purposes of, or in connection with, the carrying out of any function exercisable by it under or by virtue of Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989, and it appears to the Authority that the proposal is 'important' within the meaning of section 5A.2

1.17. We do not believe our proposal meets any of the 'important' criteria. The impact on suppliers is unlikely to be significant as they are obliged to meet the Privacy Requirements for their smart meter installations (so should have the necessary systems and processes in place to comply), regardless of whether we extend the obligations to Smart-Type Meters and Advanced Meters. As such, we do not consider it necessary to conduct an Impact Assessment.



## 2. Proposed obligations – domestic sector

### Chapter summary

Suppliers with customers with Smart-Type Meters are not captured by the obligations in the Privacy Requirements. In this chapter we consider what level of obligations should apply in the domestic sector.

We are minded to extend the obligations contained in the Privacy Requirements. However, we consider whether a more flexible approach is warranted where the Smart-Type Meter is already installed. This includes considering potential customer experience issues where the consumer has already made choices about data access and where they may lose smart services.

**Question 1: Please provide views on the different approaches to extending the data access and privacy framework discussed in this chapter. In particular, which is your preferred approach and why?**

**Question 2: Does the licence drafting at Appendices 2 and 3 achieve our policy aims?**

**Question 3: We have questioned whether a consumer who already has a Smart-Type Meter being approached again regarding their choices for data privacy could create a poor experience. Relevant to this is the nature of the conversation on their choices they had at installation. If you think a more flexible framework (ie opt-out consent permissible if accessing Detailed Data) is necessary to prevent poor consumer experience, please provide evidence that the consumer would be unnecessarily inconvenienced by a further conversation regarding their choices.**

**Question 4: If we fully extend the Privacy Requirements, what would the impact on consumers be in terms of loss of services?**

**Question 5: If we introduce a flexible framework, what level of consent (ie opt-in or opt-out) should suppliers be required to obtain from domestic consumers before using any data for Marketing purposes?**

**Question 6: If we introduce a flexible framework, do you consider that after an initial period, suppliers should be required to get opt-in consent for Detailed Data? What would be an appropriate period? Please provide reasons for your answers.**

### Extending the Privacy Requirements to consumers with Smart-Type Meters

2.1. DECC estimated that some 804,420 Smart-Type Meters had been installed in domestic premises as of end September 2013. We expect that some suppliers will

## Consultation on extending the existing smart meter framework for data access and privacy to Smart-Type Meters and Advanced Meters

continue to install Smart-Type Meters, although this will ramp down as smart meters become more widely available.<sup>8</sup>

2.2. The Privacy Requirements for domestic consumers<sup>9</sup> are set out in full in the supply licences, but are summarised in the table below.

### Basic framework:

- Allow suppliers to access monthly (or less granular) energy consumption data<sup>10</sup>, without customer consent, for billing and for the purposes of fulfilling any statutory requirement or licence obligation;
- Allow suppliers to access daily (or less granular) energy consumption data for any purpose except marketing, with clear opportunity for the customer to **opt out**; and
- Require that suppliers must receive explicit (**opt-in**) consent from the customer in order to access half-hourly energy consumption data, or to use energy consumption data [of any granularity] for marketing purposes.

### Exceptions to the basic framework:

- Allow suppliers to access daily energy consumption data on an ad hoc basis, without customer consent, where the supplier has reasonable suspicion that theft is being committed, or for the purposes of accurate billing (for example, at change of tenancy/change of supplier/change of tariff events) and addressing customer queries;
- Allow suppliers to access half-hourly energy consumption data for use in approved trials, with clear opportunity for the consumer to opt out;
- For pre-payment customers, allow suppliers to access more regular readings as top-ups are made, provided this has been explained to the customer.

Source: DECC's response to consultation on its proposed framework for smart metering data access and privacy<sup>11</sup>.

2.3. Note that where consumers have Smart-Type Meters, suppliers may already be collecting Detailed Data on an opt-out basis. In contrast, where a consumer has a smart meter, suppliers are required by the Privacy Requirements to obtain opt-in consent obtaining or using Detailed Data or if using any granularity of consumption data for Marketing purposes.

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<sup>8</sup> DECC's Statistical release: Smart meters, Great Britain, quarter 3 2013, <https://www.gov.uk/government/publications/smart-meter-statistics-data-quarter-3-2013>, looking at the big six suppliers only.

<sup>9</sup> References to 'consumer', 'Smart-Type Meter', 'smart meter' etc in this chapter relate to the domestic sector, unless otherwise stated.

<sup>10</sup> For clarity, 'monthly/daily/half-hourly energy consumption data' means energy consumption data relating to a period of one month/one day/half an hour. This may be different from the frequency with which meter readings are taken (for example, if seven sets of daily energy consumption data were collected at the end of each week).

<sup>11</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf)

2.4. In its response to its consultation on data access and privacy<sup>12</sup>, DECC stated that it was keen to explore the possibility of a clear voluntary commitment from suppliers to apply the Privacy Requirements to advanced domestic meters (which we are calling Smart-Type Meters in this consultation). They went on to say “Ofgem has also said that it will consider whether similar protections to those in the data access and privacy framework should be extended to consumers with such meters.”

2.5. We have considered this issue in light of our principal duty to protect the interests of consumers, both present and future. We are now consulting on extending the Privacy Requirements to consumers with Smart-Type Meters.

#### *Ofgem’s proposals*

2.6. We think that suppliers with customers with Smart-Type Meters should face the same obligations in respect of access to data as those supplying consumers with smart meters, unless there are strong arguments to suggest that a different approach is needed. This ensures fair and consistent treatment of consumers, in this case ensuring they have control over the consumption data on their meters. As such, **our proposal is to extend the Privacy Requirements’ obligations to suppliers with customers with Smart-Type Meters.**

2.7. We considered whether the protections should be extended through voluntary arrangements, but **we propose to introduce new licence obligations that extend the Privacy Requirements.** This would help to ensure there is consistent treatment of similar groups of consumers. It would also provide a route for requesting information from suppliers to ascertain their compliance.

2.8. The proposals above are reflected in the licence drafting at Appendix 2. However, we have considered whether a more flexible approach may be warranted when a Smart-Type Meter has already been installed, as discussed below.

#### Obligations where a Smart-Type Meter has already been installed

2.9. In principle, we consider the obligations on suppliers should be the same regardless of when the Smart-Type Meter was installed. However, below we discuss some of the potential impacts (negative and positive) on the consumer from suppliers being required to get opt-in consent.

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<sup>12</sup> See paragraph 3.87 here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf)

### Avoiding 'noise and confusion' for consumers

2.10. The research<sup>13</sup> from Ofgem's Consumer First Panel in early 2011 showed that consumers do not want more 'noise and confusion' in their lives as a result of sharing smart meter data.

2.11. We are mindful that the most convenient time for suppliers to obtain opt-in consent may well be during, or leading up to, the installation visit itself. As such, for consumers who already have Smart-Type Meters installed, their supplier has presumably already discussed data access and privacy and the consumer's choices in this respect. Some consumers may have decided not to exercise their right to opt-out. If we decided to require suppliers to obtain opt-in consent for Detailed Data, they would need to have a further conversation with their customers, which may be considered more 'noise and confusion'.

2.12. How important an issue this is depends on:

- how detailed the initial conversation was and how clearly the consumers' choices were presented
- how many consumers would be affected
- when the supplier would intend to contact that consumer again to keep them up-to-date on their choices.<sup>14</sup>

### Potential loss of 'smart' services

2.13. Some consumers may be receiving useful services from their supplier based on Detailed Data. Fewer consumers are likely to provide opt-in consent compared to those who provide opt-out consent, as opt-in requires a consumer to make an active choice. For example, the consumer may want the service, but may not respond to an email. A move to require opt-in consent for collection of data through meters that have already been installed may result in some consumers losing services they value. We are interested to understand what the impact on consumers (in terms of loss of services) would be if suppliers were required to get opt-in consent to access Detailed Data.

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<sup>13</sup> Ofgem Consumer First Panel Year 3 – 2010/2011: Report from the third set of workshops: Smart Metering Data Privacy Issues, Ofgem, June 2011

<sup>14</sup> The Privacy Requirements require suppliers to "at such intervals as are determined appropriate by the licensee" ensure that customers are regularly updated on the energy consumption data they are collecting (eg granularity of data, what it is being used for and any rights the consumer has to object (or withdraw consent) to that data being obtained and used).

2.14. Balanced against the risk of losing services, it may be that if suppliers are required to get opt-in consent for Detailed Data, they will face incentives to offer improved products and services to consumers in return for accessing Detailed Data.

#### Use of data for Marketing purposes

2.15. The Privacy Requirements require suppliers to obtain opt-in consent to use any granularity of consumption data for Marketing purposes.

2.16. DECC commissioned research which found that “the overwhelming concern was the possibility that data collected via a smart meter might lead to more unwanted marketing communication”<sup>15</sup>. As such, we are consulting on what type of consent (opt-in or opt-out) a supplier should be required to get, where the supplier will use the data for Marketing and the Smart-Type Meter has already been installed.

#### *Ofgem’s proposals*

2.17. As already noted, our initial proposal is to extend the Privacy Requirements to cover all suppliers with customers with Smart-Type Meters irrespective of when the meter was installed. However, we are interested to hear views on any potential consumer detriment, due to the factors outlined above, that may arise from a very rigid adherence to this principle.

2.18. If convincing evidence is provided, **we may consider it appropriate to allow suppliers to continue to obtain Detailed Data on an opt-out basis (possibly for a limited time, before reverting to opt-in) from Smart-Type Meters already installed.** We invite comments on the legal drafting at Appendix 3, which provides for this more flexible approach.

2.19. Even if we go down this route, **our preferred approach would still be that suppliers are required to get opt-in consent to use consumption data for Marketing purposes.** This approach is consistent with addressing concerns over unwanted Marketing resulting from access to consumption data.

2.20. However, we recognise there might be benefits in allowing access on an opt-out basis, for example to avoid the need for suppliers to have to have a further discussion with their customers regarding use of data. We invite comments on both approaches. We provide licence drafting for both opt-out and opt-in consent for the use of data for Marketing purposes at Appendix 3, with our non-preferred approach (opt-out) being represented in square brackets.

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<sup>15</sup> See paragraph 1.11 of DECC’s government response to consultation on data access and privacy  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf)

2.21. The licence drafting at Appendix 3 provides alternative text (in square brackets) that allows for suppliers to have access to Detailed Data with opt-out consent for a period, after which opt-in consent is required. We welcome views on what would be an appropriate period in light of any services suppliers are providing to consumers using Detailed Data.

## Trials

2.22. Trials involving smart meters provide important data and insight that can increase understanding of how to maximise the benefits of smart meters for consumers. Early trials are likely to have used Smart-Type Meters, due to the relatively low/non-availability of smart meters.

2.23. We do not intend to unnecessarily limit suppliers' ability to continue with successful trials that include Smart-Type Meters. Also, we do not want to create barriers to starting new trials using Smart-Type Meters, although we anticipate the needs for such trials are now likely to be low due to the greater availability of smart meters. However, we need to be sure that consumers participating in trials have an appropriate level of protection.

### *Ofgem's proposals*

2.24. **We propose that suppliers should have the opportunity to apply to Ofgem to use, or continue to use, Detailed Data from their Smart-Type Meters in trials.** This would be consistent with the approach for smart meters and is reflected in the proposed licence drafting in Appendices 2 and 3. We would expect to adopt DECC's 'Process for approval of supplier trials using half-hourly energy consumption data'<sup>16</sup> in considering whether those trials should receive a derogation from the requirement to obtain opt-in consent for Detailed Data.

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<sup>16</sup> See below paragraph 3.39 here:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf)

## 3. Proposed obligations – micro business sector

### Chapter summary

Suppliers with micro business customers with Advanced Meters are not captured by the obligations in the Privacy Requirements. In this chapter we consider what level of obligations should apply.

We are currently minded to extend the obligations contained in the Privacy Requirements.

**Question 7: We invite comments on our proposal to extend the Privacy Requirements to cover Advanced Meters installed at micro businesses, including the licence drafting at Appendices 2 and 3.**

### Extending the Privacy Requirements to micro business consumers with Advanced Meters

3.1. The Privacy Requirements for micro business consumers<sup>17</sup> are set out in full in the supply licences, but is summarised in the table below.

#### Basic framework:

- Allow suppliers to access monthly (or less granular) energy consumption data, without customer consent, for billing and for the purposes of fulfilling any statutory requirement or licence obligation;
- Allow suppliers to access any granularity of energy consumption data for any purpose, with clear opportunity for the customer to opt out.

3.2. We have considered whether the Privacy Requirements need to be extended to micro businesses, as the concerns about privacy may be lower than when considering domestic customers (as reflected in the less onerous privacy framework put in place by DECC for smart meters). We note that DECC considered these issues when consulting on the Privacy Requirements. They made the following points:

- “Privacy concerns may be as acute for micro-businesses as for domestic consumers, because there will be fewer people in the organisation and because the premise itself may be shared living/working space.”
- “Micro-businesses may also be less able to negotiate different arrangements with alternative providers, and so offering suppliers unfettered access to their energy

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<sup>17</sup> References to ‘consumer’, ‘Advanced Meter’, ‘smart meter’ etc in this chapter relate to the micro business sector, unless otherwise stated.

consumption data may inhibit competition.”

- “Information that relates to a business and its activities can be personal data under the Data Protection Act, if it can be related to or identifies an individual, and this is more often the case when the business is a sole trader or a smaller enterprise where the information may be easily linked to an individual.”

3.3. We consider these points to be relevant in considering any changes we may make. Also, having a different framework for smart meters compared to Advanced Meters may place incentives on suppliers to install more Advanced Meters at micro business premises than they would choose to all things being equal<sup>18</sup>.

3.4. Given that the Privacy Requirements only require opt-out consent, there are fewer complexities to consider regarding meters already installed in deciding what obligations to apply. Micro business consumers may have been given a choice over what data the supplier will obtain and use, in which case extending the Privacy Requirements (which require opt-out consent) is unlikely to be more onerous than the choice the consumer had at the point of installation. If suppliers are providing services based on obtaining data on an opt-out basis, extending the Privacy Requirements would not cause such services to cease. Where a supplier did not provide any choice to the consumer, concerns about the customer experience being affected by them being contacted again would not apply (as they haven't discussed their choices in the first place).

#### *Ofgem's proposals*

3.5. We think that suppliers with micro business customers with Advanced Meters should face the same obligations in respect of access to data as those supplying consumers with smart meters, but we are seeking views on whether such obligations are necessary. **We are currently minded to extend the Privacy Requirements' obligations to suppliers with micro business customers with Advanced Meters.** For the same reasons as stated in respect of extending the Privacy Requirements' obligations in the domestic sector, **we propose to introduce new licence obligations that extend the Privacy Requirements.**

3.6. The proposals above are reflected in the licence drafting at Appendices 2 and 3.

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<sup>18</sup> Suppliers will be able to install Advanced Meters at non-domestic premises and this count towards their smart meter rollout obligation, provided they are installed by 5 April 2016.



## 4. Other considerations

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### Chapter summary

In this chapter we consider various issues regarding the introduction of new obligations, such as whether similar requirements should apply to network companies. We also consider the coverage of rules underpinning supplier actions and behaviour during the smart meter installation process.

**Question 8: Do you agree with our proposal to not extend the existing data access and privacy arrangements that apply to network companies for premises with smart meters to network companies for premises with Smart-Type Meters and Advanced Meters at micro business premises?**

**Question 9: Do you agree that 56 days is sufficient for suppliers to become compliant with their new obligations?**

**Question 10: If we extend the Privacy Requirements, are there any reasons why suppliers wouldn't be able to comply based on the metering stock it would apply to?**

**Question 11: We welcome views and evidence from stakeholders on whether consideration should be given to extending the existing Smart Metering Installation Code of Practice (SMICoP) rules to the installation of Smart-Type Meters and Advanced Meters at micro business premises.**

### Obligations for network companies

4.1. DECC introduced licence conditions for network companies (both electricity distribution network operators and gas transporters) that apply similar data access and privacy rules as those introduced for suppliers. We have considered whether those requirements should be extended for domestic consumers with Smart-Type Meters micro business consumers with Advanced Meters.

4.2. For smart meters, there will be a clear route for network companies to access the smart meter data, by requesting it from the Data and Communications Company (DCC). As Smart-Type Meters and Advanced Meters are unlikely to be capable of being enrolled in the DCC, this route for accessing data would not be available to network companies.

4.3. As such, the only potential route for network companies to access data would be through suppliers. The risk to consumers not having control over the smart meter data is therefore low, as if a network company did request data from a supplier, the supplier's obligations in terms of seeking consent from the consumer would apply.

**We do not therefore propose to extend the arrangements for network companies.** We welcome comment on whether you agree with this proposal.

## Implementation date

4.4. Consumers who already have Smart-Type Meters and Advanced Meters may not currently have the same level of control over consumption data as consumers with smart meters. Any delay in extending the Privacy Requirements would delay the benefits which these consumers may gain from the enhanced control.

4.5. We propose that if we introduce new licence obligations, suppliers would have 56 days to become compliant (ie this is the time it would take the licence conditions to come into effect given the statutory timescales required to make such changes). While we recognise there may be a logistical challenge in terms of contacting consumers to explain their new choices, we are keen to extend the obligations as soon as possible. Also, we note that suppliers should already have systems in place to comply with the Privacy Requirements for smart meters, which should be able to be used for their Smart-Type Meters and Advanced Meters. However, we welcome views and evidence on whether suppliers should have a longer period to comply with the new requirements in respect of domestic premises<sup>19</sup>.

## Variety in metering equipment

4.6. There are likely to be numerous makes and models of Smart-Type Meters and Advanced Meters installed at consumers' premises. Certain meters may have inherent technical limitations that mean suppliers, should we choose to introduce licence conditions, would need to do some work to ensure the meters are capable of compliance.

### *Ofgem's proposals*

4.7. We are interested to hear from suppliers if there are any technical reasons why they believe the Privacy Requirements are incompatible with their meters. Such views must be supported by detailed and robust evidence. However, we would not expect there to be any irresolvable technical reasons that prevent suppliers complying with the Privacy Requirements and hence **we have not included for consultation licence drafting to provide for more flexible arrangements for such meters.**

## Smart Metering Installation Code of Practice

4.8. The SMICoP is a licence-backed code that sets out rules and standards of conduct for suppliers installing smart meters for domestic and micro business customers. The Authority approved the code in May 2013, and it took effect from 1

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<sup>19</sup> We have not considered whether more time is necessary for the micro business obligations, as obtaining opt-out consent should be easier than obtaining opt-in consent.

June 2013. Further information on the SMICoP can be found on the Energy UK website<sup>20</sup>.

4.9. The licence conditions underpinning the SMICoP and the SMICoP itself only apply to the installation of smart meters. For Smart-Type Meters and Advanced Meters at micro business premises, the SMICoP may be applied on a voluntary basis and we understand that the six large suppliers have adopted this voluntary approach for some time.

4.10. However, in the absence of formal arrangements where Smart-Type Meters and Advanced Meters are installed, we would welcome views and evidence from stakeholders on whether consideration should be given to extending the existing rules to the installation of Smart-Type Meters and Advanced Meters.

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<sup>20</sup> <http://www.energy-uk.org.uk/policy/smart-meters/-smart-metering-installation-code-of-practice.html>

## 5. Appendices

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## Appendix 1 - Consultation response and questions

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We would like to hear the views of interested parties in relation to any of the issues set out in this document.

We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter heading and which are replicated below.

Responses should be received by 19 February 2014 and should be sent to:

Colin Down  
Smarter Metering  
Ofgem, 9 Millbank, London SW1P 3GE  
020 7901 7327  
[Smartermarkets@ofgem.gov.uk](mailto:Smartermarkets@ofgem.gov.uk), copying [colin.down@ofgem.gov.uk](mailto:colin.down@ofgem.gov.uk)

Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website [www.ofgem.gov.uk](http://www.ofgem.gov.uk). Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. Respondents are asked to put any confidential material in the appendices to their responses.

Next steps: Having considered the responses to this consultation, we intend to publish our decision letter in spring/summer 2014. If we decide following this consultation to introduce new licence obligations, we expect them to be in place in summer 2014.

### **CHAPTER: Two**

**Question 1: Please provide views on the different approaches to extending the data access and privacy framework discussed in this chapter. In particular, which is your preferred approach and why?**

**Question 2: Does the licence drafting at Appendices 2 and 3 achieve our policy aims?**

**Question 3: We have questioned whether a consumer who already has a Smart-Type Meter being approached again regarding their choices for data privacy could create a poor experience. Relevant to this is the nature of the**

**conversation on their choices they had at installation. If you think a more flexible framework (ie opt-out consent permissible if accessing Detailed Data) is necessary to prevent poor consumer experience, please provide evidence that the consumer would be unnecessarily inconvenienced by a further conversation regarding their choices.**

**Question 4: If we fully extended the Privacy Requirements, what would the impact on consumers be in terms of loss of services?**

**Question 5: If we introduce a flexible framework, what level of consent (ie opt-in or opt-out) should suppliers be required to obtain from domestic consumers before using any data for Marketing purposes?**

**Question 6: If we introduce a flexible framework, do you consider there should be a grace period, after which suppliers would be required to get opt-in consent for Detailed Data? What would be an appropriate amount of time? Please provide reasons for your answers.**

### **CHAPTER: Three**

**Question 7: We invite comments on our proposal to extend the Privacy Requirements to cover Smart-Type Meters installed at micro businesses.**

### **CHAPTER: Four**

**Question 8: Do you agree with our proposal to not extend the existing data access and privacy arrangements that apply to network companies for premises with smart meters to network companies for premises with Smart-Type Meters?**

**Question 9: Do you agree that 56 days is sufficient for suppliers to become compliant with their new obligations?**

**Question 10: If we extend the Privacy Requirements, are there any reasons why suppliers wouldn't be able to comply based on the metering stock it would apply to?**

**Question 11: We welcome views and evidence from stakeholders on whether consideration should be given to extending the existing SMICoP rules to the installation of Smart-Type Meters.**

## Appendix 2 – Licence drafting – full extension of Privacy Requirements

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Below we have marked up condition 47 of the Electricity Supply Licence and condition 41 of the Gas Supply Licence where we propose to make changes if we decide on a full extension of the Privacy Requirements.

### **Condition 47: Smart Metering – Matters Relating To Obtaining and Using Consumption Data Application**

47.1 Part A of this condition applies only in respect of each Domestic Premises (the relevant premises):

(a) to which electricity is supplied through an Electricity Meter which forms part of a Smart Metering System; or

(b) to which electricity is supplied through a Remote Access Meter; and

(c) in respect of which the quantity of electricity supplied is measured by that Electricity Meter.

47.2 Part B of this condition applies only in respect of each Designated Premises at which the Customer is a Micro Business Consumer (the micro business premises):

(a) to which electricity is supplied through an Electricity Meter which forms part of a Smart Metering System; or

(b) to which electricity is supplied through a Remote Access Meter; and

(c) in respect of which the quantity of electricity supplied is measured by that Electricity Meter.

#### **Rationale for changes above:**

Extends the scope of the obligations in condition 47 to also apply where a Remote Access Meter (ie a Smart-Type Meter) is installed, except where a provision in condition 47 is specifically carved out as only applying to Smart Meters; ie as at 47.6(d) and 47.15.

We considered using the definition for Advanced Domestic Meter (ADM) instead of Remote Access Meter in the licence drafting. However, ADM also includes smart meters in the way it is defined and it wouldn't capture meters that record data less granular than daily but more granular than monthly. As such, it could have led to confusion when using the licence.

### **PART A. APPLICATION TO RELEVANT PREMISES**

#### **Prohibition on obtaining consumption data**

47.3 Subject to paragraphs 47.4 and 47.7, the licensee must not, in respect of any relevant premises, obtain any Electricity Consumption Data which relates to a period of less than one month.

#### **Exception to Prohibition – Obtaining consumption data for periods of less than one month**

47.4 Paragraph 47.3 does not apply where:

- (a) the Electricity Consumption Data that is obtained relates to a period of less than one month but not less than one day; and
- (b) the requirements of either paragraph 47.5 or 47.6 are satisfied.

47.5 The requirements of this paragraph are that:

(a) the licensee has given Notice to the Domestic Customer at the relevant premises informing the Domestic Customer:

- (i) that the licensee intends to obtain Electricity Consumption Data which relates to any one or more periods of a length referred to in paragraph 47.4(a);
- (ii) of the purposes (which purposes must not include Marketing) for which the licensee may use that Electricity Consumption Data; and
- (iii) that the Domestic Customer may at any time object to the licensee obtaining that Electricity Consumption Data and of the process by which he may do so; and

(b) the Domestic Customer has either:

- (i) given explicit consent to the licensee obtaining that Electricity Consumption Data for the purposes set out in the Notice (and such consent has not been withdrawn); or
- (ii) after at least seven days have elapsed from the date on which the Notice was given to him, not objected to the licensee obtaining that Electricity Consumption Data for the purposes set out in the Notice.

47.6 The requirements of this paragraph are that one of the following applies:

(a) the licensee has reasonable grounds to suspect that there is an occurrence of theft or abstraction of electricity at the relevant premises, and it obtains Electricity Consumption Data which relates to any one or more periods of a length referred to in paragraph 47.4(a) only for the purposes of investigating that suspected theft or abstraction;

(b) the licensee obtains Electricity Consumption Data which relates to a single period of a length referred to in paragraph 47.4(a) only for the purposes of:

- (i) verifying the quantity of electricity supplied to the relevant premises since the last date in respect of which the licensee obtained Electricity Consumption Data that was used for the purposes of sending a Bill to the Domestic Customer (the Billing Date); and
- (ii) calculating and sending an accurate and up to date Bill (including a final Bill) to the Domestic Customer in respect of the Charges for the Supply of Electricity to the relevant premises since the Billing Date;

(c) the licensee obtains Electricity Consumption Data which relates to any one or more periods of a length referred to in paragraph 47.4(a) only for the purposes of responding to an enquiry from or a complaint made by, or on behalf of, the Domestic Customer at the relevant premises and relating to the supply of electricity by the licensee to the relevant premises; or



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(d) the Electricity Meter forming part of the Smart Metering System or Remote Access Meter at the relevant premises is a Prepayment Meter, and the Electricity Consumption Data:

- (i) is obtained only by virtue of the Remote Access Meter or Smart Metering System registering an advance payment made by the Domestic Customer through that Prepayment Meter; and
- (ii) relates to a single period of a length referred to in paragraph 47.4(a) which corresponds to the period since the previous advance payment made by the Domestic Customer through that Prepayment Meter.

**Rationale for changes above:**

Subparagraph (d) currently only applies to Smart Meters, so the change would be required to ensure it also applies where a Remote Access Meter is installed.

**Exception to Prohibition – Obtaining consumption data for periods of less than a day**

47.7 Paragraph 47.3 does not apply where:

- (a) the Electricity Consumption Data that is obtained relates to a period of less than one day; and
- (b) the requirements of either paragraph 47.8 or 47.9 are satisfied.

47.8 The requirements of this paragraph are that:

- (a) the licensee has given Notice to the Domestic Customer at the relevant premises informing the Domestic Customer:
  - (i) that the licensee intends to obtain Electricity Consumption Data which relates to any one or more periods of less than one day;
  - (ii) of the purposes for which the licensee may use that Electricity Consumption Data;
  - (iii) that the licensee requires the Domestic Customer's consent to obtain that Electricity Consumption Data; and
  - (iv) that where the Domestic Customer gives consent he may withdraw it at any time and of the process by which he may do so; and
- (b) the Domestic Customer has given his explicit consent to the licensee obtaining that Electricity Consumption Data for the purposes set out in the Notice and such consent has not been withdrawn.

47.9 The requirements of this paragraph are that:

- (a) where
  - (i) there is a Remote Access Meter and the Secretary of State Authority has approved the Trial; or
  - (ii) the Electricity Meter forms part of a Smart Metering System and the Secretary of State has approved proposals submitted by the licensee for obtaining Electricity Consumption Data which relates to any one or more periods of less than one day, in respect of a particular category of relevant

~~premises and for a particular purpose (in each case as specified in the proposal), on a trial basis (the Trial); and~~

- (b) the relevant premises fall within that category;
- (c) the licensee has given at least 14 days advance Notice to the Domestic Customer at the relevant premises informing the Domestic Customer:
  - (i) of the nature and purpose of the Trial;
  - (ii) that he may at any time object to being included in the Trial;
  - (iii) of the process by which the Domestic Customer may object; and
- (d) the Domestic Customer has not objected to being included in the Trial.

Rationale for changes above:

We, as opposed to the Secretary of State, would expect to approve proposals for a trial where it concerns Remote Access Meters.

For efficiency, the definition of trial has been moved from the main body of text to the table of definitions.

### **Prohibition on use of consumption data**

47.10 Subject to paragraph 47.11, the licensee must not use Electricity Consumption Data obtained in respect of any relevant premises other than for any of the following purposes:

- (a) calculating and sending a Bill to the Domestic Customer;
- (b) complying with a relevant condition or a relevant requirement;
- (c) where the requirements of paragraph 47.5 are satisfied, the purpose set out in the Notice given to the Domestic Customer under paragraph 47.5(a);
- (d) where any of the requirements of paragraph 47.6 are satisfied, the purpose for which the data was obtained in accordance with paragraph 47.6;
- (e) where the requirements of paragraph 47.8 are satisfied, the purpose set out in the Notice given to the Domestic Customer under paragraph 47.8(a);
- (f) where the requirements of paragraph 47.9 are satisfied, the purpose of the Trial.

### **Exception to prohibition on use of consumption data**

47.11 The licensee may use Electricity Consumption Data for purposes other than the purposes specified in paragraph 47.10 where:

- (a) it has given at least seven days advance Notice informing the Domestic Customer that it intends to use Electricity Consumption Data for the purposes specified in the Notice; and
- (b) the requirements of paragraph 47.12 are satisfied.

47.12 The requirements of this paragraph are that:

- (a) where the Electricity Consumption Data relates to any period of less than one day, the Domestic Customer has given explicit consent for that Electricity Consumption Data to be used for the purposes specified in the Notice;

(b) where the Notice given under paragraph 47.11(a) specifies that the licensee intends to use Electricity Consumption Data for Marketing, the Domestic Customer has given explicit consent for the Electricity Consumption Data to be used for Marketing; and

(c) in all other cases, the Domestic Customer has not objected to the Electricity Consumption Data being used for the purposes specified in the Notice.

### **Maintaining records and informing customers**

47.13 The licensee must, in respect of each of its Domestic Customers at relevant premises, at all times maintain an accurate and up to date record of:

(a) the date of any Notice sent to the Domestic Customer under this condition and of the information contained in it;

(b) the nature of the Domestic Customer's response (if any) to that Notice;

(c) the time periods (by reference to length) in relation to which the licensee obtains or may obtain Electricity Consumption Data; and

(d) where the licensee obtains Electricity Consumption Data by virtue of the requirements of paragraph 47.6(a) a statement setting out the reasons why such requirements are satisfied in the circumstances of the case.

47.14 The licensee must, in accordance with paragraph 47.15, inform the Domestic Customer in Writing of:

(a) the time periods (by reference to length) in relation to which the licensee obtains or may obtain Electricity Consumption Data;

(b) the purposes for which that Electricity Consumption Data is, or may be, used by the licensee; and

(c) where any of the time periods is of less than one month, the Domestic Customer's right, if any, to object or withdraw consent (as the case may be) to the licensee obtaining or using (as the case may be) that Electricity Consumption Data.

47.15 The licensee shall inform the Domestic Customer of the matters set out in paragraph 47.14:

(a) where it installs or arranges for the installation of the [Remote Access Meter or Smart Metering System](#) at the Domestic Premises, on, or at any time during the 14 days prior to, the date of installation or as soon as reasonably practicable after the date of installation; and

(b) in all cases, at such intervals as are determined appropriate by the licensee for the purposes of ensuring that the Domestic Customer is regularly updated of such matters.

#### **Rationale for changes above:**

Small addition to ensure this provision also applies where a Remote Access Meter is being installed.

## **PART B. MICRO BUSINESS PREMISES**



**Prohibition on obtaining consumption data**

47.16 Subject to paragraph 47.17, the licensee must not, in respect of any micro business premises, obtain any Electricity Consumption Data which relates to a period of less than one month.

**Exception to prohibition on obtaining consumption data**

47.17 Paragraph 47.16 does not apply where:

- (a) the licensee has given at least seven days advance Notice to the Micro Business Consumer at the micro business premises informing the Micro Business Consumer:
  - (i) that the licensee intends to obtain Electricity Consumption Data which relates to any one or more periods of less than one month;
  - (ii) of the purposes for which the licensee may use that Electricity Consumption Data; and
  - (iii) that the Micro Business Consumer may at any time object to the licensee obtaining that Electricity Consumption Data and of the process by which he may do so; and
- (b) the Micro Business Consumer has not objected to the licensee obtaining that Electricity Consumption Data for the purposes set out in the Notice.

**Use of consumption data**

47.18 The licensee must not use Electricity Consumption Data obtained in respect of any micro business premises other than for any of the following purposes:

- (a) calculating and sending a Bill to the Micro Business Consumer;
- (b) complying with a relevant condition or a relevant requirement;
- (c) where the requirements of paragraph 47.17 are satisfied, the purpose set out in the Notice given to the Micro Business Consumer under paragraph 47.17(a).

**Interpretation and Definitions**

47.19 In this condition, any reference:

- (a) to Electricity Consumption Data being 'obtained' by the licensee shall be read as incorporating a reference to the licensee requesting any other person to obtain that Electricity Consumption Data on its behalf (and references to 'obtain' and 'obtaining' shall be construed accordingly);
- (b) to the licensee obtaining Electricity Consumption Data which 'relates to' a specified period, shall be read as incorporating a reference to the licensee obtaining any data which would allow it to calculate Electricity Consumption Data in respect of that period (and references to Electricity Consumption Data being 'in relation to' a period of time shall be construed accordingly).

47.20 For the purposes of this condition:

Electricity Consumption Data	means, in respect of a relevant premises or a micro business premises, the quantity of electricity measured by the Electricity Meter as having been supplied to the relevant premises or the
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	micro business premises.
<u>Electronic Consumption Data Display</u>	<u>means an electronic device that provides information, by way of an electronic display, for the purposes of ascertaining the quantity of electricity supplied to Premises and/or information relating to Charges for the Supply of Electricity, in relation to Premises where an Electricity Meter is installed.</u>
Marketing	means, (a) any activities of the licensee or its Representatives which are directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the provision of goods or services by any person and includes entering into contracts for the provision of goods or services with such customers; (b) the licensee or its representatives disclosing Electricity Consumption Data to any other person for the purposes of that person undertaking activities which are directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the provision of goods or services by any person, including the entering into contracts for the provision of goods or services with such customers, but for these purposes 'goods or services' shall be taken to exclude the supply of electricity by the licensee.
Micro Business Consumer	has the meaning given to it in standard condition 7A of this licence
<u>Remote Access Meter</u>	<u>means an Electricity Meter that, either on its own or with an ancillary device:</u> <u>(a) provides measured Electricity Consumption Data for multiple time periods and is able to provide such data for periods of less than one month;</u> <u>(b) is able to provide the licensee with remote access to such data; and</u> <u>(c) is not:</u> <u>i. an Electronic Consumption Data Display; or</u> <u>ii. a Smart Metering System or part of a Smart Metering System.</u>
<u>Trial</u>	<u>means proposals submitted by the licensee for obtaining Electricity Consumption Data which relates to any one or more periods of less than one day, in respect of a particular category of relevant premises and for a particular purpose (in each case as specified in the proposal), on a trial basis.</u>

**Rationale for changes above:**

Definition of Remote Access Meter is required to limit the scope of the obligation to meters of the relevant capability.  
For efficiency, the definition of trial has been moved from the main body of text to the table of definitions.

## **Condition 41. Smart Metering – Matters Relating To Obtaining and Using Consumption Data**

### **Application**

41.1 Part A of this condition applies only in respect of each Domestic Premises (the relevant premises):

(a) to which gas is supplied~~s~~ through a Gas Meter which forms part of a Smart Metering System; or

(b) to which electricity is supplied through a Remote Access Meter; and

~~(b)(c)~~ in respect of which the quantity of gas supplied is measured by that Gas Meter.

41.2 Part B of this condition applies only in respect of each Designated Premises at which the Customer is a Micro Business Consumer (the micro business premises):

(a) to which gas is supplied through a Gas Meter which forms part of a Smart Metering Ssystem; or

(b) to which electricity is supplied through a Remote Access Meter; and

~~(c)~~ in respect of which the quantity of gas supplied is measured by that Gas Meter.

#### **Rationale for changes above:**

Extends the scope of the obligations in condition 41 to also apply where a Remote Access Meter (ie a Smart-Type Meter) is installed, except where a provision in condition 41 is specifically carved out as only applying to Smart Meters; ie as at 41.6(d) and 41.15.

We considered using the definition for Advanced Domestic Meter (ADM) instead of Remote Access Meter in the licence drafting. However, ADM also includes smart meters in the way it is defined and it wouldn't capture meters that record data less granular than daily but more granular than monthly. As such, it could have led to confusion when using the licence.

## **PART A. APPLICATION TO RELEVANT PREMISES**

### **Prohibition on obtaining consumption data**

41.3 Subject to paragraphs 41.4 and 41.7, the licensee must not, in respect of any relevant Premises, obtain any Gas Consumption Data which relates to a period of less than one month.

### **Exception to Prohibition – Obtaining consumption data for periods of less than one month**

41.4 Paragraph 41.3 does not apply where:

(a) the Gas Consumption Data that is obtained relates to a period of less than one month but not less than one day; and

(b) the requirements of either paragraph 41.5 or 41.6 are satisfied.

41.5 The requirements of this paragraph are that:

(a) the licensee has given Notice to the Domestic Customer at the relevant premises informing the Domestic Customer:

- (i) that the licensee intends to obtain Gas Consumption Data which relates to any one or more periods of a length referred to in paragraph 41.4(a);
- (ii) of the purposes (which purposes must not include Marketing) for which the licensee may use that Gas Consumption Data; and
- (iii) that the Domestic Customer may at any time object to the licensee obtaining that Gas Consumption Data and of the process by which he may do so; and

(b) the Domestic Customer has either:

- (i) given explicit consent to the licensee obtaining that Gas Consumption Data for the purposes set out in the Notice (and such consent has not been withdrawn); or
- (ii) after at least seven days have elapsed from the date on which the Notice was given to him, not objected to the licensee obtaining that Gas Consumption Data for the purposes set out in the Notice.

41.6 The requirements of this paragraph are that one of the following applies:

(a) the licensee has reasonable grounds to suspect that there is an occurrence of theft of gas at the relevant premises, and it obtains Gas Consumption Data which relates to any one or more periods of a length referred to in paragraph 41.4(a) only for the purposes of investigating that suspected theft;

(b) the licensee obtains the Gas Consumption Data which relates to a single period of a length referred to in paragraph 41.4(a) only for the purposes of:

- (i) verifying the quantity of gas supplied to the relevant premises since the last date in respect of which the licensee obtained Gas Consumption Data that was used for the purposes of sending a Bill to the Domestic Customer (the Billing Date); and
- (ii) calculating and sending an accurate and up to date Bill (including a final Bill) to the Domestic Customer in respect of the Charges for the Supply of Gas to the relevant premises since the Billing Date;

(c) the licensee obtains the Gas Consumption Data which relates to any one or more periods of a length referred to in paragraph 41.4(a) only for the purposes of responding to an enquiry from or a complaint made by, or on behalf of, the Domestic Customer at the relevant premises and relating to the supply of gas by the licensee to the relevant premises; or

(d) the Gas Meter forming part of the Smart Metering System [or Remote Access Meter](#) at the relevant premises is a Prepayment Meter, and the Gas Consumption Data:

- (i) is obtained only by virtue of the [Remote Access Meter or](#) Smart Metering System registering an advance payment made by the Domestic Customer through that Prepayment Meter; and
- (ii) relates to a single period of a length referred to in paragraph 41.4(a) which corresponds to the period since the previous advance payment made by the Domestic Customer through that Prepayment Meter.

**Rationale for changes above:**

Subparagraph (d) currently only applies to Smart Meters, so the change would be required to ensure it also applies where a Remote Access Meter is installed.

**Exception to Prohibition – Obtaining consumption data for periods of less than a day**

41.7 Paragraph 41.3 does not apply where:

- (a) the Gas Consumption Data that is obtained relates to a period of less than one day; and
- (b) the requirements of either paragraph 41.8 or 41.9 are satisfied.

41.8 The requirements of this paragraph are that:

- (a) the licensee has given Notice to the Domestic Customer at the relevant premises informing the Domestic Customer:
  - (i) that the licensee intends to obtain Gas Consumption Data which relates to any one or more periods of less than one day;
  - (ii) of the purposes for which the licensee may use that Gas Consumption Data;
  - (iii) that where the Domestic Customer gives consent he may withdraw it at any time and of the process by which he may do so; and
  - (iv) that where the Domestic Customer gives consent he may withdraw it at any time and of the process by which he may do so; and
- (b) the Domestic Customer has given his explicit consent to the licensee obtaining that Gas Consumption Data for the purposes set out in the Notice and such consent has not been withdrawn.

41.9 The requirements of this paragraph are that:

~~(a)~~ (a) where

- (i) there is a Remote Access Meter and the Secretary of State Authority has approved the Trial; or
- (ii) the Gas Meter forms part of a Smart Metering System and the Secretary of State has approved the Trial; and

(b) the relevant premises fall within that category;

(c) the licensee has given at least 14 days advance Notice to the Domestic Customer at the relevant premises informing the Domestic Customer:

- (i) of the nature and purpose of the Trial;
- (ii) that he may at any time object to being included in the Trial;
- (iii) of the process by which the Domestic Customer may object; and

~~(a)~~ (d) the Domestic Customer has not objected to being included in the Trial.

**Rationale for changes above:**

We, as opposed to the Secretary of State, would expect to approve proposals for a



trial where it concerns Remote Access Meters.  
For efficiency, the definition of trial has been moved from the main body of text to the table of definitions.

### **Prohibition on use of consumption data**

41.10 Subject to paragraph 41.11, the licensee must not use Gas Consumption Data obtained in respect of any relevant premises other than for any of the following purposes:

- (a) calculating and sending a Bill to the Domestic Customer;
- (b) complying with a relevant condition or a relevant requirement;
- (c) where the requirements of paragraph 41.5 are satisfied, the purpose set out in the Notice given to the Domestic Customer under paragraph 41.5(a);
- (d) where any of the requirements of paragraph 41.6 are satisfied, the purpose for which the data was obtained in accordance with paragraph 41.6;
- (e) where the requirements of paragraph 41.8 are satisfied, the purpose set out in the Notice given to the Domestic Customer under paragraph 41.8(a);
- (f) where the requirements of paragraph 41.9 are satisfied, the purpose of the Trial.

### **Exception to prohibition on use of consumption data**

41.11 The licensee may use Gas Consumption Data for purposes other than the purposes specified in paragraph 41.10 where:

- (a) it has given at least seven days advance Notice informing the Domestic Customer that it intends to use Gas Consumption Data for the purposes specified in the Notice; and
- (b) the requirements of paragraph 41.12 are satisfied.

41.12 The requirements of this paragraph are that:

- (a) where the Gas Consumption Data relates to any period of less than one day, the Domestic Customer has given explicit consent for that Gas Consumption Data to be used for the purposes specified in the Notice;
- (b) where the Notice given under paragraph 41.11(a) specifies that the licensee intends to use Gas Consumption Data for Marketing, the Domestic Customer has given explicit consent for the Gas Consumption Data to be used for Marketing; and
- (c) in all other cases, the Domestic Customer has not objected to the Gas Consumption Data being used for the purposes specified in the Notice.

### **Maintaining records and informing customers**

41.13 The licensee must, in respect of each of its Domestic Customers at relevant premises, at all times maintain an accurate and up to date record of:

- (a) the date of any Notice sent to the Domestic Customer under this condition and of the information contained in it;
- (b) the nature of the Domestic Customer's response (if any) to that Notice;

(c) the time periods (by reference to length) in relation to which the licensee obtains or may obtain Gas Consumption Data; and

(d) where the licensee obtains Gas Consumption Data by virtue of the requirements of paragraph 41.6(a) a statement setting out the reasons why such requirements are satisfied in the circumstances of the case.

41.14 The licensee must, in accordance with paragraph 41.15, inform the Domestic Customer in Writing of:

(a) the time periods (by reference to length) in relation to which the licensee obtains or may obtain Gas Consumption Data;

(b) the purposes for which that Gas Consumption Data is, or may be, used by the licensee; and

(c) where any of the time periods is of less than one month, the Domestic Customer's right, if any, to object or withdraw consent (as the case may be) to the licensee obtaining or using (as the case may be) that Gas Consumption Data.

41.15 The licensee shall inform the Domestic Customer of the matters set out in paragraph 41.14:

(a) where it installs or arranges for the installation of the [Remote Access Meter or Smart Metering System](#) at the Domestic Premises, on, or at any time during the 14 days prior to, the date of installation or as soon as reasonably practicable after the date of installation; and

(b) in all cases, at such intervals as are determined appropriate by the licensee for the purposes of ensuring that the Domestic Customer is regularly updated of such matters.

**Rationale for changes above:**

Small addition to ensure this provision also applies where a Remote Access Meter is being installed.

**PART B. MICRO BUSINESS PREMISES**

**Prohibition on obtaining consumption data**

41.16 Subject to paragraph 41.17, the licensee must not, in respect of any micro business premises, obtain any Gas Consumption Data which relates to a period of less than one month.

**Exception to prohibition on obtaining consumption data**

41.17 Paragraph 41.16 does not apply where:

(a) the licensee has given at least seven days advance Notice to the Micro Business Consumer at the micro business premises informing the Micro Business Consumer:

(i) that the licensee intends to obtain Gas Consumption Data which relates to any one or more periods of less than one month;

(ii) of the purposes for which the licensee may use that Gas Consumption Data; and

(iii) that the Micro Business Consumer may at any time object to the licensee obtaining that Gas Consumption Data and of the process by which he may do so; and

(b) the Micro Business Consumer has not objected to the licensee obtaining that Gas Consumption Data for the purposes set out in the Notice.

**Use of consumption data**

41.18 The licensee must not use Gas Consumption Data obtained in respect of any micro business premises other than for any of the following purposes:

- (a) calculating and sending a Bill to the Micro Business Consumer;
- (b) complying with a relevant condition or a relevant requirement;
- (c) where the requirements of paragraph 41.17 are satisfied, the purpose set out in the Notice given to the Micro Business Consumer under paragraph 41.17(a).

**Interpretation and Definitions**

41.19 In this condition, any reference:

(a) to Gas Consumption Data being 'obtained' by the licensee shall be read as incorporating a reference to the licensee requesting any other person to obtain that Gas Consumption Data on its behalf (and references to 'obtain' and 'obtaining' shall be construed accordingly);

(b) to the licensee obtaining Gas Consumption Data which 'relates to' a specified period, shall be read as incorporating a reference to the licensee obtaining any data which would allow it to calculate Gas Consumption Data in respect of that period (and references to Gas Consumption Data being 'in relation to' a period of time shall be construed accordingly).

41.20 For the purposes of this condition:

Gas Consumption Data	means, in respect of a relevant premises or a micro business premises, the quantity of gas measured by the Gas Meter as having been supplied to the relevant premises or the micro business premises.
<u>Electronic Consumption Data Display</u>	<u>means an electronic device that provides information, by way of an electronic display, for the purposes of ascertaining the quantity of gas supplied to Premises and/or information relating to Charges for the Supply of Gas, in relation to Premises where an Gas Meter is installed.</u>
Marketing	Means:  (a) any activities of the licensee or its Representatives which are directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the provision of goods or services by any person and includes entering into contracts for the provision of goods or services with such customers; (b) the licensee or its representatives disclosing Gas Consumption Data to any other person for the purposes of that person undertaking activities which are directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the provision of goods or services by any person, including the entering into contracts for the

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	provision of goods or services with such customers, but for these purposes 'goods or services' shall be taken to exclude the supply of gas by the licensee.
Micro Business Consumer	has the meaning given to it in standard condition 7A of this licence
<u>Remote Access Meter</u>	<u>means a Gas Meter that, either on its own or with an ancillary device:</u> <u>(i) provides measured Gas Consumption Data for multiple time periods and is able to provide such data for periods of less than one month;</u> <u>(ii) is able to provide the licensee with remote access to such data; and</u> <u>(iii) is not:</u> <u>a. an Electronic Consumption Data Display; or</u> <u>b. a Smart Metering System or part of a Smart Metering System.</u>
<u>Trial</u>	<u>means proposals submitted by the licensee for obtaining Gas Consumption Data which relates to any one or more periods of less than one day, in respect of a particular category of relevant premises and for a particular purpose (in each case as specified in the proposal), on a trial basis.</u>

**Rationale for changes above:**

Definition of Remote Access Meter is required to limit the scope of the obligation to meters of the relevant capability.

For efficiency, the definition of trial has been moved from the main body of text to the table of definitions.

## Appendix 3 – Licence drafting – flexible extension of Privacy Requirements

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Below we have marked up condition 47 of the Electricity Supply Licence and condition 41 of the Gas Supply Licence where we propose to make changes if we decide on a flexible extension of the Privacy Requirements.

### **Condition 47: Smart Metering – Matters Relating To Obtaining and Using Consumption Data Application**

47.1 Part A of this condition applies only in respect of each Domestic Premises (the relevant premises):

(a) to which electricity is supplied through an Electricity Meter which forms part of a Smart Metering System; or

(b) to which electricity is supplied through a Remote Access Meter; and

(c) in respect of which the quantity of electricity supplied is measured by that Electricity Meter.

47.2 Part B of this condition applies only in respect of each Designated Premises at which the Customer is a Micro Business Consumer (the micro business premises):

(a) to which electricity is supplied through an Electricity Meter which forms part of a Smart Metering System; or

(b) to which electricity is supplied through a Remote Access Meter; and

(c) ins respect of which the quantity of electricity supplied is measured by that Electricity Meter.

#### **Rationale for changes above:**

Extends the scope of the obligations in condition 47 to also apply where a Remote Access Meter (ie a Smart-Type Meter) is installed, except where a provision in condition 47 is specifically carved out as only applying to Smart Meters; ie as at 47.6(d) and 47.15.

We considered using the definition for Advanced Domestic Meter (ADM) instead of Remote Access Meter in the licence drafting. However, ADM also includes smart meters in the way it is defined and it wouldn't capture meters that record data less granular than daily but more granular than monthly. As such, it could have led to confusion when using the licence.

### **PART A. APPLICATION TO RELEVANT PREMISES**

#### **Prohibition on obtaining consumption data**

47.3 Subject to paragraphs 47.4 and 47.7, the licensee must not, in respect of any relevant premises, obtain any Electricity Consumption Data which relates to a period of less than one month.

#### **Exception to Prohibition – Obtaining consumption data for periods of less than one month**

47.4 Paragraph 47.3 does not apply where:

- (a) the Electricity Consumption Data that is obtained relates to a period of less than one month but not less than one day; and
- (b) the requirements of either paragraph 47.5 or 47.6 are satisfied.

47.5 The requirements of this paragraph are that:

(a) the licensee has given Notice to the Domestic Customer at the relevant premises informing the Domestic Customer:

(i) that the licensee intends to obtain Electricity Consumption Data which relates to any one or more periods of a length referred to in paragraph 47.4(a);

(ii) of the purposes (which purposes must not include Marketing)

[, except in the case of a Pre-Installed Remote Access Meter] for which the licensee may use that Electricity Consumption Data; and

(iii) that the Domestic Customer may at any time object to the licensee obtaining that Electricity Consumption Data and of the process by which he may do so; and

(b) the Domestic Customer has either:

(i) given explicit consent to the licensee obtaining that Electricity Consumption Data for the purposes set out in the Notice (and such consent has not been withdrawn); or

(ii) after at least seven days have elapsed from the date on which the Notice was given to him, not objected to the licensee obtaining that Electricity Consumption Data for the purposes set out in the Notice.

**Rationale for changes above:**

We are consulting on whether licensees should be required to obtain opt-in or opt-out consent to obtain Electricity Consumption Data for Pre-installed Remote Access Meters for the purpose of Marketing. The licence drafting in square brackets ensures the prohibition on licensees on obtaining Energy Consumption Data for Marketing purposes would not apply to Pre-Installed Remote Access Meters. If our decision were that a licensee should not be able to obtain such data for Marketing purposes from a Pre-Installed Remote Access Meter, then the legal text in square brackets would not be included.

47.6 The requirements of this paragraph are that one of the following applies:

(a) the licensee has reasonable grounds to suspect that there is an occurrence of theft or abstraction of electricity at the relevant premises, and it obtains Electricity Consumption Data which relates to any one or more periods of a length referred to in paragraph 47.4(a) only for the purposes of investigating that suspected theft or abstraction;

(b) the licensee obtains Electricity Consumption Data which relates to a single period of a length referred to in paragraph 47.4(a) only for the purposes of:

(i) verifying the quantity of electricity supplied to the relevant premises since the last date in respect of which the licensee obtained Electricity Consumption

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- Data that was used for the purposes of sending a Bill to the Domestic Customer (the Billing Date); and
- (ii) calculating and sending an accurate and up to date Bill (including a final Bill) to the Domestic Customer in respect of the Charges for the Supply of Electricity to the relevant premises since the Billing Date;
- (c) the licensee obtains Electricity Consumption Data which relates to any one or more periods of a length referred to in paragraph 47.4(a) only for the purposes of responding to an enquiry from or a complaint made by, or on behalf of, the Domestic Customer at the relevant premises and relating to the supply of electricity by the licensee to the relevant premises; or
- (d) the Electricity Meter forming part of the Smart Metering System or Remote Access Meter at the relevant premises is a Prepayment Meter, and the Electricity Consumption Data:
- (i) is obtained only by virtue of the Remote Access Meter or Smart Metering System registering an advance payment made by the Domestic Customer through that Prepayment Meter; and
  - (ii) relates to a single period of a length referred to in paragraph 47.4(a) which corresponds to the period since the previous advance payment made by the Domestic Customer through that Prepayment Meter.

**Rationale for changes above:**

Subparagraph (d) currently only applies to Smart Meters, so the change would be required to ensure it also applies where a Remote Access Meter is installed.

47.7 Paragraph 47.3 does not apply where:

- (a) the Electricity Consumption Data that is obtained relates to a period of less than one day; and
- (b) the requirements of either paragraph 47.8 or 47.9 are satisfied.

47.8 The requirements of this paragraph are that:

- (a) the licensee has given Notice to the Domestic Customer at the relevant premises informing the Domestic Customer:
  - (i) that the licensee intends to obtain Electricity Consumption Data which relates to any one or more periods of less than one day;
  - (ii) of the purposes for which the licensee may use that Electricity Consumption Data;
  - (iii) that the licensee requires the Domestic Customer's consent to obtain that Electricity Consumption Data or, where paragraph c) applies, that the Domestic Customer may at any time object to the licensee obtaining that Electricity Consumption Data and of the process by which he may do so; and
  - (iv) where paragraph b) applies, that where the Domestic Customer gives consent he may withdraw this consent at any time and of the process by which he may do so; and either

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(b) the Domestic Customer has given his explicit consent to the licensee obtaining that Electricity Consumption Data for the purposes set out in the Notice and such consent has not been withdrawn; or

(c)- in the case of a Pre-Installed Remote Access Meter, after at least seven days have elapsed from the date on which the Notice referred to in paragraph a) was given to the Domestic Customer, he has not objected to the licensee obtaining that Electricity Consumption Data for the purposes set out in the Notice.

**Rationale for changes above:**

This provides for suppliers to take Detailed Data on an opt-out basis where there is a Pre-Installed Remote Access Meter. It needs to be read in conjunction with the new definition for Pre-Installed Remote Access Meter.

47.9 The requirements of this paragraph are that:

(a) where

(i) there is a Remote Access Meter and the Secretary of State Authority has approved the Trial; or

(ii) the Electricity Meter forms part of a Smart Metering System and the Secretary of State has approved ~~proposals submitted by the licensee for obtaining Electricity Consumption Data which relates to any one or more periods of less than one day, in respect of a particular category of relevant premises and for a particular purpose (in each case as specified in the proposal), on a trial basis (the Trial); and~~

(b) the relevant premises fall within that category;

(c) the licensee has given at least 14 days advance Notice to the Domestic Customer at the relevant premises informing the Domestic Customer:

(i) of the nature and purpose of the Trial;

(ii) that he may at any time object to being included in the Trial;

(iii) of the process by which the Domestic Customer may object; and

(d) the Domestic Customer has not objected to being included in the Trial.

**Rationale for changes above:**

We, as opposed to the Secretary of State, would expect to approve proposals for a trial where it concerns Remote Access Meters.

For efficiency, the definition of trial has been moved from the main body of text to the table of definitions.

**Prohibition on use of consumption data**

47.10 Subject to paragraph 47.11, the licensee must not use Electricity Consumption Data obtained in respect of any relevant premises other than for any of the following purposes:

(a) calculating and sending a Bill to the Domestic Customer;



- (b) complying with a relevant condition or a relevant requirement;
- (c) where the requirements of paragraph 47.5 are satisfied, the purpose set out in the Notice given to the Domestic Customer under paragraph 47.5(a);
- (d) where any of the requirements of paragraph 47.6 are satisfied, the purpose for which the data was obtained in accordance with paragraph 47.6;
- (e) where the requirements of paragraph 47.8 are satisfied, the purpose set out in the Notice given to the Domestic Customer under paragraph 47.8(a);
- (f) where the requirements of paragraph 47.9 are satisfied, the purpose of the Trial.

**Exception to prohibition on use of consumption data**

47.11 The licensee may use Electricity Consumption Data for purposes other than the purposes specified in paragraph 47.10 where:

- (a) it has given at least seven days advance Notice informing the Domestic Customer that it intends to use Electricity Consumption Data for the purposes specified in the Notice; and **either**
- (b) the requirements of paragraph 47.12 are satisfied; **or**

[(c) in the case of a Pre-Installed Remote Access Meter, after at least seven days have elapsed from the date on which the Notice referred to in paragraph (a) was given to the Domestic Customer, he has not objected to the licensee obtaining that Electricity Consumption Data for the purposes set out in the Notice.]

47.12 The requirements of this paragraph are that:

- (a) where the Electricity Consumption Data relates to any period of less than one day, the Domestic Customer has given explicit consent for that Electricity Consumption Data to be used for the purposes specified in the Notice;
- (b) where the Notice given under paragraph 47.11(a) specifies that the licensee intends to use Electricity Consumption Data for Marketing, the Domestic Customer has given explicit consent for the Electricity Consumption Data to be used for Marketing; and
- (c) in all other cases, the Domestic Customer has not objected to the Electricity Consumption Data being used for the purposes specified in the Notice.

**Rationale for changes above:**

We are consulting on whether licensees should be required to obtain opt-in or opt-out consent to obtain Electricity Consumption Data for Pre-installed Remote Access Meters for the purpose of Marketing. The licence drafting in square brackets ensures the prohibition on licensees on obtaining Energy Consumption Data for Marketing purposes would not apply to Pre-Installed Remote Access Meters. If our decision were that a licensee should not be able to obtain such data for Marketing purposes from a Pre-Installed Remote Access Meter, then the legal text in square brackets would not be included.

**Maintaining records and informing customers**

47.13 The licensee must, in respect of each of its Domestic Customers at relevant premises, at all times maintain an accurate and up to date record of:

- (a) the date of any Notice sent to the Domestic Customer under this condition and of the information contained in it;
- (b) the nature of the Domestic Customer's response (if any) to that Notice;
- (c) the time periods (by reference to length) in relation to which the licensee obtains or may obtain Electricity Consumption Data; and
- (d) where the licensee obtains Electricity Consumption Data by virtue of the requirements of paragraph 47.6(a) a statement setting out the reasons why such requirements are satisfied in the circumstances of the case.

47.14 The licensee must, in accordance with paragraph 47.15, inform the Domestic Customer in Writing of:

- (a) the time periods (by reference to length) in relation to which the licensee obtains or may obtain Electricity Consumption Data;
- (b) the purposes for which that Electricity Consumption Data is, or may be, used by the licensee; and
- (c) where any of the time periods is of less than one month, the Domestic Customer's right, if any, to object or withdraw consent (as the case may be) to the licensee obtaining or using (as the case may be) that Electricity Consumption Data.

47.15 The licensee shall inform the Domestic Customer of the matters set out in paragraph 47.14:

- (a) where it installs or arranges for the installation of the [Remote Access Meter or Smart Metering System](#) at the Domestic Premises, on, or at any time during the 14 days prior to, the date of installation or as soon as reasonably practicable after the date of installation; and
- (b) in all cases, at such intervals as are determined appropriate by the licensee for the purposes of ensuring that the Domestic Customer is regularly updated of such matters.

**Rationale for changes above:**

Small addition to ensure that 47.14 applies where a Remote Access Meter is being installed.

**PART B. MICRO BUSINESS PREMISES**

**Prohibition on obtaining consumption data**

47.16 Subject to paragraph 47.17, the licensee must not, in respect of any micro business premises, obtain any Electricity Consumption Data which relates to a period of less than one month.

**Exception to prohibition on obtaining consumption data**

47.17 Paragraph 47.16 does not apply where:

- (a) the licensee has given at least seven days advance Notice to the Micro Business Consumer at the micro business premises informing the Micro Business Consumer:

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- (i) that the licensee intends to obtain Electricity Consumption Data which relates to any one or more periods of less than one month;
- (ii) of the purposes for which the licensee may use that Electricity Consumption Data; and
- (iii) that the Micro Business Consumer may at any time object to the licensee obtaining that Electricity Consumption Data and of the process by which he may do so; and

(b) the Micro Business Consumer has not objected to the licensee obtaining that Gas Consumption Data for the purposes set out in the Notice.

**Use of consumption data**

47.18 The licensee must not use Electricity Consumption Data obtained in respect of any micro business premises other than for any of the following purposes:

- (a) calculating and sending a Bill to the Micro Business Consumer;
- (b) complying with a relevant condition or a relevant requirement;
- (c) where the requirements of paragraph 47.17 are satisfied, the purpose set out in the Notice given to the Micro Business Consumer under paragraph 47.17(a).

Electricity Consumption Data	means, in respect of a relevant premises or a micro business premises, the quantity of electricity measured by the Electricity Meter as having been supplied to the relevant premises or the micro business premises.
<u>Electronic Consumption Data Display</u>	<u>means an electronic device that provides information, by way of an electronic display, for the purposes of ascertaining the quantity of electricity supplied to Premises and/or information relating to Charges for the Supply of Electricity, in relation to Premises where an Electricity Meter is installed.</u>
Marketing	means, (a) any activities of the licensee or its Representatives which are directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the provision of goods or services by any person and includes entering into contracts for the provision of goods or services with such customers; (b) the licensee or its representatives disclosing Electricity Consumption Data to any other person for the purposes of that person undertaking activities which are directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the provision of goods or services by any person, including the entering into contracts for the provision of goods or services with such customers, but for these purposes 'goods or services' shall be taken to exclude the supply of electricity by the licensee.
Micro Business Consumer	has the meaning given to it in standard condition 7A of this licence
<u>Pre-Installed</u>	<u>means a Remote Access Meter installed prior to [insert the date</u>

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<p><u>Remote Access Meter</u></p>	<p><u>of this condition coming into force] which has not been subject to a change of supplier or consumer subsequent to [insert the date of this condition coming into force].</u></p> <p><u>[6/12/18/24/30/36 months – delete as necessary] from [insert date on which this condition comes into force] all Pre-Installed Meters shall cease to be considered Pre-Installed Meters for the purposes of this condition and shall instead be subject to the obligations attaching to Remote Access Meters</u></p>
<p><u>Remote Access Meter</u></p>	<p><u>means an Electricity Meter that, either on its own or with an ancillary device:</u></p> <p><u>(i) provides measured Electricity Consumption Data for multiple time periods and is able to provide such data for periods of less than one month;</u></p> <p><u>(ii) is able to provide the licensee with remote access to such data; and</u></p> <p><u>(iii) is not:</u></p> <p><u>a. an Electronic Consumption Data Display; or</u></p> <p><u>b. a Smart Metering System or part of a Smart Metering System.</u></p>
<p><u>Trial</u></p>	<p><u>means proposals submitted by the licensee for obtaining Electricity Consumption Data which relates to any one or more periods of less than one day, in respect of a particular category of relevant premises and for a particular purpose (in each case as specified in the proposal), on a trial basis.</u></p>

**Rationale for changes above:**

Definition of Remote Access Meter is required to limit the scope of the obligation to meters of the relevant capability.

Definition of Pre-Installed Remote Access Meter is needed to ensure that in certain circumstances, suppliers can take Detailed Data with opt-out consent.

For efficiency, the definition of trial has been moved from the main body of text to the table of definitions.

We are consulting on whether we should allow licensees a period in respect of Pre-Installed Remote Access Meters, during which they can obtain Detailed Data with opt-out consent, and after which they would require opt-in consent. This is reflected by the text in square brackets as part of the Pre-Installed Remote Access Meter definition, which provides for a period of between 6 and 36 months. If our decision is that there should be a period after which the consenting regime changes, then the legal text in square brackets would be included.

### **Condition 41: Smart Metering – Matters Relating To Obtaining and Using Consumption Data Application**

41.1 Part A of this condition applies only in respect of each Domestic Premises (the relevant premises):

- (a) to which Gas is supplied through a Gas Meter which forms part of a Smart Metering System; or
- (b) to which gas is supplied through a Remote Access Meter; and
- (~~cb~~) in respect of which the quantity of Gas supplied is measured by that Gas Meter.

41.2 Part B of this condition applies only in respect of each Designated Premises at which the Customer is a Micro Business Consumer (the micro business premises):

- (a) to which Gas is supplied through an Gas Meter which forms part of a Smart Metering System; or
- (b) to which gas is supplied through a Remote Access Meter; and
- (~~cb~~) ~~ins~~ respect of which the quantity of gas supplied is measured by that Gas Meter.

#### **Rationale for changes above:**

Extends the scope of the obligations in condition 47 to also apply where a Remote Access Meter (ie a Smart-Type Meter) is installed, except where a provision in condition 47 is specifically carved out as only applying to Smart Meters; ie as at 47.6(d) and 47.15.

We considered using the definition for Advanced Domestic Meter (ADM) instead of Remote Access Meter in the licence drafting. However, ADM also includes smart meters in the way it is defined and it wouldn't capture meters that record data less granular than daily but more granular than monthly. As such, it could have led to confusion when using the licence.

## **PART A. APPLICATION TO RELEVANT PREMISES**

### **Prohibition on obtaining consumption data**

41.3 Subject to paragraphs 41.4 and 41.7, the licensee must not, in respect of any relevant premises, obtain any Gas Consumption Data which relates to a period of less than one month.

Exception to Prohibition – Obtaining consumption data for periods of less than one month

41.4 Paragraph 41.3 does not apply where:

- (a) the Gas Consumption Data that is obtained relates to a period of less than one month but not less than one day; and
- (b) the requirements of either paragraph 41.5 or 41.6 are satisfied.

41.5 The requirements of this paragraph are that:

- (a) the licensee has given Notice to the Domestic Customer at the relevant premises informing the Domestic Customer:

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- (i) that the licensee intends to obtain Gas Consumption Data which relates to any one or more periods of a length referred to in paragraph 41.4(a); ~~(ii) of the purposes (which purposes must not include Marketing)~~  
[, except in the case of a Pre-Installed Remote Access Meter] for which the licensee may use that Gas Consumption Data; and
  - (ii) of the purposes (which purposes must not include Marketing)  
[, except in the case of a Pre-Installed Remote Access Meter] for which the licensee may use that Electricity Consumption Data; and
  - (iii) that the Domestic Customer may at any time object to the licensee obtaining that Gas Consumption Data and of the process by which he may do so; and
- (b) the Domestic Customer has either:
- (i) given explicit consent to the licensee obtaining that Gas Consumption Data for the purposes set out in the Notice (and such consent has not been withdrawn); or
  - (ii) after at least seven days have elapsed from the date on which the Notice was given to him, not objected to the licensee obtaining that Gas Consumption Data for the purposes set out in the Notice.

**Rationale for changes above:**

We are consulting on whether licensees should be required to obtain opt-in or opt-out consent to obtain Gas Consumption Data for Pre-installed Remote Access Meters for the purpose of Marketing. The licence drafting in square brackets ensures the prohibition on licensees on obtaining Energy Consumption Data for Marketing purposes would not apply to Pre-Installed Remote Access Meters. If our decision were that a licensee should not be able to obtain such data for Marketing purposes from a Pre-Installed Remote Access Meter, then the legal text in square brackets would not be included.

41.6 The requirements of this paragraph are that one of the following applies:

- (a) the licensee has reasonable grounds to suspect that there is an occurrence of theft or abstraction of Gas at the relevant premises, and it obtains Gas Consumption Data which relates to any one or more periods of a length referred to in paragraph 41.4(a) only for the purposes of investigating that suspected theft or abstraction;
- (b) the licensee obtains Gas Consumption Data which relates to a single period of a length referred to in paragraph 41.4(a) only for the purposes of:
  - (i) verifying the quantity of Gas supplied to the relevant premises since the last date in respect of which the licensee obtained Gas Consumption Data that was used for the purposes of sending a Bill to the Domestic Customer (the Billing Date); and
  - (ii) calculating and sending an accurate and up to date Bill (including a final Bill) to the Domestic Customer in respect of the Charges for the Supply of Gas to the relevant premises since the Billing Date;
- (c) the licensee obtains Gas Consumption Data which relates to any one or more periods of a length referred to in paragraph 41.4(a) only for the purposes of

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responding to an enquiry from or a complaint made by, or on behalf of, the Domestic Customer at the relevant premises and relating to the supply of Gas by the licensee to the relevant premises; or

(d) the Gas Meter forming part of the Smart Metering System or Remote Access Meter at the relevant premises is a Prepayment Meter, and the Gas Consumption Data:

(i) is obtained only by virtue of the Remote Access Meter or Smart Metering System registering an advance payment made by the Domestic Customer through that Prepayment Meter; and

(ii) relates to a single period of a length referred to in paragraph 41.4(a) which corresponds to the period since the previous advance payment made by the Domestic Customer through that Prepayment Meter.

**Rationale for changes above:**

Subparagraph (d) currently only applies to Smart Meters, so the change would be required to ensure it also applies where a Remote Access Meter is installed.

41.7 Paragraph 41.3 does not apply where:

(a) the Gas Consumption Data that is obtained relates to a period of less than one day; and

(b) the requirements of either paragraph 41.8 or 41.9 are satisfied.

41.8 The requirements of this paragraph are that:

(a) the licensee has given Notice to the Domestic Customer at the relevant premises informing the Domestic Customer:

(i) that the licensee intends to obtain Gas Consumption Data which relates to any one or more periods of less than one day;

(ii) of the purposes for which the licensee may use that Gas Consumption Data;

(iii) that the licensee requires the Domestic Customer's consent to obtain that Gas Consumption Data or, where paragraph c) applies, that the Domestic Customer may at any time object to the licensee obtaining that Gas Consumption Data and of the process by which he may do so; and

(iv) where paragraph b) applies, that ~~where~~ the Domestic Customer gives consent he may withdraw this consent at any time and of the process by which he may do so; and either

(b) the Domestic Customer has given his explicit consent to the licensee obtaining that Gas Consumption Data for the purposes set out in the Notice and such consent has not been withdrawn; or

(c)- in the case of a Pre-Installed Remote Access Meter, after at least seven days have elapsed from the date on which the Notice referred to in paragraph a) was given to the Domestic Customer, he has not objected to the licensee obtaining that Gas Consumption Data for the purposes set out in the Notice.

**Rationale for changes above:**

This provides for suppliers to take Detailed Data on an opt-out basis where there is a Pre-Installed Remote Access Meter. It needs to be read in conjunction with the new definition for Pre-Installed Remote Access Meter.

41.9 The requirements of this paragraph are that:

(a) where

(i) there is a Remote Access Meter and the Secretary of State Authority has approved the Trial; or

(ii) the Gas Meter forms part of a Smart Metering System and the Secretary of State has approved proposals submitted by the licensee for obtaining Consumption Data which relates to any one or more periods of less than one day, in respect of a particular category of relevant premises and for a particular purpose (in each case as specified in the proposal), on a trial basis (the Trial); and

(b) the relevant premises fall within that category;

(c) the licensee has given at least 14 days advance Notice to the Domestic Customer at the relevant premises informing the Domestic Customer:

(i) of the nature and purpose of the Trial;

(ii) that he may at any time object to being included in the Trial;

(iii) of the process by which the Domestic Customer may object; and

(d) the Domestic Customer has not objected to being included in the Trial.

**Rationale for changes above:**

We, as opposed to the Secretary of State, would expect to approve proposals for a trial where it concerns Remote Access Meters.

For efficiency, the definition of trial has been moved from the main body of text to the table of definitions.

**Prohibition on use of consumption data**

41.10 Subject to paragraph 41.11, the licensee must not use Gas Consumption Data obtained in respect of any relevant premises other than for any of the following purposes:

a) calculating and sending a Bill to the Domestic Customer;

(b) complying with a relevant condition or a relevant requirement;

(c) where the requirements of paragraph 41.5 are satisfied, the purpose set out in the Notice given to the Domestic Customer under paragraph 41.5(a);

(d) where any of the requirements of paragraph 41.6 are satisfied, the purpose for which the data was obtained in accordance with paragraph 41.6;

(e) where the requirements of paragraph 41.8 are satisfied, the purpose set out in the Notice given to the Domestic Customer under paragraph 41.8(a);



(f) where the requirements of paragraph 41.9 are satisfied, the purpose of the Trial.

**Exception to prohibition on use of consumption data**

41.11 The licensee may use Gas Consumption Data for purposes other than the purposes specified in paragraph 41.10 where:

(a) it has given at least seven days advance Notice informing the Domestic Customer that it intends to use Gas Consumption Data for the purposes specified in the Notice; and **either**

(b) the requirements of paragraph 41.12 are satisfied; **or**

**[(c) in the case of a Pre-Installed Remote Access Meter, after at least seven days have elapsed from the date on which the Notice referred to in paragraph (a) was given to the Domestic Customer, he has not objected to the licensee obtaining that Gas Consumption Data for the purposes set out in the Notice.]**

41.12 The requirements of this paragraph are that:

(a) where the Gas Consumption Data relates to any period of less than one day, the Domestic Customer has given explicit consent for that Gas Consumption Data to be used for the purposes specified in the Notice;

(b) where the Notice given under paragraph 41.11(a) specifies that the licensee intends to use Gas Consumption Data for Marketing, the Domestic Customer has given explicit consent for the Gas Consumption Data to be used for Marketing; and

(c) in all other cases, the Domestic Customer has not objected to the Gas Consumption Data being used for the purposes specified in the Notice.

**Rationale for changes above:**

We are consulting on whether licensees should be required to obtain opt-in or opt-out consent to obtain Gas Consumption Data for Pre-installed Remote Access Meters for the purpose of Marketing. The licence drafting in square brackets ensures the prohibition on licensees on obtaining Energy Consumption Data for Marketing purposes would not apply to Pre-Installed Remote Access Meters. If our decision were that a licensee should not be able to obtain such data for Marketing purposes from a Pre-Installed Remote Access Meter, then the legal text in square brackets would not be included.

**Maintaining records and informing customers**

41.13 The licensee must, in respect of each of its Domestic Customers at relevant premises, at all times maintain an accurate and up to date record of:

(a) the date of any Notice sent to the Domestic Customer under this condition and of the information contained in it;

(b) the nature of the Domestic Customer's response (if any) to that Notice;

(c) the time periods (by reference to length) in relation to which the licensee obtains or may obtain Gas Consumption Data; and

(d) where the licensee obtains Gas Consumption Data by virtue of the requirements of paragraph 41.6(a) a statement setting out the reasons why such requirements are satisfied in the circumstances of the case.

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41.14 The licensee must, in accordance with paragraph 41.15, inform the Domestic Customer in Writing of:

- (a) the time periods (by reference to length) in relation to which the licensee obtains or may obtain Gas Consumption Data;
- (b) the purposes for which that Gas Consumption Data is, or may be, used by the licensee; and
- (c) where any of the time periods is of less than one month, the Domestic Customer's right, if any, to object or withdraw consent (as the case may be) to the licensee obtaining or using (as the case may be) that Gas Consumption Data.

41.15 The licensee shall inform the Domestic Customer of the matters set out in paragraph 41.14:

- (a) where it installs or arranges for the installation of the [Remote Access Meter or Smart Metering System](#) at the Domestic Premises, on, or at any time during the 14 days prior to, the date of installation or as soon as reasonably practicable after the date of installation; and
- (b) in all cases, at such intervals as are determined appropriate by the licensee for the purposes of ensuring that the Domestic Customer is regularly updated of such matters.

**Rationale for changes above:**

Small addition to ensure that 41.15 applies where a Remote Access Meter is being installed.

**PART B. MICRO BUSINESS PREMISES**

**Prohibition on obtaining consumption data**

41.16 Subject to paragraph 41.17, the licensee must not, in respect of any micro business premises, obtain any Gas Consumption Data which relates to a period of less than one month.

**Exception to prohibition on obtaining consumption data**

41.17 Paragraph 41.16 does not apply where:

- (a) the licensee has given at least seven days advance Notice to the Micro Business Consumer at the micro business premises informing the Micro Business Consumer:
  - (i) that the licensee intends to obtain Gas Consumption Data which relates to any one or more periods of less than one month;
  - (ii) of the purposes for which the licensee may use that Gas Consumption Data; and
  - (iii) that the Micro Business Consumer may at any time object to the licensee obtaining that Gas Consumption Data and of the process by which he may do so; and

**Use of consumption data**

41.18 The licensee must not use Gas Consumption Data obtained in respect of any micro business premises other than for any of the following purposes:

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- (a) calculating and sending a Bill to the Micro Business Consumer;
- (b) complying with a relevant condition or a relevant requirement;
- (c) where the requirements of paragraph 41.17 are satisfied, the purpose set out in the Notice given to the Micro Business Consumer under paragraph 41.17(a).

Gas Consumption Data	means, in respect of a relevant premises or a micro business premises, the quantity of Gas measured by the Gas Meter as having been supplied to the relevant premises or the micro business premises.
<u>Electronic Consumption Data Display</u>	<u>means an electronic device that provides information, by way of an electronic display, for the purposes of ascertaining the quantity of Gas supplied to Premises and/or information relating to Charges for the Supply of Gas, in relation to Premises where an Gas Meter is installed.</u>
Marketing	means, (a) any activities of the licensee or its Representatives which are directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the provision of goods or services by any person and includes entering into contracts for the provision of goods or services with such customers; (b) the licensee or its representatives disclosing Gas Consumption Data to any other person for the purposes of that person undertaking activities which are directed at or incidental to identifying and communicating with Domestic Customers for the purpose of promoting the provision of goods or services by any person, including the entering into contracts for the provision of goods or services with such customers, but for these purposes 'goods or services' shall be taken to exclude the supply of Gas by the licensee.
Micro Business Consumer	has the meaning given to it in standard condition 7A of this licence
<u>Pre-Installed Remote Access Meter</u>	<u>means a Remote Access Meter installed prior to [insert the date of this condition coming into force] which has not been subject to a change of supplier or consumer subsequent to [insert the date of this condition coming into force].</u>  <u>[6/12/18/24/30/36 months – delete as necessary] from [insert date on which this condition comes into force] all Pre-Installed Meters shall cease to be considered Pre-Installed Meters for the purposes of this condition and shall instead be subject to the obligations attaching to Remote Access Meters</u>
<u>Remote Access Meter</u>	<u>means a Gas Meter that, either on its own or with an ancillary device:</u> <u>(i) provides measured Gas Consumption Data for multiple time periods and is able to provide such data for periods of less than one month;</u>

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	<p><u>(ii) is able to provide the licensee with remote access to such data; and</u></p> <p><u>(iii) is not:</u></p> <p style="padding-left: 40px;"><u>a. an Electronic Consumption Data Display; or</u></p> <p style="padding-left: 40px;"><u>b. a Smart Metering System or part of a Smart Metering System.</u></p>
<u>Trial</u>	<p><u>means proposals submitted by the licensee for obtaining Gas Consumption Data which relates to any one or more periods of less than one day, in respect of a particular category of relevant premises and for a particular purpose (in each case as specified in the proposal), on a trial basis.</u></p>

**Rationale for changes above:**

Definition of Remote Access Meter is required to limit the scope of the obligation to meters of the relevant capability.

Definition of Pre-Installed Remote Access Meter is needed to ensure that in certain circumstances, suppliers can take Detailed Data with opt-out consent.

For efficiency, the definition of trial has been moved from the main body of text to the table of definitions.

We are consulting on whether we should allow licensees a period in respect of Pre-Installed Remote Access Meters, during which they can obtain Detailed Data with opt-out consent, and after which they would require opt-in consent. This is reflected by the text in square brackets as part of the Pre-Installed Remote Access Meter definition, which provides for a period of between 6 and 36 months. If our decision is that there should be a period after which the consenting regime changes, then the legal text in square brackets would be included.

## Appendix 4 - Glossary

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### A

#### Advanced Meter

For the purpose of this consultation, an Advanced Meter is a meter installed at a micro business premise which has some smart functionality, but which does not meet the government's mandated technical standard for smart meters. In the proposed licence drafting at appendices 2 and 3, they are referred to as Remote Access Meters.

#### Authority

The Gas and Electricity Markets Authority.

### D

#### Data and Communications Company (DCC)

This is a company that manages the data and communications to and from domestic consumers' smart meters

#### Department for Energy and Climate Change (DECC)

The UK government department responsible for energy and climate change policy.

#### Detailed Data

Consumption data of a granularity greater than daily (such as half hourly data).

#### Domestic consumer

A customer that uses energy for non-commercial purposes.

### M

#### Marketing

Activity directed at domestic consumers for the purpose of promoting the provision of goods and services (as defined in supplier licence condition 47)

#### Micro business consumer

A non-domestic customer of a certain size in terms of employees and energy consumption (defined in the supplier licences).

### O

#### Ofgem

Office of Gas and Electricity Markets

### Opt-in

The consumer must give explicit consent to the supplier before the supplier takes consumption data.

### Opt-out

Where the supplier is required to notify the consumer of the consumption data they plan to take and must not take the data if the consumer so requests.

## P

### Privacy Requirements

The supplier licence obligations regarding access to and privacy of the consumption data stored on smart meters. Conditions 47 and 41 (respectively) of the electricity and gas supplier standard licence conditions.

## S

### Smart Energy Code (SEC)

The SEC is a new industry code which is a multiparty agreement which will define the rights and obligations between the Data and Communications Company (DCC) and the users of its services Suppliers, network operators and other users of the DCC's services who will all need to comply with the Code.

### Smart meter

Smart meter is a meter which, in addition to traditional metering functionality (measuring and registering the amount of energy which passes through it) is capable of providing additional functionality, for example two way communication allowing it to transmit meter reads and receive data remotely. It must also comply with the technical specification set out by the Smart Metering Programme.

### Smart Metering Installation Code of Practice ('SMICoP')

The SMICoP is a key consumer protection measure which sets out rules and standards of conduct for suppliers installing compliant smart meters for domestic and micro business consumers.

### Smart-Type Meters

Smart-Type Meters are those installed at domestic premises with some smart functionality, but which do not meet the government's mandated technical standard for smart meters. In the proposed licence drafting at appendices 2 and 3, they are referred to as either Remote Access Meters or Pre-Installed Remote Access Meters.

## Appendix 5 - Feedback Questionnaire

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1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.2. Please send your comments to:

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