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19<sup>th</sup> February 2014

Dear Colin

### Consultation – Data access and privacy for smart-type and advanced meters

Thanks for the opportunity to respond. Our detailed responses are below, as well as some general points. Whilst you have previously heard our general view on privacy, we believe that it is worth repeating here as we believe that at all times the approach to privacy in energy data should be consistent.

We believe that the Data Protection Act (1998) (DPA) is fit for purpose, and that if not, it should be amended directly. Being fit for purpose the application of the DPA in any setting, such as energy consumption and the associated supply licence conditions and codes of practice, should apply to the DPA in context and not seek to go beyond the spirit of the Act. If there are other privacy laws, beyond the European Convention on Human Rights then they should be referred to specifically when applying them in context.

Given our belief that data privacy rules (licence condition, codes etc.) should apply the DPA in context, then we support this principle in smart-type and advanced meters.

Licence Condition 48 formed part of the regulatory arrangements to support the Smart Metering Implementation Programme. It fits within the end-to-end context of the design and reflects the technical capabilities of SMETS meters and the architectures that support remote configurations and services. The application of the licence conditions to other technical contexts requires careful consideration where compliance would necessitate site visits and premature meter exchanges, resulting in a degraded customer experience and significant cost.

We recognise and of course comply with the Data Guide and with supply licence condition 48. As with the DPA, if these are not fit for purpose then they should be changed directly, rather than having subsidiary rules.

We recognise that there are privacy issues for businesses even where the DPA does not take effect, but these are quite distinct to the issues for individuals and are more related to commercial confidentiality, security and protection from nuisance.

We recognise the tension between the policy requirement for a much more substantial data infrastructure, which will enable active participation by many most consumers in the energy market and the need for some to keep data about their consumption, as private as possible.

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Yours sincerely,

A handwritten signature in black ink, appearing to read "Chris Martin".

Head of Regulation  
07989 493912



## General comments

**Consent** – for clarification our response has been based on the following view of permissions and consent:

- Monthly data (no consent required for Regulatory purposes e.g. billing etc.);
- Daily data (opt-out consent is sufficient for purposes other than Marketing);
- Half-hourly data (explicit consent is required);
- Marketing Consent as it stands today is required for 'generic' Marketing purposes; and
- Where 'tailored' Marketing uses consumption data to target specific customers then explicit consent is also required for the data access; and
- All consents captured will need to be maintained on a 'regular basis' - this is conducted through an automated process in our systems

**Supplier commitment** – we are of the understanding that suppliers should have voluntarily signed-up to the Energy Retail Association's (ERA) Privacy Commitments for Smart Metering that was developed and agreed in January 2012. The Privacy Commitments were replaced when the Data Guide became live in June 2013. These commitments were designed, amongst other things, to manage customer consent for the 'advanced' metering arrangements that are the subject of this consultation. Additional supplier obligations are also provided under Standard Licence Condition 48. It would therefore be helpful to understand if Ofgem have any particular issues with either the approach that was developed or suppliers' adoption of it. In this way appropriate legislation can be agreed and developed to cover any shortfalls that have been identified;

**Metering variants** – There are further variants that require consideration. For example, Advanced Meters in the Domestic arena Advanced Domestic Meters (ADMs) used for some Small to Medium Enterprises. These scenarios effectively create large gaps in the policy. Consideration must also be given to the clear identification and exemption for customers with CT electricity and U-16 or larger gas meters and any other variant that may have been installed due to site and customer requirements or limitations that mean that these customers cannot be serviced by the more usual, common-place, metering arrangements ;

**Fairness and consistency** – We recognise the benefits of a common consent approach for all suppliers, as it is easier to monitor and creates a simpler picture for advocates and for consumer changing supplier. However, given that it will eventually become essential to make a big distinction between empowered consumers who wish for active energy management and those who prefer to keep data about their consumption as private as possible. A consumer and supplier driven approach will therefore be essential. This will depend on the supplier-customer relationship rather than an industry/regulatory/advocate debate without the customer.

**Suggested approach** – in order to successfully extend the data access and privacy licence conditions, there appears to be three potential options:

- To 'flex' the licence conditions for all;
- Audit all supplier's consent systems, processes and records; or
- Establish a provision for individual suppliers to provide evidence in support of derogation.

We believe that the derogation approach would be the most sensible way of demonstrating customer consent for the interim period and ensure that these licence conditions are extended in a fair and controlled manner. In addition, recognition needs to be given to the fact that some suppliers may already be fulfilling the consent obligations, it therefore seems fair that they should be able to provide historical evidence to that fact. Further, this also seems to best align with the suggestion provided by Ofgem in section 2.18 of the consultation;

**Barriers** – we do not believe that the term 'noise and confusion' should be used to drive a debate beyond the context in which it was expressed and from a limited and possibly polarised sample. We not necessarily agree that customers will experience noise and confusion if they are



contacted further in order to verify their data collection and continued consent as these customers are pro-active and understand the benefits which was why they agreed to having these types of meters installed in the first place. We believe that this is a spurious argument for not contacting these consumers;

**Definitions** – We would ask that careful consideration is given to the use of ‘generic’ definitions as a means of drafting clearer licence conditions, as these may have some unforeseen or unintended impacts. For example, the definition of *Electronic Consumption Data Display* will eventually include mobile phones or other devices that are capable of displaying read and consumption data. This could effectively result in suppliers being responsible for these pieces of equipment. This is obviously neither acceptable nor the intent.

We seek clarification as to how the definition of *Remote Access Meter* interacts with existing definitions in the Licence, particularly where smart-type meters are treated as “traditional” through supplier choice rather than technical constraint; and

**Trials** – These are intended to be used where consumption data are required that would otherwise be skewed if it were only available from those who consent as this would not provide a statistically rigorous data set on which to establish large and potentially costly developments. This definition and approach should remain. We recognise that as our learning develops then trials can develop to be more targeted and effective.

**Licence Condition drafting** – Unlike the smart energy code, the licence conditions apply individually to power and gas. The drafted licence conditions will need consistently to refer to the correct fuel;

**Time-scales** – 56 days and summer 2014 implementation dates, given the current level of change to establish the DCC and other key industry changes, make these time-scales unrealistic. When determining implementation time-scales it would be useful to first understand the outcome of any consultation in order to better assess the scale of the solution required and hence the work involved. The proposed implementation date suggests that Ofgem do not fully understand the potential impact of such amendments to these licence conditions. Solutions need to be carefully developed. Changes to systems and processes have to be co-ordinated appropriately to ensure that no unforeseen impacts to other services or processes occur. Proposed changes must be appropriately tested and scheduled into existing workloads at a suitable time. Any changes to Terms and Conditions must be properly considered to ensure that they are not detrimental and these are usually made annually. Any changes that are required and prove to be detrimental to the customer will require suppliers notifying all of its customers of this fact, in advance. This would be at a significant cost.

**Other Supplier obligations** – Where obligations have been discussed, agreed, drafted, and even laid before parliament, the merit in re-opening these needs to be considered on a case by case basis and limited to the appropriate scope. Please refer to our cover letter on the general points here.

**Smart meters in ‘traditional’ mode** – These seem to properly fall out of scope for this consultation



## 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?**

*We are supportive of extending the same Licence Conditions for customers with these metering arrangements where technically possible, with the exception of AMR metering arrangements.*

*We strongly disagree with the proposed flexible approach to allowing opt-out arrangements until some future time where opt-in will be required.*

Whilst we understand and agree with the desire to ensure that all consumers are treated fairly and consistently with regard to control over their consumption data, we do not believe that the current proposals will achieve this in all instances. Further, we have not yet seen any approach that can achieve this efficiently or cost-effectively. For example, the considerations and associated drafting within this consultation appears to only be considering the more straightforward ADM metering arrangements.

Whilst we understand that the envisaged extension should apply for domestic customers, these arrangements should not extend where these are part of a business whose energy requirements are serviced via a group contract. There are a number of these metering and contract arrangements currently in place, with more installations planned for the future.

The framework was developed with smart meters that comply with SMETS functionality in mind. The Programme's technical architecture provides assets and services capable of supporting remote configuration of read and consumption registers and different data retrieval frequencies. It should be noted that applying the existing framework as drafted to different technical architectures, compliance may necessitate site visits and premature meter replacement. We believe this is not supportive of a positive customer experience and the costs have not been justified in this consultation.

With these arguments in mind, our preferred approach is for the application of the 'full' framework approach, to be applied to the data from the implementation date going forwards for an ADM or AMR meter, irrespective of its installation date but where it is technically possible. However, we do not believe that the adopted approach should extend to AMR metering arrangements where Profile Classes (PCs) 5 – 8 and their gas equivalents are involved.

Trials – the use of trials has already been covered within the Smart Programme and has resulted in an agreed definition being drafted that is now in use. The definition and process for approval of a trial should remain. We see no merit in this definition being altered as an unintended consequence of proposed additional Licence Condition drafting. Whilst the number and need for trials is expected to reduce, there may still be a requirement in the near future for example, to provide evidence for settlement reform purposes; and

Market and metering definitions - the consultation currently considers Domestic Customers having both smart and ADM type meters but does not account for other variant meter types that will also have been installed in some instances. In addition, further consideration should be given to the early deployment of ADM metering for non-domestic customers as these situations complicate the ability to apply any drafted Licence Condition in these situations



## **CHAPTER: Two**

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

*Drafting for a full extension approach is best where it is technically possible to apply. However we do have some points for clarification.*

*We would support LC implementation going forward as customer communication is ensured by regular consent review and management obligations.*

*We do not support the 'flexible' extension approach as outlined in Appendix 3.*

Whilst it can be argued that the drafting in both Appendices 2 and 3 give effect to Ofgem's proposed licence condition extension, we believe that the most straight-forward and unambiguous approach of implementing the proposed extension to Data Access and Privacy obligations. Such an approach will benefit both customers and suppliers. We believe that this can best be achieved by applying the extended obligations in full, to be applied to the data from the implementation date going forwards for an ADM or AMR meter, irrespective of its installation date, providing there has been no Change of Supplier (CoS) event.

The flexible framework approach proposed will be more complicated and costly to administer and potentially more confusing for the customer. Further, we do not see the need to establishing a 'flexible' approach within the licence conditions themselves to cover ADM arrangements in particular, as these must be replaced with SMETS meters by the end of 2020. Customers with 'advanced' metering arrangements are regularly contacted and their accounts responsibly managed. Appropriate customer contact points are therefore assured that can and will, be used to inform of any potential changes to the services provided by suppliers.

Whilst we support the full extension approach for the reasons we have so far outlined, we re-iterate some of our comments for clarity:

Licence Condition application – again we believe that it is important to clarify how the proposed extension to data access and privacy licence conditions will be applied; and

Market and metering definitions – As they are currently drafted they do not cover all possible combinations of customer and meter- type and as such there are a number of scenarios that emerge that cannot be fulfilled by the proposed Licence Conditions (see also Q1). For example, AMR meters installed in Domestic Premises, as part of a group contract or ADM meters installed in some Designated Premises in order to fulfil customer/ site specific requirements.



## CHAPTER: Two

**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 (i.e. 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.**

*We disagree that contacting the customer to amend their existing arrangements in light of new legislation creates a poor experience, if this is managed appropriately. We also do not support the 'flexible' framework approach, as previously stated.*

The consistent approach is that suppliers who did choose to deploy early, during the testing and trialling foundation stage, did so at their own risk of rework arising from policy changes that may occur in any area of smart metering. This was a key consideration in our rollout volume decisions.

We seek clarification that the 'flexible' approach can be employed without breaching existing Licence Conditions. The Data Access and Privacy obligations as outlined in Part B, for micro-businesses, under Conditions 47.16 and 47.17 state that the licensee cannot obtain data at an interval of less than a month without first giving 7 days notice of: the intention to collect the data; the purpose that the data may be used for and informing the customer that they can object to this data collection at any time.

It should also be considered that customers who are 'early adopters' are knowledgeable and proactive individuals who understand the contract and relationship that they have with their supplier. They will also understand that processes may evolve over time and that they may need to be contacted in the future, as a result, to ensure that they remain informed of any such changes in order to be able to make appropriate decisions at these customer 'touch-points'. We do not therefore support the 'noise and confusion' argument. In addition, consent is not everlasting and needs to be confirmed periodically to ensure that a customer wishes to continue with their current arrangements.

We do not consider the application of a 'flexible' approach to extending data access and privacy licence conditions to be the most appropriate for dealing with customers who have these meter types already installed. Whilst the Data Access And Privacy licence conditions extend beyond the Data Protection Act (DPA) it is likely that installations made prior these licence conditions taking effect would comply with DPA, but not the new conditions themselves in all respects. For example, maintaining records by sending regular reminders. So in order to ensure that all consumers are treated fairly and consistently, we concede that some form of assurance needs to be established.

ADM and AMR meters have been deployed over a number of years by all suppliers. This has resulted in a number of different approaches to managing these customers' requirements and it is this aspect that should be reviewed by suppliers in the first instance. As we have already discussed, it was our understanding that suppliers agreed to follow the ERA Privacy Commitments and later the Data Guide. Indeed contact with early adopters has been in response to these evolving rules. Suppliers who believe that they have historically fulfilled these rules should therefore be already compliant or be able to apply for derogation and submit the necessary evidence in support of their position.



With these aspects of data access and privacy in mind it should be possible to establish a pragmatic approach to managing these customers' requirements. For example, it should be possible to identify the information that would be required in order to support a suppliers' derogation, from these extended licence conditions, for customers with forms of advanced meters that had been installed prior to these conditions coming into effect.





## CHAPTER: Two

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

*We do not consider that customers will lose services that they wish to keep under any new arrangement.*

We do not see any scenario whereby the consumer will detrimentally lose service. Where customers make informed decisions they do so in order to maximise a perceived benefit. This is equally true where decisions relating to consent to data access and privacy or overall cost savings achieved by changing supplier are driven by the benefits outweighing the loss of any service that was provided. This is a customer choice.

Consent - If the customer values the service(s) provided and that they understand that detailed data access is required in order to provide these services then consent should be easy to obtain but not implicit.

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

*We support a universal 'opt-in' approach to consent for access to data where used for marketing purposes.*

*We do not support an opt-out approach to consent or the proposed 'flexible' approach to manage consent going forward. This will add unnecessary confusion and result in multiple system development requirements.*

We believe that no data should be accessed for marketing purposes unless express (opt-in) consent has been given by the consumer. Any other approach is subject to potential misuse and goes against our understanding of consent requirements.

In proposing a 'marketing opt-out approach' until such time that opt-in is deemed appropriate will require unnecessary development of supporting systems and process that will become obsolete in a relatively short time. Consideration must then also be given as to how these support mechanisms will be developed over time as this is likely to be more difficult than first imagined and could lead to confusion as to exactly what customer consent has actually been given. The operation of a number of consent mechanisms will be confusing for customers and may therefore require more customer contact, not less. The system developments for opt-out will require additional links to track other industry processes to ensure that this type of consent remains appropriate for Change of Supply and Change of Tenant, for example.

We also believe that the proposed approach is contrary to DECC policy.



## CHAPTER: Two

**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?**

*We support a sensible, straight-forward and unambiguous approach to extending these licence conditions.*

*We do not support the concept of either a 'flexible' framework or an arbitrary grace period.*

It appears that the introduction of the concept of a flexible approach has led to the need to also consider a grace period as a way of managing customer consent for access to detailed data, where advanced and smart-type meters have historically been installed. The assumption is that this approach will help to avoid 'noise and confusion', for these customers. However, if this is the case there will always be a risk that 'noise and confusion' may occur at whatever point the customer is contacted, be it sooner or later. The introduction of an arbitrarily agreed grace period therefore would not seem to help.

We prefer to have established a more straight-forward approach to extending these licence conditions that can be readily and consistently applied by all suppliers. If the extended obligations are implemented as proposed then existing obligations on suppliers to maintain consent records will require them to regularly contact these customers going forward. When considering the need to revisit customers to establish if they have been fully informed and that they have provided the necessary level of consent, we consider that a 'derogation approach' could be developed and applied fairly and consistently. In either case, we do not see the need to specify a grace period, as this would be inherently catered for in the implementation of supplier obligations.

We believe that in order to maintain the integrity of the Smart Metering Implementation Programme (SMIP) it is important to ensure that the underlying systems and processes that are required to be developed must, to the greatest extent possible, comply with the prevailing Licence Conditions and the obligations that these place on certain industry parties. We therefore suggest that by allowing both the 'flexible approach' and 'grace period' to be employed around customer consent for marketing has the potential to increase and extend the risk that customers will be marketed where they have not agreed to this.

Suppliers have been installing advanced meter-types for some time and should already have been managing their customers with these meters with consent in mind as these concepts are not new. It would be at a suppliers own risk that they diverge from this approach.

Further, we do not believe that it is appropriate to build implementation time-scales into Licence Condition clauses, which is effectively what is envisaged here.



## CHAPTER: Three

**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.**

*We support this approach, but have further comments to make for consideration.*

Whilst we agree with and support the notion of extending the data access and privacy licence conditions to cover advanced and smart-type meters at micro-businesses, further consideration needs to be given for this market sector. We do not believe that the Licence Conditions, as drafted in this consultation, cover both ADM and AMR metering arrangements adequately. As the industry has developed to accommodate the increasing demand for advanced and smart-type metering a wide range of services and products are now employed in this sector. This variation needs to be carefully considered when uniformly applying new obligations as these can sometimes have unforeseen impacts. As appropriate obligations already exist under the current drafting of the Data Access and Privacy licence conditions for SMETS meters, we believe that a straight-forward, simple extension of these obligations to cover advanced and smart-type meters installed at micro-business sites is the most appropriate approach.

We suggest the following points for further consideration:

Customer contracts – suppliers when servicing their customers requirements are obliged to install customer preferred metering, where this is possible. In other situations meter variants are required in order to provide a customer with the service that they require. Under current arrangements AMR meters can be installed until April 2016 and under certain contractual circumstance be installed up until 2020 and may not therefore need to be exchanged before that date;

Group contracts – The concepts and Licence Condition drafts are predicated on the definitions around micro-businesses and domestic customers. This will be problematic where these domestic consumers are part of a larger 'group contract'. Solutions that are developed to accommodate the extension of these licence conditions in these instances may therefore additionally require some form of change to contracts and/or terms and conditions. This complicates the development of any overall solution and we therefore believe that the proposed implementation time-scales are not achievable. See our response to Q9 for further detail; and

Definitions - As the definition of micro-business is currently under review we must be careful to first understand who would be included within this definition before it is applied to changes of this nature. We do not consider that it is appropriate to include Profile Classes (PCs) 5 – 8, or the gas equivalents as part of this consultation, for example. We advocate that a clear definition of the applicable market be established in order to better understand the implications of any proposed solutions.



**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 and Advanced Meters at micro business premises?**

*We support the proposal to not extend these rules to network companies.*

In order to fully respond to this question it would be helpful to understand the current obligations that exist for network companies with regard to Data Access and Privacy, as the current drafting suggests that they only apply to suppliers.

However, we acknowledge that where these 'advanced' metering arrangements have been installed they will not be supported by the DCC. Therefore, the data may only be accessed via the supplier, who may not have permission to collect it. A separate permission regime and 'ring-fenced' data store for networks within suppliers' systems will drive significant investment costs. Therefore Network Operators will need to provide a robust business case in support of such an arrangement and also be prepared to pay for such an investment.

**CHAPTER: Four**

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

*We support the establishment of a clear, fixed and unambiguous implementation time-scale in order to ensure that industry parties all work to consistent deadlines, thus ensuring the market is treated fairly and consistently.*

*We do not agree that the proposed 56 days provides sufficient time.*

When determining implementation time-scales it would be useful to first understand the outcome of any consultation in order to better assess the scale of the solution required and hence the work involved. A more complete assessment is therefore required in order to firstly understand the extent of the system and process developments required and to ensure that once complete these customers can be treated fairly and consistently, with no unforeseen barriers to switching or inappropriate loss of service occurring.

Further, advanced metering arrangements have been part of a supplier's offerings for some time now in order to meet customers' requirements and the market demand. As such, there is a notable level of divergence for this market sector both in terms of the meter types employed and their use. This fact needs to be considered before any time-scales around proposed developments and implementation time-scales can be fully assessed. The potential exists for any solution that is developed as a result of this consultation to require detrimental changes to a Suppliers' terms and conditions. Where this is the case due legal process must be followed and all customers notified of these changes.



#### **CHAPTER: Four**

**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?**

*Yes – where there is opt-out that is inconsistent with current data access but which cannot be configured*

The Data Access and Privacy licence conditions were originally designed with SMETS smart metering systems and associated services in mind. These systems include a wider range of capabilities and functionality. For example, a SMETS meter must be capable of remote configuration and scheduling of read and profile data so that it can be aligned to the customer permissions. Advanced and smart-type meters may not have the same capabilities. For example, a meter may “push” read information to the supplier and cannot be reconfigured to change the frequency of data without change of meter device. Therefore, if a customer requests less data to be extracted this may require an early meter exchange or removal of all smart capability in order to comply with DPA obligations.

Consideration must also be given where these meters are owned by the customer or where meters capable of being remotely managed but are being used in ‘traditional’ mode and so should be exempt from these licence conditions.

If these variations are to be included within this licence condition extension then there is likely to be increased costs and time for the industry to manage and confusion and inconvenience for the customer. This will therefore prove to be cumbersome, expensive and a poor customer experience.

#### **CHAPTER: Four**

**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.**

*We do not believe that there is a requirement to extend SMICoP.*

SMETS meters are designated and are therefore likely to have sufficient commonality in terms of their capability and potential use to ensure that SMICoP remains a clear and unambiguous Code of Practice that can be used to inform and engage with customers. Compliance with all aspects of SMICoP may not always be technically possible with all types of advanced and smart-type meters. For example, an advanced meter installed in a domestic property as a meter variant may not connect to an IHD and therefore an IHD cannot be explained to a customer. By keeping SMICoP as a voluntary code suppliers have the flexibility to apply the behavioural aspects of the installation, whilst not breaching the code due to any technical constraints.

Advanced and smart-type meters were never part of the SMIP and hence overall end-to-end design. Consideration of extending ‘other’ licence conditions may therefore not directly transfer to these metering arrangements and may lead to significant systems and process developments. A piecemeal and potentially uncoordinated approach may lead to the unnecessary distraction of resource during a period of intense development of the Smart metering Implementation Programme.