

Extending the smart meter framework for data access and privacy to Remote Access Meters

Consultation

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Overview:

The supply licences contain data access and privacy rules for consumption data stored on meters installed as part of the government's mandated smart meter rollout. There are a range of meters with similar functionality (principally, meters that can remotely send consumption data to the supplier). In different contexts these are referred to as smart-type, advanced domestic, advanced and AMR meters. In this document we refer to these other meters collectively as Remote Access Meters.

On 19 December 2013 we consulted on proposals to extend the supply licence smart meter rules to ensure that domestic and micro business consumers with Remote Access Meters have the same control of their energy consumption data as consumers with smart meters.

We have reviewed the consultation responses and replies to our subsequent supplier information request. This document sets out our final proposals.

We consider that consumers' interests will be best served by:

- extending the supplier obligations, in full, for suppliers to domestic consumers
- extending the supplier obligations for suppliers to micro business consumers, but providing some flexibility where suppliers are unable to remotely configure the meter.

We also discuss our decisions for extending other rules that apply to suppliers during the installation process and to network companies.

Context

The Department of Energy and Climate Change (DECC) is leading the implementation of smart metering and has placed obligations on gas and electricity suppliers to roll out smart meters. The roll-out will affect every home and smaller business in Great Britain, and involves replacing around 53 million gas and electricity meters in less than a decade.

Smart meters are expected to lead to significant benefits for consumers and the energy retail markets more widely. Consumers will have more information about their energy consumption, which should help them 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 reduce costs for the industry and, ultimately, consumers.

Smart meters can store energy consumption data at much higher detail than traditional meters and are capable of being read remotely. DECC introduced complementary supply licence obligations (the 'Privacy Requirements') to the Data Protection Act 1998, to address this issue for smart meters. The obligations ensure domestic and micro business consumers have greater control of the energy consumption data held on their smart meters.

However, some suppliers have already installed, or are installing a range of other meters with similar functionality to smart meters (principally to remotely send consumption data to the supplier). In different contexts these are referred to as smart-type, advanced domestic, advanced and AMR meters. In this document we refer to them collectively as Remote Access Meters – this being any meter, that isn't a smart meter, but that is able to remotely send consumption data to the supplier. The licence conditions introduced by DECC do not apply in respect of Remote Access Meters. As such, in December 2013 we consulted on extending those obligations to apply where there are Remote Access Meters installed.

Associated documents

- 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
- 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
- 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
- Ofgem, December 2013, consultation on extending the existing smart meter framework for data access and privacy to Smart-Type Meters and Advanced Meters
<https://www.ofgem.gov.uk/publications-and-updates/consultation-extending-existing-smart-meter-framework-data-access-and-privacy-smart-type-meters-and-advanced-meters>

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Executive Summary

The supply licences contain data access and privacy rules (the 'Privacy Requirements') for consumption data stored on meters installed as part of the government's mandated smart meter rollout. There are a range of meters with similar functionality (principally, meters that can remotely send consumption data to the supplier). In different contexts these are referred to as smart-type, advanced domestic, advanced and AMR meters. In this document we refer to these other meters collectively as Remote Access Meters.

When accessing consumption data, regardless of the type of meter, suppliers are required to comply with general privacy laws, including the Data Protection Act 1998. However, the Privacy Requirements set out in the supply licence for smart meters do not currently apply in respect of consumers with Remote Access Meters.

This document sets out our final proposals on extending the Privacy Requirements to Remote Access Meters. The Privacy Requirements set out the circumstances in which suppliers are able to collect consumption data from smart meters and the type of consent that the supplier is required to get from the consumer before taking data. They allow, in limited circumstances, suppliers to access energy consumption data from consumers without their consent; for example they are able to obtain a meter read required to issue an accurate bill.

This document also sets out our proposed next steps in relation to extending the coverage of the rules underpinning supplier actions and behaviour during the smart meter installation process, in particular whether the existing rules should be extended to apply to Remote Access Meters.

Extending the smart meter data access and privacy obligations

Supplier obligations

In chapters 2 (for domestic consumers) and 3 (for micro businesses captured by the smart meter rollout obligation¹) we propose to extend the Privacy Requirements such that they equally apply to Remote Access Meters. This would apply to both gas and electricity suppliers and regardless of when the meter was installed.

We propose to extend these rules because consumers with Remote Access Meters may not currently have the same level of control as consumers with smart meters in respect of the consumption data that suppliers can access from their meters. We think that these consumers should have the same level of control, unless there are strong arguments to suggest that a different approach is needed. This ensures fair and consistent treatment of consumers.

¹ Defined as "designated premises" in the supply licences.

We recognise that some Remote Access Meters in micro business premises cannot be remotely configured to restrict the detail of consumption data that is transmitted from the meter. As such, we propose to provide flexibility in the licence such that suppliers to micro businesses could comply with the consumer's request to limit the consumption data sent to suppliers by getting the company that manages the data flow from the meter to the supplier (the 'head end provider') to restrict the data that reaches the suppliers' systems.

We propose that the licence conditions would take effect six months from the date we publish a decision notice in response to this consultation.

Network company obligations

Network companies must follow similar data access and privacy rules about consumption data stored on smart meters. In chapter 4 we set out that we do not, at this time, intend to extend the smart meter data access and privacy rules to Remote Access Meters. We believe that it is unlikely that a network company would be able to access the data without getting the customer's consent.

Smart Metering Installation Code of Practice (SMICoP)

The SMICoP sets out rules and standards of conduct for suppliers installing smart meters for domestic and micro business customers. We have decided to not, at this point in time, extend the SMICoP licence conditions to Remote Access Meters. There was both a lack of support and evidence for needing to extend the rules. Chapter 4 discusses this further.

Next steps

We have set out the proposed modification to licence drafting in Appendices 2 and 3. We invite views on our final proposals for extending the Privacy Requirements to Remote Access Meters and the proposed licence drafting. This consultation will be open for 28 days. Subject to the responses we receive, we plan to publish a decision notice to proceed with the modification. The modification will come into effect at the end of six months from the date we publish the decision notice.

1. Introduction

1.1. Suppliers are required, by their licences, to use all reasonable steps to ensure that their domestic and smaller non-domestic customers have smart meters (or in some cases advanced meters) by the end of 2020².

1.2. There are a range of meters with similar functionality to smart meters (principally, meters that can remotely send consumption data to the supplier). In different contexts these are referred to as smart-type, advanced domestic, advanced and AMR meters. In this document we refer to these other meters collectively as Remote Access Meters – this being any meter, that isn't a smart meter, that is able to remotely send consumption data to the supplier, either on its own or with an ancillary device.

1.3. Suppliers have to replace all Remote Access Meters at domestic premises and most Remote Access Meters at small non-domestic premises with smart meters by the end of 2020.

1.4. The Department of Energy and Climate Change (DECC) considered it important for consumers to have control over the consumption data on their smart meters. To enable this, it introduced a regulatory framework for data access and privacy for smart meters. This included new supplier licence obligations (the 'Privacy Requirements') as well as obligations in the Smart Energy Code (SEC)³.

1.5. The Privacy Requirements explain when suppliers can collect consumption data from smart meters and the type of consent that the supplier is required to get before so doing. In limited circumstances, suppliers can access energy consumption data without their consent; for example they can obtain a meter reading required to issue an accurate bill.

1.6. The framework requires the supplier:

- for domestic consumers, to get
 - opt-in consent⁴ to obtain and use data at greater detail than daily reads ('Detailed Data') or to use any detail of consumption data for marketing
 - opt-out consent for access to consumption data up to daily detail

² There is an exception to this where a supplier has installed (or contracted for the installation of) an advanced meter at a small non-domestic (including micro business) premises by 5 April 2016.

³ 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 and the users of its services (suppliers, network operators and others).

⁴ The consumer must give explicit consent to the supplier.

- for micro business consumers, to get opt-out consent⁵ for access to consumption data at greater detail than monthly.

1.7. When accessing consumption data, regardless of the type of meter, suppliers must comply with general privacy laws, including the Data Protection Act 1998.⁶ However, the Privacy Requirements do not currently apply to consumers with Remote Access Meters. To correct this, in December 2013 we consulted on extending the Privacy Requirements to apply to these consumers (the 'December 2013 consultation').

Next steps

1.8. We have included a statutory consultation on the proposed licence drafting in appendices 2 and 3. This document, and those appendices constitute notice of a modification to the standard conditions of the gas and electricity supply licences.

1.9. We invite views on our final proposals for extending the Privacy Requirements to Remote Access Meters and the proposed licence drafting.

1.10. This consultation will be open for 28 days and will close on 26 September 2014. Subject to the responses we receive, we plan to publish a decision notice to proceed with the modification. The modification will come into effect six months after from the date we publish the decision notice. Application to the Competition and Markets Authority for permission to appeal must be made within 20 working days of the day after the date of the decision.

1.11. Please address any questions about this consultation to Colin Down, senior policy manager (colin.down@ofgem.gov.uk, 020 7901 7327). Responses should be sent to smartermarkets@ofgem.gov.uk, copying colin.down@ofgem.gov.uk, or by post addressed to the Smarter Metering team using the address below.

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⁵ 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.

⁶ Additionally, under consumer protection law, suppliers offering smart meters or Remote Access 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.



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1.12. We will publish any responses we receive on our website, except those marked as confidential. We intend to publish our final decision notice in winter 2014.

1.13. We have published the non-confidential responses to our December 2013 consultation on our website.

2. Final data access and privacy proposals for suppliers to domestic premises

Chapter summary

The Privacy Requirements⁷ currently apply to smart meters. We propose to extend them fully to Remote Access Meters⁸ in domestic premises⁹.

This chapter goes into our proposals in detail and discusses the responses to our December 2013 consultation.

2.1. We propose to extend fully the Privacy Requirements so they apply to Remote Access Meters, rather than just smart meters. We consider that suppliers with customers with Remote Access Meters should face the same data access and privacy obligations as those supplying customers with smart meters. This ensures fair and consistent treatment of consumers. We did not receive any evidence to convince us that we shouldn't extend the obligations.

2.2. We propose that the modification of the licence conditions will take effect six months from the date we publish a decision notice in response to this consultation.

Our views on the December 2013 consultation responses

2.3. In the December 2013 consultation we asked for views on whether a more flexible approach may be warranted when a Remote Access Meter has already been installed ('pre-installed Remote Access Meter'). We questioned whether, in these situations, suppliers should be allowed to access Detailed Data¹⁰ on an opt-out basis.

2.4. Respondents put forward several arguments in favour of extending fully the Privacy Requirements to pre-installed Remote Access Meters:

1. It would create a consistent and less confusing framework (the licence conditions would be easier to understand and organisations, such as Citizens

⁷ The smart meter supply licence obligations on data access and privacy.

⁸ There are a range of meters with similar functionality to smart meters (principally, meters that can remotely send consumption data to the supplier). In different contexts these are referred to as smart-type, advanced domestic, advanced and AMR meters. In this document we refer to these other meters collectively as Remote Access Meters – this being any meter, that isn't a smart meter, that is able to remotely send consumption data to the supplier, either on its own or with an ancillary device.

⁹ References to 'consumer', 'smart meter' etc in this chapter relate to the domestic sector, unless otherwise stated.

¹⁰ Ie data at more detail than daily reads (such as half hourly reads).

- Advice, that deal with consumer queries would find it easier to explain the rules).
2. Reduced reputational risk for the rollout.
 3. Gives suppliers an incentive to offer something in return to consumers.
 4. Helps create a level playing field between suppliers with different meter types.
 5. The Data Protection Act 1998 requires data to be processed fairly, including not treating people (or groups) differently without proper justification.
 6. Consumers with Remote Access Meters would be more engaged, so should be easier to get consent from.

2.5. In contrast to the arguments above, one respondent suggested that there was little point changing the framework as the rules will apply universally by the end of 2020 (when suppliers should have replaced Remote Access Meters with smart meters). There was also a suggestion that concerns around data access were low, as shown by the low opt-out rates. Our view is that while concerns may be low at present, there is no certainty that consumers will remain unconcerned in the future. We see merit in setting up robust consumer protection.

2.6. Two respondents asserted that we should not apply rules retrospectively. To clarify, we are not retrospectively applying the rules. For example, a supplier would not be penalised under our proposed licence obligations if, before the new licence conditions took effect, they collected consumption data in a way that is prohibited under the proposed licence conditions.

Avoiding consumers feeling hassled or being confused

2.7. We debated in our December 2013 consultation whether a consumer being approached again to discuss their data choices would lead to the consumer feeling hassled or confused.

2.8. We were mindful that the most convenient time for suppliers to obtain opt-in consent may be during, or leading up to, the installation visit. So consumers who already have Remote Access Meters installed have presumably already discussed data access and privacy and their choices in these areas with their supplier. Some consumers may have decided not 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 lead to some consumers feeling hassled or confused.

Respondents' views and our response

2.9. Some respondents thought suppliers that have pre-installed Remote Access Meters should have additional flexibility. It was suggested that consumers may be confused by a request for opt-in consent.

2.10. One respondent noted that even if suppliers didn't have this conversation now, they would need to do it before the end of 2020, as they'd need to install a smart

meter and would be required to get opt-in consent. One respondent noted that they have not had a detailed conversation about data choices with many of their consumers. These consumers would particularly benefit from such a conversation in the future. Suppliers, as customer facing organisations, should be well equipped to explain such things to the consumer to minimise any confusion.

2.11. It was suggested that asking for opt-in consent may create unnecessary worry for some consumers. However, giving consumers more control over who has access to their data should reassure them.

2.12. We were not convinced that consumers will be unduly inconvenienced by suppliers discussing their data choices. A consistent framework with strong protection should be better in the long run at reducing consumers' concerns around privacy and control over data. Also, as some customers appear to never have had a conversation about their data choices, there is value in ensuring they do have that opportunity.

Potential loss of smart services

2.13. We noted that some consumers may be receiving useful services from their supplier based on Detailed Data. We assumed that fewer consumers would provide opt-in consent compared to those who provide opt-out consent, as opt-in requires a consumer to make an active choice. As such, we sought views on whether a move to require opt-in consent for data collection from pre-installed Remote Access Meters may result in some consumers losing services they value. We wanted to know what the impact on consumers (in terms of loss of services) would be if suppliers had to get opt-in consent to access Detailed Data.

Respondents' views and our response

2.14. One respondent noted that they didn't want consumers to lose important services because they fail to respond to a request for consent (eg if on holiday). They suggested that organisations should think carefully about the time they give individuals to respond and how they contact them (eg choosing an appropriate method for communication and presenting information in an appropriate format, given that the audience isn't technical).

2.15. Only one supplier told us how it provides services to consumers based on Detailed Data. We can see that consumers would benefit from that service. However, where that supplier did ask for opt-in consent, we were encouraged that most consumers did opt-in.

2.16. We have not been convinced that the potential loss of services by consumers means we should give suppliers more flexibility when accessing data from consumers with pre-installed Remote Access Meters. Equally, if a consumer values a service, they are more likely to opt-in such that they continue to receive it.

Other issues

2.17. We asked what approach we should take on various issues if we decided that suppliers should have flexibility where they have pre-installed Remote Access Meters. As we have decided not to provide this flexibility, we haven't commented on this further. The non-confidential responses to our consultation are on our website.

3. Final data access and privacy proposals for suppliers to micro businesses

Chapter summary

The Privacy Requirements¹¹ currently apply to smart meters. We propose to extend them to Remote Access Meters¹² at micro businesses which are captured by the rollout obligation (defined as “designated premises” in the supply licence).¹³

This chapter goes into our proposals in detail and discusses the responses to our December 2013 consultation.

3.1. We propose to extend the Privacy Requirements so they apply to Remote Access Meters installed in micro businesses at designated premises, rather than just smart meters in such premises. We consider that suppliers with customers with Remote Access Meters should face the same data access and privacy obligations as those supplying consumers with smart meters. This ensures fair and consistent treatment of consumers. We did not receive any evidence to convince us that we shouldn't extend the obligations.

3.2. However, we propose some flexibility in how suppliers must comply with their obligations. This would apply where they can't remotely configure the detail of consumption data that is transmitted from the meter.

3.3. We propose that the modification of the licence conditions will take effect six months from the date we publish a decision notice in response to this consultation.

Our views on the December 2013 consultation responses

3.4. There was broad support for the principle of consistent rules. However, respondents noted various issues that may make it harder to comply with the proposed obligations. There were also concerns that suppliers may find it difficult to understand how the rules apply in different scenarios.

¹¹ The smart meter supply licence obligations on data access and privacy.

¹² There are a range of meters with similar functionality to smart meters (principally, meters that can remotely send consumption data to the supplier). In different contexts these are referred to as smart-type, advanced domestic, advanced and AMR meters. In this document we refer to these other meters collectively as Remote Access Meters – this being any meter, that isn't a smart meter, that is able to remotely send consumption data to the supplier, either on its own or with an ancillary device.

¹³ References to 'consumer', 'smart meter' etc in this chapter relate to the micro business sector, unless otherwise stated.

3.5. Two respondents noted that suppliers may not have a contractual relationship with the customer for the metering equipment. For example, the consumer may contract directly with a third party, with that third party providing metering and data services to the consumer. Suppliers were concerned that they may be in breach of the proposed obligations where the third party is taking data.

3.6. To clarify, the intent of the proposed licence obligations is that suppliers will be responsible for getting appropriate consent for any data that they obtain or use or that they contract a third party to obtain or use¹⁴. If a third party separately contracts with a customer, access to the data on that consumer's meter will be a matter for those two parties to agree.

3.7. Some respondents were concerned that in the electricity sector the rules would prevent micro businesses in profile classes 5-8 from being settled half hourly. This could conflict with a proposed modification (known as P272) to the Balancing and Settlement Code.¹⁵ To clarify, the licence conditions apply only to micro businesses in profile classes 1-4, so will not affect meters in other profile classes.

3.8. One respondent was concerned that it may be difficult to contact the decision maker of the business when trying to obtain consent. We don't think this is a problem with our proposed licence obligations in particular. Instead, it's a wider challenge that suppliers face.

3.9. One respondent raised a concern about how the rules apply where there is a domestic premises as part of a group contract. For example, a school caretaker may live onsite, where the supplier has a contract to supply the education authority.

3.10. We acknowledge that there are lots of different arrangements in the micro business sector. This adds complexity to the way contracts are set up and managed. However, suppliers have to deal with these complexities in complying with other obligations. It is for the supplier to interpret how the licence applies in any given scenario and to ensure they have arrangements set up to comply - including modifying contracts if necessary.

3.11. A supplier asked what is meant by a customer having a "clear opportunity" to opt-out of having their daily data obtained. This phrase doesn't appear in the licence. It was used by the Department of Energy and Climate Change in its decision when it introduced the Privacy Requirements. It is for suppliers to interpret how they should comply with the licence. We note that the licence condition (47.5(b)(ii) in electricity and 41.5(b)(ii) in gas) requires that where a supplier has given a domestic customer notice that they intend to obtain consumption data, before obtaining that data at

¹⁴ We are proposing some flexibility where a supplier cannot remotely configure a meter (as discussed later in this chapter).

¹⁵ <http://www.elexon.co.uk/mod-proposal/p272-mandatory-half-hourly-settlement-for-profile-classes-5-8/>

least seven days must have elapsed (unless the consumer has explicitly consented to the data being taken).

Flexibility where a supplier cannot remotely configure a meter

3.12. We asked whether suppliers would find it difficult to comply with our proposed obligations due to the technical limitations of Remote Access Meters.

3.13. Various respondents explained that some meters don't let suppliers remotely configure the detail of the consumption data that is transmitted from the meter.

3.14. This means that if a consumer, for example, wanted the supplier to take only daily readings, the supplier would have to visit the site to manually configure the meter or replace it. This could be disruptive for consumers and costly for suppliers.


3.15. In July 2014 we requested further information from suppliers to understand the extent of this issue and whether there was any way around it. The data we received suggested that this is primarily a problem for micro businesses.¹⁶

3.16. One approach that suppliers have taken to responding to consumers' data access choices is to relay the request to the company that manages the data flow from the meter to the supplier (the 'head end provider'). This company would send the supplier only the data that the customer has been given permission for it to take. The half hourly consumption readings still leave the meter and enter the head end provider's systems (as the meter cannot be remotely configured to do otherwise), but the supplier does not receive it.

3.17. We propose to allow suppliers to use these arrangements where they can't remotely configure the meter. This will minimise inconvenience for consumers by reducing the need for site visits (to manually configure the meter) and minimise costs for suppliers. Recognising that the data will still be leaving the meter, we propose that suppliers should also have to make sure that:

- where a consumer requests that the supplier stops obtaining data, that this request is quickly relayed to the head end provider and the head end provider stops sending this data as soon as practicably possible
- any data that the supplier does not have permission to access is permanently erased from the head end provider's systems as soon as reasonably practicable

¹⁶ Suppliers did flag some meters in domestic premises that they are unable to remotely configure. But this doesn't appear to be an issue with the meters themselves (ie they are inherently capable of remote configuration) but is due to the fact that suppliers are not using those meters in smart mode (ie no data is sent to the supplier). If suppliers did decide to use them in smart mode, they should be able to set up their systems and contracts in such a way as to utilise the remote configuration functionality.



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- in the unlikely event that data reaches the suppliers system despite a consumer's request to the contrary, the supplier deletes it from their systems as soon as reasonably practicable.

3.18. Some consumers may prefer that, where they opt out of letting the supplier access and use data, the head end provider also doesn't receive the data (even if it later deletes it). In this situation the consumer could explore other options with their supplier or consider switching to a new supplier.

4. Other considerations

Chapter summary

Here we consider various issues, 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. In particular, we look at whether the existing rules should be extended to Remote Access Meters¹⁷.

Data access and privacy proposals for suppliers

Licence drafting

4.1. In our December 2013 consultation we provided draft licence conditions that reflected the policy as consulted on. We asked if our licence conditions achieve our policy aims. The only substantive comment we received that we have not already dealt with was whether we need the definition of “electronic consumption data display”. There was a concern that it could be construed to include an in home display or meter with an electronic display. We have decided that “electronic consumption display” should not be carved out of the definition of a Remote Access Meter. If it is carved out, it could provide suppliers with a potential loophole to receive data remotely from a meter (via an electronic consumption display) and thus not have to comply with our proposed licence obligations.

Implementation date

Our final proposals

4.2. In our December 2013 consultation we proposed 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 the changes). Based on the responses we received to our December 2013 consultation, we consider that six months is more appropriate. Over that six month period, we would expect suppliers to pay particular attention to consumers that have had the least contact with suppliers regarding their data choices.

¹⁷ There are a range of meters with similar functionality to smart meters (principally, meters that can remotely send consumption data to the supplier). In different contexts these are referred to as smart-type, advanced domestic, advanced and AMR meters. In this document we refer to these other meters collectively as Remote Access Meters – this being any meter, that isn’t a smart meter, that is able to remotely send consumption data to the supplier, either on its own or with an ancillary device.

Respondents' views and our response

4.3. Only four respondents thought 56 days was long enough to become compliant. Those who said longer was needed suggested between six and twelve months. Respondents provided numerous reasons for why suppliers should have more time to comply, including:

- There is lots of other industry change to compete with.
- Terms and conditions would need to be amended.
- Consumers would need to be contacted, so this would need to be phased.
- Staff would need training.
- Systems and processes would need to be amended.

4.4. While we do not agree with all the issues raised by respondents, we consider that giving suppliers a longer period would allow them to minimize costs in contacting customers, as they will be better placed to use existing resources (eg staff and overheads). It should also allow them to minimise any potential inconvenience for their customers by aligning any communications with other planned contact through the year.

Other points raised by respondents

Monitoring the new rules and sharing responsibilities with the ICO

4.5. One respondent asked how we plan to monitor the new rules and how responsibilities will be shared between Ofgem and the Information Commissioner's Office (ICO). We will monitor compliance in various ways. In terms of the current Privacy Requirements¹⁸, we plan to request information from suppliers towards the end of the year to understand how they are complying. We will consider whether to request further information next year, which could include their approach to complying with the obligations we are proposing to introduce.

4.6. In terms of working with ICO, we are creating a memorandum of understanding which will set out how we would share any intelligence that we pick up through our monitoring activities. We are in regular contact with one another. In terms of any breaches of licence conditions that also represent a breach of the Data Protection Act 1998 – we would need to assess on a case by case basis how we approach any action we decide to take, but would take a joined up approach wherever possible.

4.7. One respondent asked about complaint handling and the redress process for the proposed obligations.

¹⁸ The smart meter supply licence obligations in respect of data access and privacy.

4.8. The ICO has no specific remit covering energy companies or smart metering. This means the existing rules apply: the ICO's involvement would only extend to activities which resulted in breaches of the requirements of the Data Protection Act 1998. Examples include the unlawful disclosure or loss of personal data, or a failure to respond appropriately to requests for personal data under the Data Protection Act 1998. The ICO could also look into breaches such as failure to comply with direct marketing rules under the Privacy and Electronic Communications Regulations 2003.

4.9. The same energy-sector processes that consumers can currently follow if they have a complaint with their energy company would apply. For example, a consumer could contact their supplier first. If the complaint is not resolved to their satisfaction or in a timely manner, they can ask the energy ombudsman to investigate.¹⁹

Wider statutory and regulatory framework

4.10. One respondent asked how we will link our proposed work with EU Regulations on data. This is outside of the scope of this consultation. Clearly we will need to be mindful of any legislation that interacts with our licence conditions, as well as working closely with the Department of Energy and Climate Change (DECC) when it reviews the data privacy framework.

4.11. One respondent noted that a change would be needed to the Balancing and Settlement Code, which it said, as drafted, would be inconsistent with our proposed obligations in terms of identifying data ownership. We note that the Balancing and Settlement Code includes a modification process that parties can use if they consider a change is required to the code.

4.12. One respondent noted that they comply with the "data guide"²⁰ and questioned if we have any problems with it. We understand that the data guide does not require opt-in consent for accessing half hourly data from Remote Access Meters.

Parity of protections between domestic and micro business consumers

4.13. One respondent said we should ensure that the micro business data access and privacy rules (whether for smart meters or Remote Access Meters) are the same as the smart meter rules in the domestic sector. We have no current plans to enhance the micro business obligations that DECC introduced. This is outside the scope of this consultation, which wasn't looking to change the existing smart meter rules. Also, no convincing evidence was provided that the current protections aren't proportionate.

¹⁹ <https://www.ofgem.gov.uk/information-consumers/domestic-consumers/making-enquiry-or-complaint>

²⁰ More information on the data guide can be found here: <http://www.energy-uk.org.uk/policy/smart-meters.html>

Giving notice and recording a consumers response

4.14. Two respondents said that the smart meter licence conditions do not allow suppliers to issue notice and record consent verbally. The requirements around issuing notices and recording consent were set by DECC when it introduced the Privacy Requirements. We have no plans to change this, as this is outside the scope of this consultation, which wasn't looking to change the existing smart meter rules.

Data access and privacy proposals – network companies

4.15. There will be a clear route for network companies to access smart meter data, by requesting it from the Data and Communications Company (DCC). Network companies' access to smart meter consumption data is restricted by licence conditions which are similar to those that apply to suppliers. Remote Access Meters are not currently covered by the same requirements. In our December 2013 consultation, we proposed that we would not extend the existing smart meter obligations to Remote Access Meters at domestic and micro business premises.

4.16. If a network company wanted to access data from a Remote Access Meter that was not enrolled in DCC, it would either need to be through the supplier or through approaching the customer directly. If a network company did request data from a supplier, the supplier's proposed obligations in terms of seeking consent from the consumer would apply. If the network company approaches the customer directly, then that customer is in control of how it consents for its data to be used. Consequently, there is minimal risk of a customers' data being used by network companies without appropriate consent.

Ofgem's decision

4.17. We have decided to not extend the smart meter data access and privacy rules to Remote Access Meters. As explained above, we believe that the customer is already adequately protected. We recognise that if Remote Access Meters are enrolled in DCC, then network companies could potentially access the meter data, without the consent of the customer. Since there are no current plans to enrol such meters in DCC, we do not consider that we need to impose any further rules on Remote Access Meters at this point in time.

Respondents' views

4.18. There was broad support for not extending the rules, although one respondent thought we should, suggesting there are no downsides to doing so. They also noted that there are differences of opinion on what a smart meter is, so you may see Remote Access Meters being enrolled into DCC. Further, it has not been completely ruled out that Remote Access Meters won't be enrolled into DCC.

Smart Metering Installation Code of Practice (SMICoP) – suppliers

4.19. 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. In our consultation we asked whether consideration should be given to extending the existing SMICoP rules to the installation of Remote Access Meters. In the December 2013 consultation, we referred to Smart-Type Meters when talking about Remote Access Meters at domestic premises and Advanced Meters when talking about Remote Access Meters at micro business premises.

4.20. Only one respondent advocated the extension of SMICoP rules to Remote Access Meters at domestic premises. They thought that consumers might be confused about what to expect from installation visits where differing meter types are being installed. No respondents' advocated extension to Remote Access Meters installed at micro business premises.

4.21. All domestic and micro business customers will receive the benefits of a SMICoP installation during the roll-out when they receive a smart meter. In light of this and the lack of both support and evidence advocating extension, we will not consider the extension of SMICoP licence conditions further at this time. We note that even if we were to extend coverage to domestic premises, it is highly likely that by the time licence changes were made, few Remote Access Meters would be due for installation.²¹ We also note the ongoing commitment from the six large suppliers to voluntarily meet SMICoP requirements where they do install Remote Access Meters in domestic premises.

²¹ Alongside our consultation, we asked suppliers to provide us with an estimate of the number of upcoming Remote Access Meter installations.

Appendix 1 – The Privacy Requirements

The boxes below summarise the data access and privacy framework (which is set out in full in the supply licences) that applies in respect of smart meters. We refer to this as the “Privacy Requirements” in this document. As set out in chapters 2 and 3, we are proposing that the Privacy Requirements would apply to Remote Access Meters, subject to some changes in respect of Remote Access Meters, at micro business premises, which the supplier cannot remotely configure.

Domestic sector

Basic framework:

- Allow suppliers to access monthly (or less granular) energy consumption data²², 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 detail] 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 privacy²³.

²² 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).

²³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf

Micro business sector

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 detail of energy consumption data for any purpose, with clear opportunity for the customer to opt out.

Appendix 2 - Statutory consultation on amendment to the Electricity Supply Licence

NOTICE UNDER SECTION 11A(2) OF THE ELECTRICITY ACT 1989

The Gas and Electricity Markets Authority (“the Authority”) hereby gives notice pursuant to section 11A(2) of the Electricity Act 1989 (“the Act”) as follows:

1. The Authority proposes to modify all electricity supply licences granted or treated as granted under section 6(1)(d) of the Act by amending Standard Licence Condition (“SLC”) 47 “Smart Metering – Matters Relating To Obtaining and Using Consumption Data”.
2. The reason why the Authority proposes to make this licence modification is to ensure consistent protections for all domestic and for all micro business consumers which are captured by the rollout obligation (defined as “designated premises” in the supply licence) in relation to suppliers obtaining and using energy consumption data. Further detail is set out in our document “Extending the existing smart meter framework for data access and privacy to Remote Access Meters”, published on 29 August 2014.
3. In relation to domestic consumers, the effect of the proposed modification is to ensure that suppliers only obtain and use energy consumption data held on consumers’ Remote Access Meter where they have appropriate consent. The Authority aims to achieve this by requiring electricity suppliers to:
 - a. obtain the opt-out consent of the consumer where they intend to collect electricity consumption data for a period that relates to less than one month, but not less than a day
 - b. obtain the opt-in consent of the consumer where they intend to collect electricity consumption data that relates to a period of less than a day, or to use any such data for marketing purposes.
4. In relation to micro businesses which are captured by the rollout obligation (defined as “designated premises” in the supply licence), the effect of the proposed modification is to ensure that suppliers only obtain and use energy consumption data held on micro business consumers’ Remote Access Meter where they have appropriate consent. The Authority aims to achieve this by requiring electricity suppliers to:
 - a. obtain the opt-out consent of the consumer where the supplier intends to collect electricity consumption data for a period that relates to less than one month
 - b. where meters are not remotely configurable by the supplier, to put in place suitable arrangements to respond to consumers’ data access

choices, by relaying a request to the company that manages the data flow from the meter to the supplier to only send on the data to the supplier that the supplier has been given permission by the consumer to obtain and use.

5. Relevant licence holders for the purposes of this Notice are all holders of electricity supply licences.
6. A copy of the proposed modification and other documents referred to in this notice are available (free of charge) from the Ofgem library (telephone 020 7901 7003) or on the Ofgem website (www.ofgem.gov.uk).
7. Any representations to the proposed licence modifications may be made on or before 26 September 2014 to: Colin Down, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to smartermarkets@ofgem.gov.uk.
8. All responses will normally be published on Ofgem's website and held in the Research and Information Centre. However, if respondents do not wish their response to be made public then they should clearly mark their response as not for publication. Ofgem prefers to receive responses in an electronic form so they can be placed easily on the Ofgem website.
9. If the Authority decides to make the proposed modification it will take effect not less than six calendar months after the decision is published.

.....
Rob Church, Associate Partner
Duly authorised on behalf of the
Gas and Electricity Markets Authority

29 August 2014

SCHEDULE

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

[\(cb\)](#) 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.

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

(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.

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.

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.

PART B. MICRO BUSINESS PREMISES

Prohibition on obtaining consumption data

47.16 Subject to paragraphs 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) (i) the Micro Business Consumer has not objected to the licensee obtaining that Electricity Consumption Data for the purposes set out in the Notice; or-

(ii) the Micro Business Consumer has objected to the licensee obtaining Electricity Consumption Data which relates to any one or more periods of less than one month and the licensee is unable to remotely configure the Remote Access Meter to prevent that Electricity Consumption Data being automatically sent to the licensee or a third party, but as soon as reasonably practicable the licensee:

(1) takes all reasonable steps to prevent the third party passing that Electricity Consumption Data to the licensee or any other third party;

(2) takes all reasonable steps to ensure the third party permanently erases that Electricity Consumption Data

(3) permanently erases any of that Electricity Consumption Data it has obtained.

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 micro business premises.
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
Remote Access Meter	means an Electricity Meter that, either on its own or with an ancillary device: (a) provides measured Electricity Consumption Data for multiple time periods and is able to provide such data for periods of less than one month; (b) is able to provide the licensee with remote access to such data; and (c) is not a Smart Metering System or part of a Smart Metering System.
Trial	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.

Appendix 3 - Statutory consultation on amendment to the Gas Supply Licence

NOTICE UNDER SECTION 23(2) OF THE GAS ACT 1986

The Gas and Electricity Markets Authority (“the Authority”) hereby gives notice pursuant to section 23(2) of the Gas Act 1986 (“the Act”) as follows:

1. The Authority proposes to modify all gas supply licences granted or treated as granted under 7A(1) of the Act by amending Standard Licence Condition (“SLC”) 41 “Smart Metering – Matters Relating To Obtaining and Using Consumption Data”.
2. The reason why the Authority proposes to make this licence modification is to ensure consistent protections for all domestic and for all micro business consumers which are captured by the rollout obligation (defined as “designated premises” in the supply licence) in relation to suppliers obtaining and using energy consumption data. Further detail is set out in the main of this document “Extending the existing smart meter framework for data access and privacy to Remote Access Meters”, published on 29 August 2014.
3. In relation to domestic consumers, the effect of the proposed modification is to ensure that suppliers only obtain and use energy consumption data held on consumers’ Remote Access Meter where they have appropriate consent. The Authority aims to achieve this by requiring gas suppliers to:
 - a. obtain the opt-out consent of the consumer where they intend to collect gas consumption data for a period that relates to less than one month, but not less than a day
 - b. obtain the opt-in consent of the consumer where they intend to collect gas consumption data that relates to a period of less than a day, or to use any such data for marketing purposes.
4. In relation to micro businesses which are captured by the rollout obligation (defined as “designated premises” in the supply licence), the effect of the proposed modification is to ensure that suppliers only obtain and use energy consumption data held on micro business consumers’ Remote Access Meter where they have appropriate consent. The Authority aims to achieve this by requiring gas suppliers to:
 - a. obtain the opt-out consent of the consumer where the supplier intends to collect gas consumption data for a period that relates to less than one month

- b. where meters are not remotely configurable by the supplier, to put in place suitable arrangements to respond to consumers' data access choices, by relaying a request to the company that manages the data flow from the meter to the supplier to only send on the data to the supplier that the supplier has been given permission by the consumer to obtain and use.
5. Relevant licence holders for the purposes of this Notice are all holders of gas supply licences.
6. A copy of the proposed modification and other documents referred to in this notice are available (free of charge) from the Ofgem library (telephone 020 7901 7003) or on the Ofgem website (www.ofgem.gov.uk).
7. Any representations to the proposed licence modifications may be made on or before 26 September 2014 to: Colin Down, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to smartermarkets@ofgem.gov.uk.
8. All responses will normally be published on Ofgem's website and held in the Research and Information Centre. However, if respondents do not wish their response to be made public then they should clearly mark their response as not for publication. Ofgem prefers to receive responses in an electronic form so they can be placed easily on the Ofgem website.
9. If the Authority decides to make the proposed modification it will take effect not less than six calendar months after the decision is published.

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Rob Church, Associate Partner
Duly authorised on behalf of the
Gas and Electricity Markets Authority

29 August 2014

SCHEDULE

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
- (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 System; or](#)

[\(b\) to which gas is supplied through a Remote Access Meter; and](#)

[\(c\) in respect of which the quantity of gas supplied is measured by that Gas Meter.](#)

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.

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

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.

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) (i) the Micro Business Consumer has not objected to the licensee obtaining that Gas Consumption Data for the purposes set out in the Notice; ~~or~~
- (ii) the Micro Business Consumer has objected to the licensee obtaining Gas Consumption Data which relates to any one or more periods of less than one month and the licensee is unable to remotely configure the Remote Access Meter to prevent that Gas Consumption Data being automatically sent to the licensee or a third party, but as soon as reasonably practicable the licensee:
- (1) takes all reasonable steps to prevent the third party passing that Gas Consumption Data to the licensee or any other third party;
 - (2) takes all reasonable steps to ensure the third party permanently erases that Gas Consumption Data
 - (3) permanently erases any of that Gas Consumption Data it has obtained.

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	means, in respect of a relevant premises or a micro business
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Data	premises, the quantity of gas measured by the Gas Meter as having been supplied to the relevant premises or the micro business premises.
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
Remote Access Meter	means a Gas Meter that, either on its own or with an ancillary device: (a) provides measured Gas Consumption Data for multiple time periods and is able to provide such data for periods of less than one month; (b) is able to provide the licensee with remote access to such data; and (c) is not a Smart Metering System or part of a Smart Metering System.
Trial	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.

Appendix 4 - Glossary

A

Advanced Meter

For the purpose of this consultation, an Advanced Meter is a meter as defined in electricity supply licence condition 39 and gas supply licence condition 33.

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 more detail than daily reads (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 conditions 47 and 41 (respectively) of the electricity and gas supply standard licence conditions.)

Micro business consumer

A non-domestic customer of a certain size in terms of employees and energy consumption (defined in condition 7A of the gas and electricity supply 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 supply 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 supply standard licence conditions.

R

Remote Access Meters

Remote Access Meters are those installed at domestic premises or micro business premise that are “designated premises” (ie micro businesses that are captured by the smart meter rollout obligation) that can provide a supplier with remote access to consumption data (whether on its own or with an ancillary device), but which do not meet the government’s mandated technical standard for smart meters.

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).

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.

Appendix 5 - Consultation Response and Questions

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

1.2. We particularly invite views on our final proposals for extending the Privacy Requirements to Remote Access Meters and the proposed licence drafting.

1.3. Responses should be received by 26 September 2014 and should be sent to smartermarkets@ofgem.gov.uk, copying colin.down@ofgem.gov.uk, or by post addressed to the Smarter Metering team using the address below:

Smarter Metering
9 Millbank
Ofgem
London
SW1P 3GE

1.4. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website 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.

1.5. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

1.6. We intend to publish our final decision notice in winter 2014.

Appendix 6 - Feedback Questionnaire

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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Consultation Co-ordinator
Ofgem
9 Millbank
London
SW1P 3GE
andrew.macfaul@ofgem.gov.uk