

Decision on extending the smart meter framework for data access and privacy to Remote Access Meters

Final decision

Publication date: 9 February 2015

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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 29 August 2014 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. This document sets out our final decision.

We have decided 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.

This document, along with annexes, forms our decision to proceed with the licence modifications required to implement our proposed policy.

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 much more detailed energy consumption data 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.

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>
- Ofgem, August 2014, consultation on extending the smart meter framework for data access and privacy to Remote Access Meters
<https://www.ofgem.gov.uk/publications-and-updates/extending-smart-meter-framework-data-access-and-privacy-remote-access-meters>

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Executive Summary

We agree with the Department of Energy and Climate Change (DECC) that it is important for consumers to have control over the consumption data on their meters. To facilitate this control, DECC introduced a regulatory framework for data access and privacy for smart meters only, including new supplier licence obligations (the 'Privacy Requirements') as well as obligations in the Smart Energy Code (SEC).

As well as smart meters, 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 decision 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.

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 set out our decision to extend the Privacy Requirements such that they equally apply to Remote Access Meters. This will apply to both gas and electricity suppliers and regardless of when the meter was installed.

We have decided 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. We did not receive any arguments that have made us change our position.

We recognise that some Remote Access Meters in micro business premises cannot be

¹ Defined in the supply licences as micro businesses that supply energy to "designated premises".



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remotely configured to restrict the detail of consumption data that is transmitted from the meter. As such, we have decided 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.

Next steps

We have set out the final modification to the licences in annexes 1 and 2. The modification will take effect six months from the publication date of this decision.

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. 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 supply licence obligations (the 'Privacy Requirements') as well as obligations in the Smart Energy Code (SEC)³.

1.4. 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 a consumer's consent; for example they can obtain a meter reading required to issue an accurate bill.


1.5. 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. See standard licence conditions 33 (gas) and 39 (electricity) of the supply licences.

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.



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

1.6. 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

1.7. We have included the final licence drafting in annexes 1 and 2.

1.8. The modification will take effect six months from the publication date of this decision. 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.

1.9. Please address any questions about this decision to Colin Down, Senior Policy Manager (colin.down@ofgem.gov.uk, 020 7901 7327) or by post using the address below.

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1.10. We have published the non-confidential responses to our December 2013 and August 2014 consultations on our website.

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.

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

Chapter summary

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

This chapter goes into our decision in detail and discusses the responses to our August 2014 consultation.

2.1. In our August 2014 consultation, we proposed to extend fully the Privacy Requirements so they apply to Remote Access Meters, rather than just smart meters. We did not receive any evidence to convince us that we shouldn't extend the obligations.

2.2. We have decided 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. It also ensures that suppliers have the right incentives to properly explain to consumers the benefits of allowing suppliers to have access to more granular data.

2.3. The modification of the licence conditions will take effect six months from the publication date of this decision.

Our views on the August 2014 consultation responses

2.4. Most respondents remained supportive of our proposals and reiterated their earlier comments made in their responses to our December 2013 consultation. These respondents saw merit in providing equivalent protections for all domestic consumers, irrespective of their meter type.

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.

2.5. Two respondents were not supportive. One thought the risk of consumer detriment was greater from introducing our proposals than from doing nothing. They thought that our proposals did not make the case for addressing the perceived consumer detriment. For example, the respondent thought that our proposals:

- risked a negative consumer experience of smart meters, for example the hassle in responding to suppliers' requests for consent, and
- risked consumers losing smart services, which could reduce their access to valuable insight into their energy consumption and undermine the consumer smart meter benefits case.

2.6. We responded to these points in our August 2014 consultation and no new arguments or evidence have been presented subsequently.

2.7. One respondent noted that the licence drafting we included as an appendix to the August 2014 consultation contained minor errors. For example, some pre-existing paragraphs that appear in the supply licence were not replicated in the appendix; also our proposed addition of paragraph SLC 47.17(b)(ii) of the electricity supply licence (and equivalent proposed addition to paragraph SLC 41.17 of the gas supply licence) should've been presented as an addition to paragraph SLC 47.17A (or SLC 41.17A). We have corrected these errors in annexes 1 and 2. There is no change to our previously stated intent.

Electricity settlement

2.8. One respondent argued that we shouldn't introduce the new rules. They said that having access to daily data by default (ie without consent) allows them to achieve a settlement¹⁰ as close to 100% as possible at round one (R1) of settlement.

2.9. Electricity settlement occurs daily and requires consumption data to be submitted to Elexon¹¹ within 45 days to be included in R1 of settlement for a given period. The respondent thought that the time it takes data aggregators to process the data would mean this would be difficult to achieve without consumers' daily data. We appreciate that more frequent submissions of settlement data can bring benefits. For example, it can reduce financial uncertainty for suppliers, by reducing their `cash

¹⁰ Suppliers have incentives to match the amount of energy they buy with the amount used by their customers: they are charged for the difference between the volume of energy that they buy and what their customers consume. The process for comparing contracted and metered positions, and determining the charges to be paid for any imbalance, is called settlement. The Balancing and Settlement Code (BSC) is a legal document which defines the rules and governance for the balancing mechanism and imbalance settlement processes of electricity in Great Britain.

¹¹ ELEXON is known as the Balancing and Settlement Code Company (BSCCo).

out¹² risk. By extending the framework to Remote Access Meters we may be making it more difficult for suppliers to use this option to manage this risk.

2.10. However, we think the impact of our proposals on Remote Access Meters will be very small for two reasons. Firstly, Remote Access Meters likely form a small proportion of a supplier's entire meter portfolio. A supplier's portfolio will also include traditional meters and smart meters. This already small proportion of a supplier's meter portfolio is further reduced as this issue only applies to Remote Access Meters where a consumer has chosen to opt out of supplying daily data. The Privacy Requirements set out that where a consumer does not opt-out, the supplier may obtain daily data.

2.11. On balance, we are not convinced that mitigating cash out risk provides a strong reason not to extend the Privacy Requirements. Any future reform of settlement will need to take account of the data access and privacy arrangements for both smart meters and any remaining pool of Remote Access Meters.

Gas meters designed for high consumption domestic properties

2.12. Some consumers, for example those with large properties or a swimming pool, may have different types of gas meter compared to most domestic consumers. These meters are able to measure gas with a higher flow rate. One example is the U16¹³ gas meter.

2.13. The obligation to rollout smart meters does not extend to U16 meters or other meters with higher flow rates. This means there could be Remote Access Meters that cannot be remotely configured in domestic consumers' homes beyond 2020. The supplier argued that they should have the same flexibility as we are providing where a micro-business has a meter that is not remotely configurable.

2.14. We have decided to not provide this flexibility. We have not seen any evidence to suggest that there are a large number of U16 meters in domestic premises. Also, where there are such meters, the supplier may obtain appropriate consent from the consumer such that they can continue to collect detailed consumption data (eg opt out consent if the meter is transmitting daily reads).

The number of Remote Access Meters

2.15. One respondent noted that concerns around Remote Access Meters were declining in importance as the installation of Remote Access Meters has stopped

¹² Prices that are used to settle the difference between contracted generation or consumption and the amount that was actually generated or consumed in each half hour trading period.

¹³ The number after the U refers to the maximum capacity of the meter in cubic meters per hour. So a U16 meter is approved to measure gas flows of up to 16m³ per hour.

almost entirely and smart meters and are already captured under the existing licence conditions.

2.16. We agree that the pool of Remote Access Meters will likely decline as they are replaced by compliant smart meters. However, we still consider there is benefit in ensuring there are consistent protections for the considerable number of customers that currently have Remote Access Meters and for those that will continue to have them possibly up to the end of 2020.

Costs of compliance

2.17. One respondent noted that the proposed rules would require large scale customer contact, which would be costly and fall unevenly across suppliers.

2.18. We appreciate that there will be costs with becoming compliant with the proposed rules. Suppliers didn't provide any quantifiable evidence on the costs of compliance, so it is difficult to comment in detail on this. As noted in the August 2014 consultation, by giving suppliers six months from the date of this decision to become compliant it would allow them to minimize costs in contacting customers, as they will be better placed to use existing resources (eg staff and overheads).


2.19. We appreciate that the costs will fall unevenly across suppliers. This is probably true to some extent with most policy proposals. Suppliers that moved early to install Remote Access Meters did so at their own risk, and with that they have enjoyed the benefits that such meters bring. Also, in 2012 we flagged our intention to consider whether to extend the Privacy Requirements to Remote Access Meters, so this potential change was not completely unforeseen.¹⁴

Responding to consumer queries

2.20. One supplier noted that it is convenient to collect consumers' daily data without consent. They argued that it means that if a consumer phones with a query, the supplier can respond without having to ask for consent to access the data. They also noted that holding that data reduces the risk of technical issues preventing them from accessing that data during a phone call with the consumer.

2.21. Our proposed rules allow a supplier to access daily data without seeking consent when responding to an enquiry from or a complaint made by (or on behalf of) the consumer. Beyond that, we are not convinced that suppliers should gather consumers' personal data without consent 'just in case' it comes in handy at some point in time. The rules we have proposed would not prohibit a supplier from seeking

¹⁴ <https://www.ofgem.gov.uk/ofgem-publications/86360/ofgemsresponsetodeccsconsultationondataaccessandprivacy.pdf>



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consent to hold such data 'just in case'. Suppliers should however keep in mind their broader obligations under the Data Protection Act, such as around data retention.¹⁵

¹⁵ The ICO's website notes the following: principle 5 [of the Data Protection Act] requires you to retain personal data no longer than is necessary for the purpose you obtained it for. <https://ico.org.uk/for-organisations/guide-to-data-protection/principle-5-retention/>

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

Chapter summary

The Privacy Requirements¹⁶ currently apply to smart meters. We have decided to extend them to Remote Access Meters¹⁷ at micro businesses which are captured by the rollout obligation (defined as “designated premises” in the supply licence).¹⁸

This chapter goes into our decision in detail and discusses the responses to our August 2014 consultation.

3.1. We proposed 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. It also ensures that suppliers have the right incentives to properly explain to consumers the benefits of allowing suppliers to have access to more granular data. We did not receive any evidence to convince us that we shouldn't extend the obligations.

3.2. However, we proposed some flexibility in how suppliers must comply with their obligations. In summary, we have proposed that where a supplier cannot remotely configure the meter and a consumer opts out of providing data, the supplier could relay this 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 supplier is permitted to receive.

3.3. The modification of the licence conditions will take effect six months from the publication date of this decision.

¹⁶ The smart meter supply licence obligations on data access and privacy.

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.

¹⁸ References to 'consumer', 'smart meter' etc. in this chapter relate to the micro business sector, unless otherwise stated.

Our views on the August 2014 consultation responses

3.4. Most respondents remained broadly supportive of our proposals and reiterated their earlier comments made in response to our December 2013 consultation. These included concerns that suppliers may find it difficult to understand how the rules apply in different scenarios. One respondent offered more detailed and qualified support.

Respondents' views and our responses

3.5. Some of the responses dealt with in chapter 2 equally apply to our micro business proposals, so we haven't reiterated them here.

3.6. The Information Commissioner's Office (ICO) thought our proposals for suppliers to micro business consumers to require their head end provider to filter the data they receive was a sensible approach.

3.7. The ICO's support was contingent on there being sensible safeguards in place to protect consumers' privacy. These might include having a robust framework in place to govern the data flow between meter, head end provider and supplier. This could include restrictions on the head end provider's use of the data; ensuring that data additional to that which the consumer has consented to provide is deleted as soon as practicable; and that data is not used for any other purpose.

3.8. The new licence obligations say that where a supplier intends to use the option of the head end provider filtering the data to align with the consumers choices on data, the supplier must do the following (as soon as reasonably practicable after any request by the consumer):

- take all reasonable steps to prevent the third party passing the data to the licensee or any other third party;
- take all reasonable steps to ensure the third party permanently erases the data
- permanently erase any of the data it has obtained.

3.9. The new licence obligations are in addition to the wider data protection legislation (such as the Data Protection Act 1998). The Data Protection Act places further restrictions on both the supplier and their third party on what data they can collect and how it can be used and stored. We feel the combination of the new licence conditions and wider data protection legislation provides a robust framework.

Appendix 1 - 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).



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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.

Appendix 2 - 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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