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for energy consumers

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Date: 30 April 2020

## **Electricity Settlement Reform Significant Code Review:**

### **Open letter - Clarification on issues around access to data for settlement / forecasting purposes**

Dear Colleague,

On 10 July 2018, we published a consultation on access to half-hourly **(HH)** electricity data for settlement purposes.<sup>1</sup> Following analysis of the responses and associated engagement with stakeholders, we published our decision document on 25 June 2019.<sup>2</sup> The decision document set out seven key decisions on the access to data rules for implementation of market-wide half-hourly settlement **(MHHS)**.

Our decision on MHHS will be subject to the outcome of an Impact Assessment **(IA)** and will be set out within the Full Business Case **(FBC)**.<sup>3</sup> At the same time as this letter we have published our draft IA and associated consultation document, in order to gather information and evidence to inform the FBC.<sup>4</sup> At the time of our analysis for the draft IA, we had intended to publish the FBC in autumn 2020. However, in the light of the COVID-19 situation, we are keeping the project timings under review. Further information on this is provided in the consultation document.

The purpose of this open letter is to ensure that stakeholders and other interested parties are clear on what the access to data decision document means, including in terms of obligations on suppliers and consumer choices around access to their HH data, now and in the future. The letter is also intended to clarify some other points related to MHHS data issues.

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<sup>1</sup> Link to the [consultation](#) on the Ofgem website

<sup>2</sup> Link to the [decision document](#) on the Ofgem website

<sup>3</sup> The FBC will be the third and final iteration of the MHHS business case. We published the second iteration, the [Outline Business Case](#), in August 2018

<sup>4</sup> Link to the [Impact Assessment and consultation document](#)

## **1. Access to data decision document**

The seven key decisions set out in the access to data decision letter are as follows:

### ***Access to electricity consumption data for settlement***

1. We confirmed our proposed approach, according to which there will be a legal obligation on the party responsible for settlement to process domestic consumers' HH electricity consumption data for settlement purposes, unless the consumer opts out. Such data access currently requires consumer explicit consent on an opt-in basis.
2. We confirmed our proposed position that there will be a legal obligation on the party responsible for settlement to process microbusiness consumers' HH electricity consumption data for settlement purposes. Microbusinesses are currently able to opt-out of this processing, however this opt-out will not be available once the new data sharing framework enters into force.
3. We decided to rule out pursuing either of the enhanced privacy options (anonymisation or hidden identity (pseudonymisation)) that we sought views on in our consultation.

### ***Existing customers***

4. We confirmed our proposed position that existing domestic customers with smart meters should have their HH electricity consumption data processed for settlement purposes only on an opt-in basis, or an opt-out basis for existing microbusiness customers with smart / advanced meters, consistent with the framework that was in place when they had their smart / advanced meters installed. At the point at which a consumer makes a choice to change electricity contract or supplier, they will then be subject to the new rules as above. We do not expect this to include situations where new terms and conditions apply by default, for example where a customer moves on to a default tariff following expiration of a fixed term contract.

### ***Forecasting***

5. Where parties are required to collect and process data for settlement purposes, we said we will also enable them to use this non-aggregated data for forecasting purposes. Microbusiness customers will therefore not have the right to opt-out of sharing their HH data for forecasting purposes (in line with our decision on settlement, point 2 above).

We note that suppliers are subject to existing data protection obligations and must treat their customers' data accordingly. They are obliged to maintain a high level of data

security, including restricting which personnel are able to view identifiable data, and to adopt additional privacy measures where appropriate, such as pseudonymising or anonymising data.

### ***Export data***

6. We set out our view that the opt-out available for domestic consumers in respect of sharing their HH consumption data for settlement and forecasting purposes should not be available in respect of sharing their HH export data.

### ***Future review***

7. We said we will be reviewing the evidence following the implementation of MHHS to understand if the proposed data sharing framework continues to be appropriate to enable the system-wide benefits to be realised. If not, we will consult on amending the rules as appropriate.

We will set out our expected review date when publishing our final decision on MHHS in the FBC. We expect the review to take place once we have had sufficient time to gather evidence of how the new system is operating in practice. We are considering what an appropriate length of time for the evidence gathering period would be, and will aim to set out our expectation in the FBC. Whilst we expect this is likely to be a matter of years, we will engage with stakeholders to seek their views going forward.

For clarity, the new framework will be set out on the basis outlined above, and all licensees will be required to operate accordingly once the new requirements are in place. Any subsequent changes following any future review would be informed by evidence and subject to consultation.

### ***Opt-out granularity***

We also set out our view that, when a domestic customer opts out of HH data collection, suppliers should collect data from those customers for settlement purposes at daily granularity. The supplier would also then be able to use that data for forecasting. This would be an extension to the current rules which allow domestic customers to opt-out to monthly granularity of data collection, except where the data is required for certain regulated purposes whereupon suppliers can collect daily data.<sup>5</sup>

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<sup>5</sup> Such regulated purposes include providing an accurate bill and in order to investigate suspected theft or fraud

We are gathering evidence on this in the consultation issued alongside the draft Impact Assessment, including asking for views on what would be a proportionate arrangement for existing customers who already have their smart meters.<sup>6</sup> We will continue to discuss this particular issue with stakeholders ahead of making a final decision on it within the FBC.

## **2. Implications for suppliers and consumers**

### ***Between now and the introduction of new data access rules***

The proposed approaches, as set out above, would be introduced through amendments to the electricity supply licence. These new rules would be applicable from the point at which the licence amendments come into force, which may be a period of time after they are entered into the licence.

At the time of our analysis for the draft IA, we had planned to publish our FBC in autumn 2020. There would then follow a period of preparing any licence amendments necessary to introduce the new rules. The licence amendments will be subject to the usual statutory consultation process. We expect that the licence amendment process will take a minimum of 3-6 months following publication of the FBC, so the new rules had been expected to enter into the licence some time during the first half of 2021. However as explained above, we are keeping project timings under review in light of the COVID-19 situation.

As we feel that opt-out is the proportionate approach to apply to domestic consumers in order to achieve the benefits of MHHS, we are keen to expedite the new framework in as timely a manner as possible, to maximise the number of consumers sharing their data. We therefore expect that the new data sharing framework will enter into force shortly after it is set out in the licence. The wording within the licence amendment will determine when this date, the **data access framework transition date**, will be.

After this point new customers accepting smart meters will be subject to the new data sharing framework, though their data will not be collected under the new framework until MHHS is implemented (**migration start date**, discussed later). In the meantime, supplier licensees are and will be required to abide by the current data sharing framework, including collection of HH data for settlement purposes from domestic consumers only on an opt-in basis where explicit consent has been obtained.<sup>7</sup> This includes data collected for the purposes of Elective HHS.

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<sup>6</sup> Link to our [draft Impact Assessment and consultation document](#)

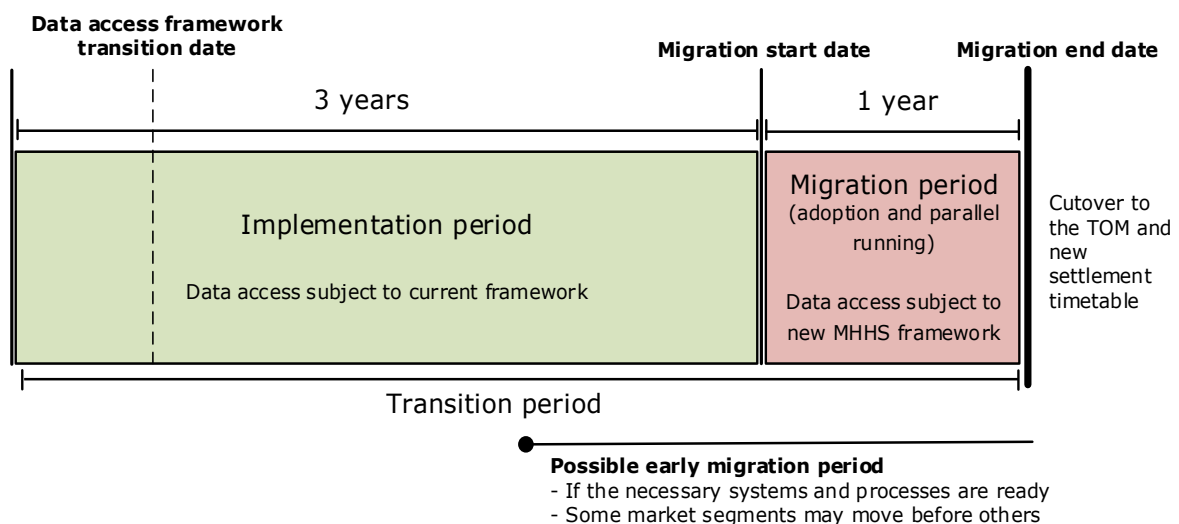
<sup>7</sup> Note, a separate gateway exists in the licence whereby HH data can be collected by suppliers for the purposes of a trial approved by the Secretary of State, unless the consumer opts out ([Electricity Supply SLC 47.9](#))

**Between the introduction of new access to data rules and MHHS implementation**

In our draft IA we have set out that our preferred option is for an implementation timetable or **transition period** of 4 years. This would comprise an initial **implementation period** of 3 years, followed by a one year **migration period** where both systems run in parallel before the full cutover is made to the new Target Operating Model (**TOM**).<sup>8</sup> At the time of our analysis for the draft IA and based on publication of the FBC in autumn 2020, we had proposed the cutover (where all MPANs had been migrated to the new TOM) to be the end of 2024. Our consultation document contains further information and asks stakeholders for views about the impact of COVID-19 on implementation timescales.

All necessary processes for migration to begin must be in place at the end of the implementation period, or the **migration start date**. This could also be regarded as the **MHHS implementation date**. The one year migration period following this would then allow for suppliers to gradually migrate their customers over to the new TOM. At the end of this one year period, the **migration end date**, all customers should have been moved over to the new TOM.

We have also said that, if all of the necessary systems and processes are in place before the migration start date, there may be an **early migration period** where suppliers can begin to migrate their customers across to the new TOM.<sup>9</sup>



<sup>8</sup> Other timetable durations (eg an implementation period of 2 or 4 years) are possible, but we expect the process would remain the same

<sup>9</sup> This will be contingent on certain conditions having been met

We expect there to be a period of time between the **data access framework transition date** and the **migration start date**. During this time, a number of smart meter customers will change contract / supplier, whilst other customers will have their first smart meters fitted. This will mean that, when MHHS is implemented (**migration start date**), these customers will be subject to these new data sharing rules, which in the case of a domestic customer will mean there is a legal obligation on their supplier to process their HH data for settlement, unless they have opted-out.

To be clear and as noted earlier, data cannot be processed for settlement / forecasting purposes under the new framework until the **migration start date** (or the start of any early migration period). The purpose of the **data access framework transition date** being before this is so that customers accepting smart meters / changing contract in this interim period are subject to the new framework, and their data can therefore be processed on that basis when MHHS is implemented (ie opt-out for domestic consumers, mandatory for microbusinesses).

We would take the opportunity to remind suppliers of their obligations under data protection law in terms of providing their customers timely information about their data sharing rights prior to the data being processed. Suppliers will also need to record any changes to the customer's preferences which might arise from the regular conversations they have about data sharing choices available to them.<sup>10</sup>

We will continue to engage with stakeholders on these issues and provide clear information as to what the specific obligations will be in a timely manner.

### **3. Customer Communications**

We recognise that the exact messages that suppliers will provide to consumers around settlement and their data sharing choices will require careful consideration. We are also considering whether there may be a role for a central body such as Ofgem to play in this messaging, and are gathering evidence on this in the consultation issued alongside the draft Impact Assessment.<sup>11</sup>

We would take the opportunity to remind suppliers of the need to ensure that their communications are compliant with relevant requirements, such as those included in the supply licence and in data protection legislation, including the GDPR.

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<sup>10</sup> Condition 47.15 of the [Electricity Supply Standard Licence Conditions](#) requires that suppliers as licensees contact their customers regarding their HH data sharing choices on a periodic basis as deemed appropriate by the supplier, to understand if they remain appropriate for that particular customer.

<sup>11</sup> Link to our [draft Impact Assessment](#)

#### 4. Data Access and Privacy Framework

We said in our decision document that, where a party is required to collect and process HH data for settlement purposes, they would also be permitted to use this non-aggregated HH data for forecasting purposes, in order to assist them in predicting their future purchasing liabilities based on the needs of their customers.

Aside from settlement and forecasting, all other uses of the data remain subject to the existing rules, as set out in the provisions of the smart metering Data Access and Privacy Framework (**DAPF**). The DAPF was established to complement (but not replace) existing data protection legislation by providing sector-specific provisions, that enable proportionate access to energy consumption data whilst ensuring that appropriate privacy safeguards are in place. The provisions of the DAPF are enacted through the Supply Licence Conditions (**SLCs**)<sup>12</sup> and the Smart Energy Code (**SEC**),<sup>13</sup> and industry parties are responsible for ensuring that they are compliant with the relevant rules. BEIS reviewed the DAPF in 2018 and concluded that it remained appropriate in terms of it meeting its three main objectives - safeguarding consumer privacy, ensuring appropriate consumer communications are in place and facilitating the use of data to drive innovation and improve system efficiency.<sup>14</sup>

Future amendment(s) to the DAPF provisions to facilitate MHHS changes would be implemented through changes to the SLCs and SEC. Until those changes are made, data access for all purposes remains subject to the current rules as set out in the relevant codes and licence conditions. We are not currently suggesting any changes to access for purposes other than settlement and forecasting. All these other purposes will continue to be subject to the current framework provisions after the implementation of MHHS.

We would also take the opportunity to remind stakeholders that parties that hold personal data are obliged to comply with data protection legislation, including the GDPR.<sup>15</sup> Compliance with the access to data rules is not necessarily sufficient to constitute compliance with the GDPR, and vice versa.

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<sup>12</sup> Link to the [Electricity Supply Standard Licence Conditions](#) on the Ofgem website

<sup>13</sup> Link to the [Smart Energy Code](#) on the SEC website

<sup>14</sup> Link to the [2018 DAPF review](#) on the BEIS website. Note, evidence collected during the 2018 review showed that many stakeholders refer to the 2012 [Government response to the consultation on the Data Access and Privacy Framework](#) as a summary of the framework's regulatory requirements. However, the consultation response document does not reflect changes made to the framework since publication in 2012, which are set out in the relevant codes and licence conditions.

<sup>15</sup> [The EU General Data Protection Regulation 679/2016](#)

## **5. Next steps**

We are keen to ensure that all remaining access to data policy issues beyond the headline decisions already set out are worked through in a timely manner, in order to ensure the data access framework is designed appropriately and is ready to support MHHS. We continue to engage with stakeholders and are in the process of triaging the remaining policy issues to ensure we prioritise them accordingly. As ever, we invite stakeholders to raise issues related to access to data, particularly any areas they feel are unclear and require clarification. If you would like to contribute, you can contact us at [Half-HourlySettlement@ofgem.gov.uk](mailto:Half-HourlySettlement@ofgem.gov.uk).

One particular area we are working on in the short-term is around supplier-customer communications and messaging. This will include understanding which approaches are most appropriate in communicating settlement and data privacy rights / options to consumers, and whether there is a role for a central body such as Ofgem in the process (for example, providing explanations on a website that suppliers could point to). Again, please contact us at the above address if you would like to contribute.

Yours sincerely,

**Anna Stacey**  
**Head of Settlement Reform**