

The Information Commissioner's response to Ofgem's consultation "Delivering faster and more reliable switching: proposed new switching arrangements"

The Information Commissioner has responsibility for promoting and enforcing data protection legislation in the UK. She is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can, and taking appropriate action where the law is broken.

Currently, the Data Protection Act 1998 governs how organisations hold and use personal data in the UK. From 25 May 2018, the General Data Protection Regulation (GDPR) takes effect. The Government has also laid the Data Protection Bill before Parliament. These will significantly reform data protection law.

The Information Commissioner welcomes the opportunity to respond to Ofgem's consultation on proposed changes to enable consumers to switch suppliers more easily. The Commissioner's response is restricted to those areas that fall within her regulatory remit and on the understanding that Reform Package 2a (RP2a) is Ofgem's current preferred option. Part of the proposals include cleansing the data currently in the Electricity Central Online Enquire Service (ECOES) and Data Enquiry Service (DES) databases. The Commissioner is broadly supportive of efforts to improve data quality and to address and minimise inaccuracies.

The Commissioner's understanding is that RP2 proposes the creation of a Central Switching Service (CSS), which aims to facilitate faster switching. The CSS would incorporate the information contained within the ECOES and DES databases, and would be managed by the Data Communications Company (DCC).

The CSS would then be able to undertake the switching operations that Meter Point Registration Service currently undertakes for electricity, and that UK Link undertakes for gas.

The consultation recognises that the DCC will be a data controller for the personal data held and used by the CSS, and must meet its obligations

under data protection law. The GDPR requires that organisations provide individuals with information about how and why their data is being handled. The particular requirements are set out in Articles 13 and 14, and include the identity and contact details of the data controller and their data protection officer (if they have one); the purposes for handling the data; if the processing is done on the basis of legitimate interests, what those interests are; who the data will be shared with; international transfers; data subject rights; retention periods; and any automated decision making. Consideration should be given as to how privacy information would be delivered to consumers.

The Commissioner was pleased to note that a Data Protection Impact Assessment (DPIA) has been undertaken to identify and suggest mitigations for data protection and privacy risks.

The DPIA suggests that MPxN information may only be personal data when combined with address information. It later notes that the ICO has already considered whether MPxN information is personal data by itself. The Commissioner's view remains that MPxN is itself personal data, irrespective of the presence of address information.

Article 6 of the GDPR requires that organisations have a 'lawful basis' for holding and using personal data. If and when the CSS is developed, careful consideration will need to be given as to what DCC's lawful basis will be. While processing on the basis of a legal obligation has been suggested, it will depend whether this will be the case, and if so, then the extent to which that legal obligation requires the processing of personal data.

Data protection law provides a number of rights to individuals that empower them to exercise control over their personal data. Some of these rights will depend on what lawful basis would be engaged by the CSS. For example, an individual's rights to erasure (Article 17), portability (Article 20), to object (Article 21), and in relation to automated decisions (Article 22) all depend on the basis for processing their personal data. Other individual rights are not affected by the lawful basis. The DCC would need to put procedures in place to recognise individuals' requests, and to enable them to exercise their rights.

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