



Department
of Energy &
Climate Change

Smart Metering Implementation Programme

Data access and privacy

Government response to consultation

December 2012

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Executive Summary

Smart meters will lead to a step change in the amount of data that will be available about energy consumption. Consumers will be able to access the information they need to understand and manage their energy use, save money on bills, and reduce carbon emissions. Smart metering energy consumption data will also enable the industry to operate more efficiently and support the provision of new energy services to help consumers manage their energy use.

Concerns about data access and privacy have been raised in many countries rolling out smart meters, and it will be important to give consumers clarity and reassurance about the ways in which their energy consumption data can be accessed, by whom, for which purposes, and the choices that consumers have about this.

The Government consulted on a framework for smart metering data access and privacy between April and June 2012. This document sets out the Government's response to that consultation.

The overall framework will be reviewed within three years of it coming into force.

Consumer access to data

Through the Smart Metering Implementation Programme, and consistent with the Government's broader midata¹ initiative, arrangements will be put in place to enable domestic consumers easily to access their own energy consumption data. Consumers will be able to access their own energy consumption data through their In-Home Display, through the connection of additional devices to the Home Area Network, or by requesting information from their supplier.

These arrangements are set out in more detail in **Chapter 2**.

Supplier access to data

Domestic consumers will have control over how their energy consumption data is used, except where this is required for billing or for other regulated purposes. In particular:

- Suppliers will only be able to use energy consumption data for marketing purposes where the consumer has given their explicit consent to this;
- Suppliers will have to give consumers the chance to object if the supplier wishes to access energy consumption data relating to a period of less than one month; and
- Suppliers will only be able to access the most detailed level of data (up to half-hourly) if the customer has given their explicit consent to this.

There are some exceptions to these basic rules, for example to allow half-hourly consumption data to be used for the purposes of approved trials, if the consumer does not object.

¹ More information about midata is available online at <http://www.bis.gov.uk/policies/consumer-issues/consumer-empowerment/personal-data>

Suppliers will be required to explain clearly to their customers which energy consumption data they will be accessing, for which purposes, and what choices the consumer has about this.

Requirements on suppliers will be set out in licence conditions, enforceable by Ofgem. Subject to successful completion of the Parliamentary process, the licence conditions will come into force at the end of June 2013.

The Government's conclusions on supplier access to data are set out in full in **Chapter 3**.

Network operator access to data

Distribution network operators will be able to access domestic customers' energy consumption data for regulated purposes, provided that network operators aggregate or otherwise treat the data such that it can no longer be associated with an individual premises, and provided that they have plans for such access approved by DECC or Ofgem.

Network operators are continuing to develop their thinking about the need for access to data from individual households in the longer term, and the Government remains open to new evidence about this.

The Government's conclusions on network operator access to data are set out in **Chapter 4**.

Third party access to data

Consumers will be able to share their energy consumption data easily with third parties, such as switching sites and energy services companies, if they choose to do so.

Where third parties access energy consumption data remotely via the Data and Communications Company (DCC), arrangements will be put in place through the Smart Energy Code to protect consumers. In particular, third parties will be required through the Code to:

- Take steps to verify that the request for third party services has come from the individual in question – although more work will be done to define the precise mechanism for verification;
- Obtain explicit (opt-in) consent from consumers before requesting data from the DCC; and
- Provide reminders to consumers about the data that is being collected.

To ensure that these requirements are complied with, audit arrangements will be developed by the Smart Energy Code Panel.

The Government's conclusions on third party access to data are set out in full in **Chapter 5**.

Non-domestic sector

Smart-type metering is already established in the non-domestic sector, and there is, and will continue to be, a wider variety of approaches to metering than in the domestic sector (for example, with Advanced meters, and smart meters that are opted in to or out of the DCC).

Given the similarity between micro-businesses and domestic consumers, micro-businesses will have choice about whether their supplier can access more detailed than monthly consumption data. All non-domestic consumers will have "timely access" to their own consumption data.

The Government's conclusions on data access and privacy in the non-domestic sector are set out in full in **Chapter 6**.

Chapter 1 – Introduction

This chapter sets out the background to and context for the smart metering data access and privacy framework. It explains the structure of this Government Response document, and describes next steps.

Access to more detailed and more accurate energy consumption data from smart meters has the potential to deliver benefits for consumers, suppliers and the energy system more widely, and to stimulate innovation and competition in the developing energy services market.

In order to ensure consumers' interests are protected, the Government has developed a data access and privacy framework to provide clarity about the ways in which energy consumption data from smart meters can be accessed, by whom, for which purposes, and the choices that consumers should have about this.

Introduction to smart metering

- 1.1 The Government's vision is for every home and smaller businesses in Great Britain to have smart electricity and gas meters. Domestic consumers will also be offered an In-Home Display. The roll-out of smart meters will play an important role in Britain's transition to a low-carbon economy and help us meet some of the long-term challenges we face in ensuring an affordable, secure and sustainable energy supply.
- 1.2 Consumers will have near real-time information on their energy consumption to help them control energy use, save money and reduce emissions. There will be an end to estimated billing and switching between suppliers will be smoother and faster. New products and services will be supported in a vibrant, competitive, more efficient market in energy and energy management. Suppliers will have access to accurate data for billing and to improve their customer service. They will also be able to reduce costs, for example by reducing call centre traffic, removing the need for a site visit to read meters and better manage debt. Energy networks will have better information upon which to manage and plan current activities and the move towards smart grids which support sustainable energy supply.
- 1.3 Smart meters will be installed over two implementation phases; the Foundation Stage and mass roll-out. During the Foundation Stage, which began in April 2011, the Government is working with industry, consumer groups and other stakeholders to ensure all the necessary groundwork is completed for mass roll-out. Mass roll-out will start in 2014 and be completed in 2019. The Foundation Stage is crucial to the successful mass roll-out of smart meters. Some consumers will receive smart meters during the Foundation Stage, as the energy companies start up their programmes in preparation for the mass roll-out. The majority of consumers will receive their smart meters during the mass roll-out.

Development of a data access and privacy framework

1.4 Smart meters will lead to a step change in the amount of data that will be available about energy consumption. The Government has developed a data access and privacy policy framework for the roll-out of smart meters in order to:

- Protect consumers' interests, in particular by addressing concerns that consumers may have about privacy;
- Enable proportionate access to data by authorised parties to ensure that benefits can be delivered; and
- Promote competition and innovation in the developing energy services market.

1.5 The Smart Metering Implementation Programme Response to Prospectus Consultation², published in March 2011, established several key principles to guide policy on data access and privacy, including that:

- The Government would follow international best practice in undertaking 'Privacy by Design'. This means that privacy issues would be considered and embedded into the overall design of the Programme from the start;
- Consumers should have a choice about how their smart metering data is used and by whom, except where it is required to fulfil regulated duties;
- The Government was minded to define regulated duties narrowly, precisely because consumers would not have a choice about allowing access to their data for these purposes; and
- Consumers should be able to share their consumption data easily with other parties, should they wish to.

1.6 Following the Prospectus Response, in a Call for Evidence in Autumn 2011, the Government sought views and evidence about the level of data access that was required by suppliers, network operators and third parties for different purposes³. The Call for Evidence also asked questions about the ways in which consumer and third party access to data should work in practice.

Consultation

1.7 In April 2012, the Government published a consultation to seek views on its proposals for a data access and privacy framework⁴. The consultation was available on the DECC website and a paper version of the consultation document was made available on request. The consultation closed on 1 June 2012. A list of the consultation questions is provided at Annex B.

² DECC, Smart Metering Implementation Programme. Response to Prospectus Consultation, Supporting Document 1 of 5: Data Access and Privacy <http://www.decc.gov.uk/assets/decc/Consultations/smart-meter-imp-prospectus/1477-data-access-privacy.pdf> (March 2011)

³ DECC, Smart Metering Implementation Programme. A call for evidence on data access and privacy <http://www.decc.gov.uk/assets/decc/11/consultation/smart-metering-imp-prog/2547-smip-call-for-evidence-180811.pdf> (August 2011)

⁴ DECC, Smart Metering Implementation Programme. Data access and privacy – consultation document <http://www.decc.gov.uk/assets/decc/11/consultation/smart-metering-imp-prog/4933-data-access-privacy-con-doc-smart-meter.pdf> (April 2012)

- 1.8 In total, 43 written responses to the consultation were received from a range of stakeholder groups, including energy suppliers, network companies, trade associations, technical solutions companies, regulators, and consumer and privacy groups. A full list of respondents is provided at Annex C. Individual responses to the consultation have been published on the DECC website, alongside this document, with the exception of those which respondents wished to be treated in confidence. Summaries of responses to consultation questions are embedded within the relevant chapters throughout this document.
- 1.9 In addition to receiving written responses, the Government used the consultation period to discuss the data access and privacy proposals in more depth in meetings and workshops. This included discussions with the Programme's Consumer Engagement and Roll-out Group, Consumer Advisory Group, small supplier and non-domestic groups, regulatory working groups, and at a dedicated workshop on data access and privacy attended by a wide range of stakeholders. The Government has also continued to meet regularly with Ofgem and the Information Commissioner's Office, the independent regulator of the Data Protection Act 1998.

Consumer research

- 1.10 In order to augment the evidence base and hear from domestic consumers directly, the Government commissioned some research into consumer attitudes towards smart metering data access and privacy. The work was undertaken by Navigator Research during the summer of 2012, and examined the extent to which the Government's proposals for a data access and privacy framework, as set out in the April consultation document, addressed potential concerns that consumers may have.
- 1.11 A full report on the findings from the research has been published alongside this document⁵. In summary, some of the main findings from the research were that:
- Once it was understood, reactions to the data access and privacy framework were largely positive. The framework was seen to give householders choice and control. It was felt to recognise what was necessary and helpful to the individual and society and allow for that information to be provided, while also recognising that other information was not necessary and should only be accessible with consent;
 - The overwhelming concern was the possibility that data collected via a smart meter might lead to more unwanted marketing communication;
 - With an increase in the granularity of energy consumption data collected (i.e. from monthly to daily, to half-hourly, etc), consumers started to feel more sensitive;
 - While some consumers were happy for suppliers to have access to their daily energy consumption data, others felt there was no good reason why they would need it, and so it should be 'opt in' rather than 'opt out'; and
 - There were major reservations over how the framework would operate in practice. Principally, would the choices be presented prominently and clearly in a way that could be readily understood, and not buried in the Terms and Conditions or worded so as to lead householders to a choice they might not intend?
- 1.12 Findings from the research have been taken into account in the finalisation of the data access and privacy framework – as referenced throughout this document. In addition,

⁵ Navigator, Smart Metering Data Access and Privacy: Public Attitudes Research
http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (December 2012)

however, the research discusses several important issues around presentation of the framework and consumer messaging, which should be borne in mind – in particular by suppliers and others engaging with consumers on the usage of data - going forwards. The Government will continue to monitor this, and consider the effectiveness of messaging to consumers, as part of its planned review of the overall data access and privacy framework (see Chapter 3).

Privacy Charter

- 1.13 The Government has previously concluded that as part of the overall consumer engagement package, a Privacy Charter should be developed to provide clear reassurance to consumers about the ways in which their personal data will be used, and the choices they have about this. The Charter is not intended to take the place of regulatory requirements. Rather, the Charter will need to reflect the regulatory framework that is put in place – in line with the conclusions in this document – and be presented in a way that is accessible to consumers.
- 1.14 The Government will look to suppliers to develop the Charter and ensure that it is supported by consumer groups and other industry parties. The Government's expectation is that a Charter should be available from the point at which the regulatory framework for data access and privacy takes effect. The Government has said that it will review progress made and decide whether any formal obligation is needed on suppliers to deliver a Charter.

Privacy Impact Assessment

- 1.15 Alongside the development of the smart metering data access and privacy framework, and in line with best practice, the Government has developed a Privacy Impact Assessment (PIA). The aim of the PIA is to ensure that any potential privacy impacts have been identified and arrangements are in place to manage them. The Government has worked closely on the PIA with major stakeholders from the energy industry, consumer groups, regulatory authorities including the Information Commissioner's Office, and others. The PIA has been published alongside this document⁶.
- 1.16 The Privacy Impact Assessment should be seen as an umbrella document for the privacy impacts of the Smart Metering Implementation Programme as a whole. The Government would expect that separate PIAs on individual practices are undertaken by all parties involved in the processing of smart meter data, such as suppliers, network operators and third parties, prior to the mass roll-out of smart metering. It is proposed that the Smart Energy Code should include a recommendation that each DCC user undertakes a Privacy Impact Assessment in accordance with guidance from the Information Commissioner's Office⁷.
- 1.17 The European Commission is currently developing a Data Protection Impact Assessment template for Smart Grids and Smart Metering Systems to be used on a voluntary basis. The

⁶ DECC, Smart Metering Implementation Programme. Privacy Impact Assessment http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (December 2012)

⁷ DECC, Smart Metering Implementation Programme. Stage 1 of the Smart Energy Code – a Government response and a consultation on draft legal text http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (November 2012)

template will be made available to organisations and Member States later in 2012. The Government will take account of this and any other developments at EU level in future iterations of its Privacy Impact Assessment.

Wider context

Data Protection Act

- 1.18 The Data Protection Act 1998 establishes a framework of rights and duties that are designed to safeguard personal data. The Government's policy on data access and privacy in respect of smart metering is designed to address more specific questions about the choices consumers should have about smart metering, and the levels of energy consumption data that it is appropriate for suppliers and others to access to carry out essential functions connected to the provision of energy. The Information Commissioner's Office has supported this approach, suggesting that sector-specific provisions, that complement the Data Protection Act, might be appropriate in the case of smart metering.
- 1.19 The Data Protection Act would continue to apply in conjunction with the regime that the Government puts in place. Suppliers and other data users would continue to have to comply with relevant requirements under the Act (for example, obligations to register with the Information Commissioner's Office and inform it about personal data being processed, and to comply with the eight data protection principles⁸). Consumers would also retain their rights under the Act (including rights to access information held about them, to object to processing that is causing them distress, and to prevent processing for direct marketing).
- 1.20 The Government's framework for data access and privacy focuses on energy (gas and electricity) consumption data, which has been identified by consumer groups as the primary area of concern. A range of parties may wish to access other types of smart metering data, such as technical data (including voltage reads), alerts and alarms. Such data may still constitute personal data according to the Data Protection Act, and in these cases, the Data Protection Act would apply.
- 1.21 It is the legal responsibility of all industry participants to ensure that they comply with the Data Protection Act (and any other relevant legislation) to the extent that it applies to them. Under the Data Protection Act, data controllers must ensure that any processing of personal data for which they are responsible complies with the Act. Generally speaking, suppliers, network operators and third parties accessing energy consumption data are likely to be data controllers, with the Data and Communications Company (DCC) potentially acting as a data processor on their behalf, although this will depend on the exact nature of the activity being undertaken and the contractual basis for it.
- 1.22 In any case, the Government believes it appropriate that the DCC should handle energy consumption data in line with the principles of the Data Protection Act, and in a way which does not prevent others from fulfilling their own obligations under the Act. Provision for this will be built into the Smart Energy Code, draft legal text for which was published for consultation in November 2012⁹. The Code would also require the Data and Communications Company to provide reasonable assistance to DCC users in complying with

⁸ Data Protection Act 1998 <http://www.legislation.gov.uk/ukpga/1998/29/schedule/1>

⁹ DECC, Smart Metering Implementation Programme. Stage 1 of the Smart Energy Code – a Government response and a consultation on draft legal text

http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (November 2012)

Subject Access Requests. The draft DCC licence requires the DCC to take appropriate action to protect confidential information (including personal data), and provides that the licence could be revoked in the event of the DCC failing to comply with an enforcement notice served on it by the Information Commissioner's Office¹⁰,

Data Protection Regulation

1.23 The European Commission is proposing a comprehensive reform of the 1995 European Data Protection Directive¹¹. The proposed EU Data Protection Regulation (which would be directly applicable and supersede certain provisions of the Data Protection Act were it to come into force) includes a number of elements that could have implications for the smart metering data access and privacy framework. Negotiations across Member States on the EU's proposals are likely to continue over the coming months. The Government will keep track of the proposals as they develop.

1.24 If a new Regulation is agreed, it would be the legal responsibility of all industry participants to ensure that they complied with the Data Protection Act, as amended, to the extent that it applied to them – as well as complying with the requirements in the Government's data access and privacy framework.

European Commission Recommendation

1.25 In March 2012 the European Commission published a Recommendation to prepare for the roll-out of smart metering systems¹². Amongst other things, the Recommendation sets out (non-legally binding) guidelines on data protection issues, including development of Privacy Impact Assessments, use of privacy-enhancing technologies, minimisation of data collection, and storage of data. The Government has taken account of the Recommendation in the finalisation of the data access and privacy framework.

1.26 More generally, the Government continues to follow wider international developments on smart metering data access and privacy, to learn lessons from experience in other countries.

Energy Efficiency Directive

1.27 The EU Energy Efficiency Directive, which was approved by the European Parliament in September 2012, includes a requirement on the provision of easy access for domestic customers to historical daily/weekly/monthly/annual energy consumption data for at least the previous 24 months via the internet or the meter interface¹³. The Directive is expected to enter into legal force before the end of 2012, and Member States will then have 18 months to implement the requirement. In parallel with this Government Response document, the Government is publishing a consultation document on additional steps that may need to be

¹⁰ DECC, Smart Metering Implementation Programme. Government Response to the consultation on the draft DCC Licence http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (November 2012)

¹¹ Details of the EU's proposed reforms are available online at http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm (January 2012)

¹² European Commission Recommendation on preparations for the roll-out of smart metering systems http://ec.europa.eu/energy/gas_electricity/smartgrids/smartgrids_en.htm (March 2012)

¹³ European Commission, Energy Efficiency Directive http://ec.europa.eu/energy/efficiency/eed/eed_en.htm (October 2012)

taken through the Smart Metering Implementation Programme to meet the requirement in the Directive¹⁴.

Human Rights Act

1.28 The Government's Impact Assessment for the smart meter roll-out includes an assessment of compatibility with the Human Rights Act.

Security

1.29 In order to ensure the ongoing security of smart meter systems, the Government is taking a 'secure by design' approach, in which security concerns are considered and addressed at every stage throughout the development lifecycle. To support this approach, the Government has produced security requirements to mitigate, within an agreed tolerance, the anticipated risks that the end-to-end smart metering system will introduce. These requirements provide for key security controls in areas such as the encryption of sensitive data, checks on the validity of critical commands sent within the system, and the tamper resistance of metering equipment (amongst other areas). In addition, the Government is developing an assurance regime that will enable security arrangements to be reviewed on an ongoing basis in order to maintain the security of smart metering systems in both the Foundation Stage and mass roll-out. Proposals on the governance and assurance of security requirements were set out in the consultation on the second version of the Smart Metering Equipment Technical Specifications, published in August 2012¹⁵. In November 2012, the Government also published a response to consultation on a licence condition for security risk assessments and audits in the period before the DCC provides services to smart meters¹⁶.

Structure of this document

1.30 This document sets out the Government's conclusions on smart metering data access and privacy in the following key areas, mirroring the structure used in the consultation document:

- Arrangements for domestic consumers' access to their own smart metering energy consumption data, covered in **Chapter 2**;
- Arrangements for energy supplier access to domestic consumers' energy consumption data, covered in **Chapter 3**;
- Arrangements for network operator access to domestic consumers' energy consumption data, covered in **Chapter 4**;
- Arrangements to enable domestic consumers to share their energy consumption data easily with third parties (such as energy services companies and switching sites), should they choose to, covered in **Chapter 5**; and

¹⁴ DECC, Smart Metering Implementation Programme. Implementing the Energy Efficiency Directive provision on easy access to 24 months of daily/weekly/monthly/annual consumption data for consumers with smart meters – consultation document http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (December 2012)

¹⁵ DECC, Smart Metering Implementation Programme. Consultation on the second version of the Smart Metering Equipment Technical Specifications <http://www.decc.gov.uk/assets/decc/11/consultation/smart-metering-equipment-technical-specifications-2/6129-consultation-second-version-smets.pdf> (August 2012)

¹⁶ DECC, Smart Metering Implementation Programme. Government response to a consultation on a licence condition for security risk assessments and audits in the period before the DCC provides services to smart meters http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (December 2012)

- Arrangements for access to smart metering energy consumption data in the non-domestic sector, covered in **Chapter 6**.

1.31 Also included within this document are:

- licence conditions setting out obligations on suppliers and network operators at **Annex A**;
- a summary of the consultation questions on data access and privacy at **Annex B**; and
- a list of respondents to that consultation at **Annex C**.

1.32 In parallel with this document, the Government is publishing a Privacy Impact Assessment and the final report on consumer research into the proposed data access and privacy framework. These documents are available online at http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx.

Next steps

1.33 Following publication of this document, the Government expects to lay the licence conditions in respect of supplier and network operator access to data in Parliament. The licence conditions on network operators would come into force following successful completion of the Parliamentary process, with the licence conditions on suppliers coming into force from the end of June 2013 (see Chapter 3). As with all other licence conditions, once in force, Ofgem would be responsible for monitoring and, where appropriate, enforcing compliance.

1.34 The Government's conclusions on third party access to data will be implemented through the Smart Energy Code, draft legal text for which was published for consultation in November 2012¹⁷.

1.35 It will be important to continue learning from trials, tests and experience of smart metering throughout the Foundation Stage and beyond. There are also expected to be wider developments in the energy market (such as on settlement) and, as described above, possibly in Europe, which might have implications for smart metering data access and privacy. The Government is therefore clear that the framework should be kept under review in order that it can take account of any relevant developments. As set out in more detail in Chapter 3, the Government is committed to reviewing the framework within three years of it coming into force.

¹⁷ DECC, Smart Metering Implementation Programme. Stage 1 of the Smart Energy Code – a Government response and a consultation on draft legal text http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (November 2012)

Chapter 2 – Consumer access to data

This chapter sets out the Government’s conclusions in relation to consumer access to energy consumption data. It describes three key ways that consumers will be able to access their own data – directly through the In-Home Display, by connecting additional devices to the Home Area Network, and by requesting information from suppliers.

Consistent with the midata initiative¹⁸, the Government is clear that consumers should be able easily to access their own smart metering energy consumption data, and share it with third parties, should they choose to.

Access to data will help consumers reduce energy consumption and save money on bills. Research also highlights that consumers are increasingly aware that their personal data has a commercial value, that they want to have control over such data, and that they would consider sharing their data if it is clear that they will derive benefit from this¹⁹.

Consultation proposals

2.1 The consultation document explained the arrangements that are being put in place to ensure that domestic consumers are able easily to access their own energy consumption data. Three key routes of access were described:

- access through the In-Home Display;
- access through the connection of additional devices to the Home Area Network; and
- by requesting information from the energy supplier.

2.2 The consultation sought views on these arrangements, and asked whether there was a need for any additional arrangements to enable domestic consumers to access their own energy consumption data directly from their supplier, free of charge and in a common format.

Summary of responses to consultation

Consultation Question

- | | |
|----|--|
| 1. | Do you have any comments on the arrangements for consumer access to data through the in-home display, Home Area Network or supplier? Do you foresee any problems with any of these mechanisms? If so, how could any problems be |
|----|--|

¹⁸ More information about midata is available online at <http://www.bis.gov.uk/policies/consumer-issues/consumer-empowerment/personal-data>

¹⁹ See, for example, Consumer Focus research Private Lives: a people’s inquiry into personal information http://www.demos.co.uk/files/Private_Lives_-_web.pdf (2010) and Accenture, Revealing the Values of the New Energy Consumer http://www.accenture.com/SiteCollectionDocuments/PDF/Resources/Accenture_Revealing_Values_New_Energy_Consumer.pdf (2011)

	overcome?
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- 2.3 There was clear support for the use of In-Home Displays (IHDs) as the principal way for domestic consumers to access their data, and it was felt that this was where the real benefits of behavioural change would occur. One consumer group cited their own research that had been carried out, illustrating how positively consumers responded to energy information displayed on IHDs, but felt that more thought was needed on messaging to IHDs, and that Operational Licence Conditions should ensure the full range of data available under the Smart Metering Equipment Technical Specifications (SMETS) was available on the IHD at no extra cost. Some technical solutions and industry organisations advised that current IHD functionality needed to be simple enough for consumers to engage with, and some suggested that current functionality was not adequate to engage all consumers.
- 2.4 There was also support for the use of consumer access devices connected to the Home Area Network (HAN), to enable consumers to access their consumption data in a more bespoke manner. However, consumer groups were concerned that this form of access would be used only by technology-literate consumers. Many industry and technical solutions respondents caveated their support for the HAN by stressing that issues around security and operability still needed to be finalised in the second version of SMETS to provide assurance that devices could be connected in a secure and consumer-friendly way. Another industry group felt it was important to ensure that the supplier did not need to be involved in any process by which a consumer granted access to their data to a third party.

Consultation Question

- | | |
|-----------|--|
| 2. | Is there a need for any additional arrangements to enable consumers easily to access their own energy consumption data directly from their supplier, free of charge and in a common format? |
|-----------|--|

- 2.5 Most respondents referred to the Government's midata project as an example to follow and join up with in regard to consumer access to data. It was pointed out that one of the key aims of midata is to provide consumers with information in a common format, and the suggestion was therefore that additional arrangements were unnecessary. However, a consumer group queried the extent of supplier support for midata, and made recommendations about how the initiative could be strengthened.
- 2.6 There were some differences in opinion as to whether consumers should receive data free of charge. In general, most suppliers and other industry organisations felt that although any initial requests, or infrequent requests, should not incur a charge, it was reasonable that subsequent, frequent requests should be charged for. Consumer groups and the Information Commissioner's Office took the opposite view that charging should not take place in either case. One non-domestic industry body felt that it was not clear why suppliers should be required to provide data free of charge when third parties were not required to do this. There was almost unanimous agreement amongst respondents from all stakeholder groups that data should be supplied in a common format. The majority of respondents thought that the CSV format (rather than XML) was appropriate.
- 2.7 Two technical solutions/communications companies argued that the Data and Communications Company (DCC) should store data and that suppliers should be required to

make data available to consumers via a web portal (like the Green Button Initiative in the USA).

Government conclusions

- 2.8 The Smart Metering Equipment Technical Specifications (SMETS) define the minimum required functionality of an In-Home Display (IHD)²⁰. Suppliers will be required to offer all domestic consumers an IHD, free of charge, and the Government expects the IHD to be a key means by which consumers will interact with the smart meter and the information it can provide.
- 2.9 To provide additional confidence that consumers will have full use of the functionality available on the IHD, the Government has proposed in the consultation on the second version of SMETS, published in August 2012, that energy suppliers should be required through licence conditions to ensure that domestic consumers can access, free of charge, the full range of IHD functionality²¹.
- 2.10 The consultation document on the second version of SMETS also proposed that suppliers should be required to ensure that all consumption, export and tariff information held on the meter is made available to consumers, free of charge, over the Home Area Network (HAN). Consumers would be able to access this data by connecting a consumer access device to the HAN. Proposals for a secure and consumer-friendly method of linking consumer access devices to the HAN were set out in the consultation document on the second version of SMETS. The first version of SMETS specified that the smart metering system should include the capability to link consumer access devices to the HAN. However as the first version of SMETS did not mandate a HAN standard it was not appropriate to define how the connection between the CAD and the HAN should be established for SMETS 1 meters.
- 2.11 Where the occupancy of a premises changes, it will be possible to prevent new occupants from accessing the previous occupant's energy consumption data that is stored on the smart meter. This would, however, depend on the previous occupant telling their supplier in advance that they are leaving the premises, in order that a "flag" can be put on the meter to mark the event.
- 2.12 Beyond the methods of consumer access to data facilitated by the Smart Metering Implementation Programme, the Government's midata initiative will help to ensure that consumers are able to access their energy consumption data in an electronic, machine-readable format. The energy sector has been at the forefront of the midata programme, with all of the six largest energy suppliers signing up to the project following the October 2011 Consumer Energy Summit. Following consultation, the Government has also announced proposals to give statutory backing to the midata programme, by taking a power to provide for the introduction of regulations to give consumers the right to request their transaction information in an electronic, machine-readable format²².

²⁰ DECC, Smart Metering Implementation Programme. Smart Metering Equipment Technical Specifications <http://www.decc.gov.uk/assets/decc/11/consultation/smart-metering-imp-prog/6425-smart-metering-equipment-technical-specifications-.pdf> (updated version, September 2012)

²¹ DECC, Smart Metering Implementation Programme. Consultation on the second version of the Smart Metering Equipment Technical Specifications <http://www.decc.gov.uk/assets/decc/11/consultation/smart-metering-equipment-technical-specifications-2/6129-consultation-second-version-smets.pdf> (August 2012)

²² BIS, midata: Government response to consultation <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/m/12-1283-midata-government-response-to-2012-consultation.pdf> (November 2012)

- 2.13 Taking this one step further, in the discussion document *Ensuring a better deal for energy consumers* the Government has also proposed the introduction of Quick Response (QR) codes onto consumers' energy bills²³. QR codes are a type of bar code that includes information that can be scanned by smart phones and QR readers. Combined with the appropriate development of apps, QR codes would enable people to check the best deals and switch supplier using smart phones.
- 2.14 The EU Energy Efficiency Directive, which was approved by the European Parliament in September 2012, includes a requirement on the provision of easy access for domestic customers to historical daily/weekly/monthly/annual energy consumption data for at least the previous 24 months via the internet or the meter interface²⁴. The Directive is expected to enter into legal force before the end of 2012, and Member States will then have 18 months to implement the requirement. In parallel with this Government Response document, the Government is publishing a consultation document on additional steps that may need to be taken through the Smart Metering Implementation Programme to meet the requirement in the Directive²⁵.
- 2.15 The Data Protection Act 1998 gives individuals the right to request personal data that is being processed by a data controller, through Subject Access Requests. Consumers would continue to benefit from this right (and others) in parallel with the protections afforded by the Government's data access and privacy framework. Data controllers would be responsible for meeting obligations to respond to Subject Access Requests. The Smart Energy Code, draft legal text for which was published for consultation in November 2012, will require the Data and Communications Company to provide reasonable assistance to DCC users in complying with Subject Access Requests²⁶.
- 2.16 Ofgem has said that it expects that suppliers would provide information to consumers about their consumption that is commensurate with the data they are accessing from the consumer's smart meter, and that it may consider whether it would be appropriate to set minimum standards in that regard.
- 2.17 Given these developments, the Government does not propose at this stage to place any additional obligations on suppliers to provide data to domestic customers in a standard format, free of charge. However, developments in this area will be kept under review. The position in relation to non-domestic customers is discussed in Chapter 6.

²³ DECC, *Ensuring a better deal for energy consumers*. DECC discussion document <http://www.decc.gov.uk/assets/decc/11/consultation/better-deal-energy-consumers/6996-better-deal-energy-consumers.pdf> (November 2012)

²⁴ European Commission, *Energy Efficiency Directive* http://ec.europa.eu/energy/efficiency/eed/eed_en.htm (October 2012)

²⁵ DECC, *Smart Metering Implementation Programme. Implementing the Energy Efficiency Directive provision on easy access to 24 months of daily/weekly/monthly/annual consumption data for consumers with smart meters – consultation document* http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (December 2012)

²⁶ DECC, *Smart Metering Implementation Programme. Stage 1 of the Smart Energy Code – a Government response and a consultation on draft legal text* http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (November 2012)

Chapter 3 – Supplier access to data

This chapter sets out the Government’s conclusions on supplier access to domestic consumers’ smart meter energy consumption data.

Suppliers will be able to access monthly energy consumption data for billing and other regulated purposes. Otherwise, consumers will have choice about whether their supplier can access their energy consumption data. The onus will be on suppliers to explain clearly to consumers what data will be accessed, for which purposes, and how consumers can easily exercise their choices about this.

Framework for supplier access to data

Consultation proposals

3.1 Drawing on responses to the Call for Evidence in Autumn 2011, the consultation document on data access and privacy analysed a range of potential uses of energy consumption data by suppliers. These potential uses included billing, detection and prevention of theft, settlement, wholesale hedging, time-of-use tariffs, consumer debt management, protecting vulnerable consumers, feedback on consumption and energy efficiency advice, and trials.

3.2 Building on this analysis, the Government proposed the following framework for supplier access to domestic consumers’ energy consumption data:

Basic framework:

- Allow suppliers to access monthly (or less granular) energy consumption data²⁷, 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 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

²⁷ 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).

are made, provided this has been explained to the customer.

3.3 For clarity, use of the term “supplier” in this chapter refers to situations where the supplier is the registered supplier for the consumer in question. Arrangements for circumstances where the supplier is acting as a “third party” for consumers for whom they are not the registered supplier are covered in Chapter 5.

Summary of responses to consultation

Consultation Question

3. Do you have any comments on the overall balance and workability of the proposals for supplier access to data?

3.4 Generally, whilst there were groups on either side who felt that the proposed framework did not go far enough, it was overall seen as broadly workable, practical and balanced when taking into account all the viewpoints, and there was a good degree of support, understanding and acceptance of it.

3.5 Some suppliers were disappointed that the framework did not allow half-hourly data to be collected on a default basis, as it was felt that half-hourly data would allow them to realise greater benefits, specifically in regard to settlement and administering effective time-of-use tariffs. But most of these suppliers could nevertheless understand the position taken in consultation, viewed the proposals as pragmatic, and felt that over time the case for default access to half-hourly data would grow. One supplier continued to view use of half-hourly data as absolutely vital, especially for demand risk management, queried the need for regulation above and beyond the Data Protection Act, and felt that the framework was biased against suppliers. Some suppliers stated that opt-in consent should not be needed for marketing, but rather that this should be changed to opt out. The Information Commissioner’s Office felt that overall the framework offered a good level of control and protection to consumers, and supported the use of licence conditions – but noted that any relaxation of the framework would need to be justified with evidence.

3.6 On the other hand, whilst welcoming the proposal to require explicit consent for half-hourly data, there were some concerns from Ofgem, a consumer group and privacy groups about the proposal to make daily data available on an opt-out basis. This was seen by some as unjustified and potentially detrimental to competition (giving suppliers unfair advantage over third parties) and consumers (for example, if the data was used to apply pressure to low-income customers or screen out some customers from particular offers). One consumer group wanted to ensure that the processing of data was appropriate and not excessive for the purposes in question, in line with the Data Protection Act. Some industry respondents agreed with consumer groups and regulators that suppliers were responsible for demonstrating to consumers the clear benefits that could be delivered through data access.

3.7 One representative of third party energy services companies was concerned that allowing access to daily data on an opt-out basis would lead inexorably to allowing access to half-hourly data on an opt-out basis, which is where they felt there may be more of an issue in terms of the potential impact on competition. Another energy services company strongly supported supplier access to daily data on an opt-out basis as a minimum, and was pushing for more – they felt that this would not distort competition but instead allow energy services

companies in partnership with suppliers to deliver services that otherwise would not exist at all.

3.8 All respondents agreed that the framework should be kept under review, and indeed supplier and network operator representatives were pushing for a firm commitment to review the framework at a particular point in time, suggesting that this should be provided for in licence.

Consultation Question

4. Do you agree with the proposed approach to defining supplier regulated duties, and that suppliers should be able to access monthly (or less granular) energy consumption data for these purposes without customer consent? Would the proposed approach restrict suppliers from undertaking any essential activity, or present any other problems?

3.9 The consensus was that the proposed approach to defining regulated duties was broadly acceptable and well balanced. The need for review was also accepted, mostly by industry respondents. One consumer group thought that consumers could only be adequately protected if explicit opt-in consent were required for access to data any more granular than monthly for anything other than regulated duties.

3.10 There were some supplier respondents who felt that data uses such as time-of-use tariff innovation (and indeed innovation for all types of services) could be stifled by the need for consent or consumer choice about data more granular than monthly. In particular, supplier respondents suggested that half-hourly data would be needed for settlement and hedging uses. One supplier suggested that if network operators were to be permitted access to aggregated half-hourly data for the Distribution Use of System billing process, then suppliers would need access to the same data for invoice settlement. Another trade association stated that the non-domestic advanced meter market currently used half-hourly data and there had been no evidence of misuse of data.

Consultation Question

5. Do you agree with the proposal to enable suppliers to access daily (or less granular) energy consumption data, and use this for any purpose except marketing, provided that the customer is made aware of this and given the opportunity to opt out? What would be the implications for consumers and competition of this approach?

3.11 There was a majority view that the proposed approach was agreeable and sensible, although, as explained above, there were some groups who felt that daily data should not be provided on an opt-out basis.

3.12 One of the consumer groups felt that allowing use of daily data for any purpose except marketing ran counter to the principle of data minimisation. This respondent supported the use of daily data on an opt-out basis for the purposes of helping vulnerable customers (for example, by monitoring self-disconnection), as long as the data was used in a transparent way, but did not feel that daily data for purposes such as hedging and debt management was necessary.

Consultation Question

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| 6. | Do you agree with the proposal to require suppliers to obtain explicit (opt-in) consent from the customer in order to access half-hourly energy consumption data? |
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3.13 There was agreement from a majority of respondents to the approach suggested. Most supplier respondents welcomed the clarity that the approach gave and could understand and accept the position, even if it did not give them everything they wanted, although one supplier argued that they should be able to access half-hourly data on an opt-out basis. A trade association accepted that suppliers would need to demonstrate additional benefits in order to gain access to half-hourly data by default. One consumer group suggested that half-hourly data was not needed to design tariffs, and felt that such an approach would be anti-competitive.

Consultation Question

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| 7. | Do you agree with the proposal to require suppliers to obtain explicit (opt-in) consent from the customer in order to use energy consumption data for marketing purposes? Do you agree with the proposed definition of marketing, and in particular, that free advice should be excluded from the proposed definition? |
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3.14 Some suppliers disagreed that opt-in consent should be obtained in order to use data for marketing purposes, arguing that the opt-out provision in the Data Protection Act was enough. One supplier wanted to ensure that the definition of marketing in the data access and privacy framework did not prevent suppliers from meeting obligations under the Third Package to provide tariff advice to consumers. Others were concerned that the definition would prevent them from helping vulnerable consumers and consumers in debt, or from offering other valuable services which may be branded but not constitute marketing.

3.15 Ofgem, a consumer group and an energy consultancy were concerned about whether suppliers being able to market free products and services (which could be charged for at a later date) would put them at a competitive advantage over third parties. A common theme amongst industry respondents was that free generic energy efficiency advice was acceptable and should not need opt-in consent, although a majority also felt that clarity was needed to distinguish energy efficiency advice from marketing.

3.16 A consumer group doubted whether the licence conditions on marketing accurately reflected the policy intention, queried how these conditions fitted with the Data Protection Act, and were concerned that consumers could be approached multiple times regarding products. They cited their own research which showed that 17% of consumers did not want any kind of messaging via the In-Home Display.

Consultation Question

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| 8. | Do you agree with the Government's proposed exceptions to the basic framework for supplier access to data – to accommodate theft detection and prevention, accurate billing, customer queries and trials? Are there any other |
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important uses of energy consumption data that need to be covered in exceptions to the basic framework?
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- 3.17 There was broad agreement in principle on all of the proposed exceptions from all respondents, regardless of their stakeholder group.
- 3.18 There was support for accurate billing as an exception. One respondent queried whether allowing daily data to be retained for 14 days was enough to settle queries on billing disputes. Some respondents from industry stated that further consideration of pre-payment meters would be required, in terms of an additional exception to take a reading once a customer changed to pre-payment. Consumer groups felt that a monthly or quarterly reading would suffice for customers on pre-payment plans.
- 3.19 There was broad agreement for the proposal on theft. A distributor network respondent suggested that the definition of “reasonable suspicion” should be unambiguous and that there should be an agreed process on the usage (and subsequent deletion) of data in these circumstances. Consumer groups agreed that granular data was necessary, but advised that the process of investigation should be transparent, highlighting to consumers what trigger points would warrant “reasonable suspicion”. The same respondents advised that multiple trigger points would be needed, as singular trigger points were not reliable indicators on their own.
- 3.20 Although there was broad support for the use of half-hourly data on an opt-out basis for trials, a couple of suppliers felt that consumers should have no choice about this at all, and there was a split in opinion regarding the need for an approvals process. Some industry respondents were concerned that an Ofgem/DECC approvals process would perhaps be too time consuming and stifle innovation, and stressed that, at the very least, clarity was needed on the approvals process. One consumer group stated that they supported the proposal as long as the consumer could retain the right to opt out of the trial at any time. Another suggestion from a supplier was that approval could be given to a class or type of trial, to avoid the need for individual approval for lots of similar trials.

Government conclusions

Basic framework

- 3.21 On balance, taking account of consultation responses, consumer research and other evidence, the Government’s conclusion is that the basic framework proposed for supplier access to data – monthly data for billing and regulated purposes, daily data on an opt-out basis, and half-hourly data on an opt-in basis – should be implemented. Whilst there are some groups on either side who feel that the framework does not go far enough, there is overall a broad level of support, understanding and acceptance. The Government’s view is that the framework strikes a sensible, workable balance, and meets the objectives of protecting consumers, enabling the delivery of benefits, and facilitating competition in the developing energy services market.

Review

- 3.22 The Government made clear in the consultation document on data access and privacy that committing to keep the framework under review and remaining open to learning throughout the Foundation Stage and beyond was central to the proposals. This was

particularly important given the likely future changes to market arrangements such as settlement reform.

3.23 In light of suggestions in consultation responses that a firmer commitment would be helpful, the Government has decided that the data access and privacy framework should be reviewed at an appropriate point, no more than three years after it first takes effect. The review should cover all aspects of the data access and privacy framework, as set out in this document – consumer access to data, supplier access to data, network operator access to data, third party access to data, and data access in the non-domestic sector. DECC would be responsible for carrying out the review, with advice and evidence from relevant bodies including Ofgem, the Information Commissioner's Office, consumer and privacy groups, and industry participants.

3.24 The review would look to assess, amongst other things,

- the extent to which the data access and privacy framework was:
 - protecting consumers;
 - enabling benefits to be delivered; and
 - facilitating competition in the emerging energy services market;
- the suitability of information that was being provided to consumers about data access and privacy, including the usage of their data, the choices that they had, and how these choices were being facilitated;
- the implications of any wider developments in the energy market; and
- the implications of any wider developments at EU level (for example, any changes to data protection legislation).

3.25 Beyond this review, DECC would remain able to amend the framework using its Energy Act powers until 2018. Once in force, Ofgem would also be able to modify the licence conditions in the usual way.

Daily data

3.26 While retaining the basic framework proposed in consultation, the Government is conscious that some stakeholders remain concerned about the measure to allow suppliers to access daily data on an opt-out basis. These respondents felt that there was less justification for access to daily data by default, and that this could potentially lead to consumer detriment or adversely affect competition. Similarly, the Government's consumer research found that some consumers were unconvinced about the daily data proposal – in particular they were unclear why this data was necessary and questioned what it would be used for.

3.27 In light of this evidence, the way supplier access to daily data works in practice will be considered explicitly as part of the review of the framework proposed above, with evidence sought from consumers, suppliers and others involved. In particular, where daily data is being collected, the onus must be on suppliers to ensure that consumers are given clear information about the uses to which it is being put, and the right that the consumer has to object to this. If this was not happening, or consumers were concerned, then the Government could consider building into licence conditions more specific requirements about what the data could be used for (for example, to ensure that it was only used for the benefit of the consumer).

- 3.28 The Government is also of the view that, in so far as is practicable, consumers should have full control about usage of their data for different purposes. For example, if they wish to, consumers should be able to allow suppliers access to their daily data for some purposes (for example, for the provision of energy efficiency advice) but not others (for example, for wholesale hedging). The Government has made a minor adjustment to the licence conditions to clarify that consumers are not prevented from exercising choice in this way. Suppliers are encouraged to ensure that however choices are presented, this degree of flexibility for consumers is facilitated.
- 3.29 It is also worth being clear that not all suppliers will necessarily choose to seek to access daily (or more granular) data from their customers. This will be a commercial decision for each supplier, taking account of the regulatory framework and other factors.

Marketing

- 3.30 The consultation document on data access and privacy proposed that suppliers would need explicit (opt-in) consent from consumers in order to use their energy consumption data for marketing purposes. Research commissioned by the Government²⁸ found that by far and away the dominant concern from domestic consumers was that personal information would be used as a source of leads for marketing approaches, confirming the importance of this element of the proposals.
- 3.31 In light of the consumer research, and in view of responses to consultation, the Government has decided to make a minor adjustment to the proposed definition, to make it tighter, such that “marketing” includes information about goods or services, regardless of whether or not those goods or services are free of charge or paid for. Information about the “supply of electricity” would continue to be excluded from the definition of marketing, although this is tightly drafted and could not, for example, be used to provide cover for marketing of goods and services related to the basic supply contract.
- 3.32 The definition of marketing does not include the provision of information and feedback about energy consumption, or general advice on how to manage energy usage better, where this is not linked to a specific good or service. The Government has considered comments raised by respondents about potential interactions of the definition with other statutory requirements, but does not believe the definition of marketing used here prevents suppliers from fulfilling any such obligations.
- 3.33 The rules governing marketing proposed in relation to data access and privacy differ from those included in the licence conditions governing the Installation Code of Practice, which permit marketing of free products and services. The different approach is justified because installation is a one-off event where consumers will in any case be receiving information and which will offer suppliers a unique opportunity to engage with hard to reach vulnerable consumers who may be eligible for free services under the Energy Company Obligation, Warm Home Discount and other schemes. By contrast, allowing energy consumption data to be used for marketing of free products and services would be an ongoing arrangement, which would be likely to trigger greater levels of consumer concern.
- 3.34 It is worth being clear that the definition of marketing described above applies only to the usage of energy consumption data from smart meters. It does not create any new, more

²⁸ Navigator, Smart Metering Data Access and Privacy: Public Attitudes Research
http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (December 2012)

general rules about what does and does not constitute marketing. Alongside the data access and privacy framework, other relevant legislation – in particular the Data Protection Act 1998, which includes a general right to opt out of marketing – would continue to apply.

3.35 The Privacy and Electronic Communications Regulations forbid unsolicited marketing messages sent via electronic means over a public electronic communications network without consent. Whilst it is not possible to be definitive, the DCC's network is likely to be a public electronic communications network for these purposes. In this case, consumers would be afforded protections against unsolicited marketing messages via an In-Home Display. Furthermore support for "text messaging" is not a requirement for the minimum specification IHD. "Text messages" would only be displayed on more sophisticated (i.e. above-minimum specification) IHDs, which suppliers may choose to provide.

Theft

3.36 The consultation document proposed that suppliers should be able to access daily energy consumption data on an ad hoc basis, without customer consent, where the supplier had reasonable suspicion that theft was being committed. The Government does not consider it necessary to define further what "reasonable suspicion" means, but can see merit in the industry working together with consumer groups to try and agree best practice around the ways in which data would be used and subsequently deleted in these circumstances, and how any interventions with customers would be handled.

3.37 Looking ahead, arrangements for usage of energy consumption data for the purposes of detecting and preventing theft may also need to be revisited in light of Ofgem's review of theft management²⁹.

Trials

3.38 Broadly speaking, there was general support in consultation responses for the proposal that suppliers should be able to access half-hourly data for the purposes of trials, provided that the trial was approved by DECC/Ofgem, and that consumers had the right to opt out. However, the Government accepts that there needs to be a clear process in place for consideration and approval of plans for trials, that gives reassurance to consumers, certainty to industry, and is not unduly onerous for either DECC/Ofgem or industry.

3.39 The proposed process for the approval of trials using half-hourly data is set out in the box below. This process, and respective roles in that process, may be revisited and adjusted in future, in light of experience of it working in practice, and in light of the broader review of the data access and privacy framework referred to above.

Process for approval of supplier trials using half-hourly energy consumption data

- i. DECC would be responsible for approving supplier trials using half-hourly data – at least during Foundation. When considering proposals, DECC would seek advice from Ofgem

²⁹ See Ofgem, Tackling Gas Theft: The Way Forward [http://www.ofgem.gov.uk/Markets/RetMkts/Compl/Theft/Documents1/Tackling%20gas%20theft%20decision\(1\).pdf](http://www.ofgem.gov.uk/Markets/RetMkts/Compl/Theft/Documents1/Tackling%20gas%20theft%20decision(1).pdf) (March 2012) and Ofgem, Strategy consultation for the RIIO-ED1 electricity distribution price control, pp. 44 – 45 <http://www.ofgem.gov.uk/Networks/ElecDist/PriceCtrls/riio-ed1/consultations/Documents1/RIIOED1SConOutputsIncentives.pdf> (September 2012)

and other bodies (such as the Information Commissioner's Office) as appropriate. Trials conducted on the basis of less granular (i.e. daily or monthly) data would not need prior approval, provided that consumers had been given opportunity to opt out of their data being used for such purposes.

- ii. DECC would aim to make decisions about proposals within six weeks. This would be dependent on the size and complexity of the proposal submitted, and DECC would have flexibility to specify an alternative timeframe. It might be necessary to revert to applicants during this period to seek clarification on certain aspects of the proposals. However, applicants would be advised to discuss prospective plans with DECC before submission to ensure that they could be processed efficiently.
- iii. Proposed trials could either be approved, approved subject to caveats (i.e. certain changes should be made to the proposed trial before it could go ahead), or rejected. For particularly significant or long-term trials, DECC might also wish to be able to consider interim results or be able to review progress, as appropriate.
- iv. DECC would consider proposals for a generic "class or type" of trial, if these were put forward, provided that these proposals (like others) met the criteria outlined below.
- v. Building on the position set out in the consultation document, plans for supplier trials using half-hourly data would need to meet the following criteria:
 - a) Proposals have a clearly defined and finite **scope and duration** (for example, as a minimum explaining the trial's aims and objectives, and which customers' data would be sampled, over what period of time). Collection of data for use in trials must be appropriate, proportionate and not excessive to the purpose of the trial. There must be a clear rationale as to why half-hourly data is needed, and what value this would bring above and beyond, say, daily data;
 - b) Proposals should include a robust trial **methodology** with an accompanying rationale, which is appropriate and proportionate to the scale of the trial. Suppliers would be expected to provide details of trial design, sampling (including sampling approach, any inclusion and exclusion criteria, sample sizes), proposed data collection and analysis plans;
 - c) Proposals must demonstrate how **personal data** used in the trial will be appropriately protected. This must include robust processes for ensuring that collection and usage of personal data are only for the purposes of the trial (and not for other purposes), and that personal data are appropriately removed/deleted following the trial. Applicants would be responsible for ensuring their proposals complied with the Data Protection Act, and any other relevant legislation;
 - d) The trial is **necessary for the purposes of furthering evidence** in relation to the costs and benefits of smart metering, as defined in the Impact Assessments. Proposals must be able to demonstrate how results from the trials will help to further understanding about smart metering, including the costs and benefits of smart metering;
 - e) **Results are shared with DECC**, including on an interim basis, in order that more general lessons can be learned and fed into ongoing development of the smart metering implementation programme. Organisations running trials would be encouraged to publish their own findings, and DECC may also wish to put some

information in the public domain, where this is not commercially sensitive;

- f) Proposals demonstrate that **clear, appropriate information will be given to consumers** in advance about the use of their half-hourly data for trial purposes, and explain how consumer choice about participation in the trial would be facilitated. In particular, customers must be given a clear and easy way to opt out of the trial.
- vi. For transparency and in order to provide public reassurance, DECC would look to maintain on its website a list of trials that it had approved.

Other issues

- 3.40 As explained in Chapter 1, the Government's framework for data access and privacy focuses on energy consumption data. Suppliers (and other parties) may wish to access other types of smart metering data, such as technical data, alerts and alarms. Access to such data would not be covered by the Government's data access and privacy framework, but may still constitute personal data according to the Data Protection Act, and in these cases, the Data Protection Act would apply.
- 3.41 In particular, the Smart Metering Equipment Technical Specifications (SMETS) provide that suppliers would be able to receive alerts when one of their customer's supply is disabled – for example, where a pre-payment customer runs out of credit. This may enable suppliers to monitor self-disconnection without needing to access more detailed energy consumption data.
- 3.42 It is worth clarifying that there is a difference between the *granularity* of data that may be collected (i.e. whether the data shows consumption over a half hour, day, week, month etc.) and the *frequency* with which reads may be taken (i.e. whether data is collected once per day, once per week, once per month etc.). Whilst the data access and privacy framework regulates granularity of reads, it does not regulate frequency of reads. One privacy group felt that consumers might be more concerned if, say, their half-hourly data was collected each and every half hour – as this might lead to perceptions of being “watched” throughout the day.
- 3.43 The Government understands that all suppliers are currently working on the assumption of collecting data at most once per day (although one daily read might show consumption over 48 half-hourly intervals, if consent had been obtained for this). In a set of Privacy Commitments published by Energy UK in April, the Big Six energy suppliers also confirmed that “Consumption information will not be collected in real-time (your energy supplier won't be able to see the exact time you have used energy, just a total amount used between any two separate meter readings) unless it is needed for a particular product or service you have agreed to take”³⁰.
- 3.44 Chapter 4 explains that network operators will be able to access domestic consumers' half-hourly energy consumption data for regulated purposes provided that the data is aggregated (or otherwise treated) to address privacy concerns. The Government does not consider it appropriate to replicate this provision for suppliers, because the provision for

³⁰ Energy UK, Privacy Commitments for Smart Metering, <http://www.energy-uk.org.uk/policy/smart-meters/-privacy-commitments-for-smart-metering.html> (April 2012)

network operators was designed in response to a specific need, and because it is unclear that supplier access to this level of data is proportionate or necessary.

3.45 However, as set out in the consultation document, consistent with the principles of Privacy by Design, and European Commission recommendations, the Government would encourage all parties wishing to access energy consumption data wherever possible to take steps to avoid or mitigate potential privacy concerns by:

- considering carefully whether data needs to be collected at all, and whether it needs to be collected from all customers; and
- aggregating or anonymising meter readings where it is not necessary to have personal data.

Consumer experience

Consultation proposals

3.46 The basic premise in the consultation document was that suppliers should be responsible for explaining clearly to their own customers what data would be accessed, for which purposes, and what choices those customers had. The proposal was that this explanation should be given as early as possible, either prior to or at the point of installation of the smart meter, so that the consumer had the chance to consider their options before energy consumption data was collected. The Government proposed that suppliers should be required to remind their customers annually about the data that was being collected and the choices that the consumer had.

3.47 The consultation document also sought views on the ways in which the different choices mechanisms (opt out and opt in) should be facilitated. The proposals were that:

- For opt out, the consumer should be given notice at least 14 days in advance about what data would be collected, for which purposes;
- Consumers should be able to exercise their right to opt out at any time;
- Opt-in consent could be secured by any appropriate method that allowed a freely given, specific indication of the customer's wishes – but that the consumer should be given prior information in writing about the uses of their data and their choices; and
- Suppliers should be required to maintain records to demonstrate that they had met such requirements.

Summary of responses to consultation

Consultation Question

9.	Do you agree with the proposal to require suppliers to explain clearly to customers what energy consumption data will be accessed, for which purposes, and the choices that customers have about this, and to provide annual reminders to their customers about this?
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3.48 There was unanimous agreement that suppliers should clearly explain to consumers what energy consumption data would be accessed, for which purposes and the choices that consumers had about this.

- 3.49 Amongst industry respondents, many advised that they would prefer to have flexibility about how exactly information was given to consumers. Some stated that the Central Delivery Body (CDB) would have a key role, and that all consumer messaging would need to be aligned between the CDB and consumer-facing organisations. One supplier felt that the example wording in the consultation document was impersonal. Another industry organisation said there could be a risk of too much information generating unwarranted concerns about privacy, and suggested that information from suppliers should be cross-referenced against the wider Government smart metering programme to give consumers reassurance.
- 3.50 One consumer group stated that 82% of consumers were not aware of their suppliers' data policies, and that a recent study had shown that many suppliers were not compliant with the provisions of the Data Protection Act. It therefore argued that the need for transparency was great and that all consumer messaging should be tested before mass release. Another supplier pointed out that experience from California had shown that consumers would disengage if they were sent information too frequently or sent information that was too complex, and another warned against setting up a system of checking and rechecking that may turn the customer off.
- 3.51 All but one respondent thought that the proposal for annual reminders was in principle a good idea. However, there were many questions asked about when exactly annual reminders would need to be given, and in what format. Some suppliers advised that it would be best to give out annual reminders with a consumer's annual energy statement, and others wondered how this system would work when the consumer switched supplier. The Information Commissioner's Office felt that there might be a more natural time to send reminders, such as at the end of a tariff period. One respondent was also concerned that annual reminders would lead to greater costs for suppliers, which had not been covered in the Programme's Impact Assessment.

Consultation Question

- | | |
|------------|--|
| 10. | Do you agree with the proposed approach to the way in which suppliers should facilitate opt-out and opt-in choice mechanisms? |
|------------|--|

- 3.52 There was clear agreement amongst most respondents across stakeholder groups to the principle of consumer choice, although several important points were made on how this should be facilitated.
- 3.53 For example, many respondents felt that oral and web-based consent was sufficient, and that both could be recorded and followed up with written notification later if necessary. Respondents from all sectors agreed that consent should be auditable - one industry organisation suggested that both licence conditions and the Smart Energy Code could be used to prescribe provisions for auditing for licensees and third parties respectively. The same respondent also sought clarity on the process for how consumer choices would be managed with a change of supplier/change of tenancy, and where the landlord wished to see their tenants' data.
- 3.54 One consumer group advised that different approaches should be tested to see which was the most effective, but they were worried that the way consent mechanisms were presented could mean that blanket consents could be given inappropriately. They did, however, support the need for verbal consent to be permissible on grounds of practicality,

and supported the need for audit trails. An energy consultancy felt that choices should be presented in a way which did not lead the consumer.

Government response

Key principles

3.55 Overall, the Government confirms the principles set out in the consultation document around consumer experience - including that suppliers should be responsible for explaining clearly to customers what energy consumption data will be accessed, for which purposes, and the choices that customers have about this. The licence conditions will set some minimum requirements in terms of what information needs to be given to consumers, but also provide suppliers with flexibility about how precisely information might best be presented. The Government believes that suppliers themselves are best placed to test the effectiveness of such information, and may wish to seek advice from consumer groups, before mass distribution. As explained earlier, the review of the data access and privacy framework is expected to consider the suitability of information being provided to consumers.

3.56 Individual supplier communications with consumers would also be supported by a more general, industry-wide Privacy Charter (see Chapter 1). Given that the levels of energy consumption data collected and uses to which it is put will vary between suppliers, it is essential that suppliers lead in presenting choices to their own customers. However, the Central Delivery Body could have a role in explaining industry-wide messages.

Reminders to consumers

3.57 Suppliers will be required in licence to provide initial information to consumers about the data that would be accessed, either up to 14 days prior to installation, or as soon as reasonably practicable thereafter. Where suppliers are accessing data other than monthly data for regulated duties, they would either need to have given the customer advance notice and opportunity to object, or have received the explicit consent of the customer (see below).

3.58 The consultation document proposed that suppliers should also be required in licence (and third parties should be required in the Smart Energy Code) to provide annual reminders to their customers about the energy consumption data that was being accessed, and the choices that consumers had about this. The Government's consumer research found that this proposal would be welcomed by consumers, as it would give householders the opportunity to review their choices in the light of experience. However, in light of concerns expressed in consultation responses, the Government is keen to ensure that there is flexibility for suppliers to meet the requirement in the most sensible way, and that the requirement does not create unjustified additional costs.

3.59 Rather than specifying that reminders must be issued once per year, the obligation has therefore been adjusted to ensure that consumers are reminded about the collection of their data at appropriate, regular intervals. Suppliers and third parties will have flexibility to determine what these intervals are – whether this is at some regular point in time, or instead timed to coincide with other engagement with the consumer. The way in which this requirement was being met would be reviewed as part of the broader review of the data access and privacy framework. The licence conditions do not prevent the reminder from being included with other information, or prevent the reminder from being sent electronically.

3.60 Alongside the data access and privacy framework, data controllers (such as energy suppliers) will need to meet other statutory requirements – including requirements on the provision of privacy notices in the Data Protection Act 1998³¹.

Choice mechanisms

3.61 The Government continues to believe it is appropriate that where suppliers intend to access daily energy consumption data on an opt-out basis, then consumers need to be given advance notice, in order that they can consider whether they are comfortable with this, before the data starts being collected. This notice must include information about how the consumer could object. However, in light of concerns about the potential impact of a 14-day notice period on the customer journey, installation and supplier's processes, the notice period will be changed to seven days. The Government feels this will give consumers adequate opportunity to consider their choices, and consumers could decide to opt out at any subsequent point. Suppliers would not need to wait seven days from the notice being sent before collecting daily data if the customer had given their explicit consent to the collection. Notice could be given electronically or on paper. It would also be possible for the advance notice about daily data to satisfy the more general requirement for initial information about data access (although suppliers might choose also to repeat these messages at installation).

3.62 Similarly, in order to access more detailed (half-hourly) data, explicit (opt-in) consent must have been obtained in advance. However, the licence conditions are not specific about precisely which format consent needs to be given in. This will allow flexibility to suppliers to receive consent by any appropriate method (for example, on the telephone, by website, or email). Suppliers would, however, need to maintain records to demonstrate that consent had been obtained. (A similar approach has been taken to the licence conditions governing the Installation Code of Practice, which require suppliers to retain, and produce to Ofgem if required, documentary evidence of customer consent to marketing, although the consent may be obtained in a variety of ways). Suppliers would also be required to inform consumers that they could withdraw their consent at any time, and inform them of the process by which they could withdraw that consent.

3.63 Research commissioned by the Government found that, based on experience in the energy sector and other sectors, consumers had strong reservations about whether choices would be presented clearly and prominently in a way that could be easily understood without a great deal of effort³². It will be imperative for suppliers to consider carefully the best way of presenting choices to consumers, within the bounds of the regulatory framework. For example, one particular view expressed during the consumer research was that opting out should be easy: for example, so that consumers could choose to object simply by ticking a box, rather than by having to make a separate phone call.

Other issues

3.64 If a consumer changes energy supplier, then a “flag” will be put on the smart meter to prevent the new supplier from accessing energy consumption data relating to the period of supply by the previous supplier. (The new supplier could, however, access this data with the customer's explicit consent, in the same way as third parties could).

³¹ Guidance from the Information Commissioner's Office on privacy notices can be found online at http://www.ico.gov.uk/for_organisations/data_protection/topic_guides/privacy_notices.aspx

³² Navigator, Smart Metering Data Access and Privacy: Public Attitudes Research http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (December 2012)

3.65 In terms of rented properties, suppliers will typically only discuss details of an energy account and consumption at those premises with the specified account holder(s). Such arrangements would be covered in suppliers' terms and conditions. It would be up to individual suppliers to put in place corresponding arrangements in relation to data access and how choice should be exercised at rented properties. In situations where the landlord is the account holder (for example, where the rental agreement includes bills), the tenant might reasonably expect the landlord to have appropriate access to consumption data from the premises, and possibly exercise choice about others' access to this data, for the purposes of managing the account (for example, evaluating the energy efficiency of the property).

Implementation

Consultation proposals

3.66 The Government's position in the consultation document was that the policy on supplier access to data should be implemented through licence conditions, as this offered maximum protection and reassurance to consumers, and the most robust level of enforcement. Views were sought on this position, as well as on the drafting of the licence conditions themselves, and the potential need for any consequential changes to existing licence conditions or codes.

3.67 On timing, the key proposals in the consultation document were that:

- The framework should be implemented as soon as possible; and
- The regime should apply to all smart meters installed from the point at which the regime came into force, but not apply to smart meters that had already been installed.

Summary of responses to consultation

Consultation Question	
11.	Do you agree with the proposed use of licence conditions to implement requirements relating to supplier access to data? Would any of the detailed arrangements, or any additional measures, be more effectively set out elsewhere, for example in an industry code, a standalone code of practice or guidance?

3.68 There was a variety of views in response to this question. A large number of suppliers thought that licence conditions were not the place to implement the requirements. Instead, they advocated use of the Smart Energy Code (SEC), because this provided a level-playing field with third parties, provided adequate assurance, and would provide more flexibility for changes to be made more easily in future, if necessary. Some suppliers were worried that placing requirements in licence conditions might lead to duplication with the Data Protection Act. One supplier felt that as the SEC was not a consumer-facing document, a code of practice should be used instead.

3.69 By contrast, all consumer groups, regulators and technical solutions respondents, as well as one supplier, agreed with the proposal that licence conditions should be used in principle. Arguments here were that licence conditions would be more robust and easier to enforce, that SEC provisions would be difficult to draft and agree across the industry, and that the SEC panel could be made up of a majority of industry representatives, which might mean that suppliers had more influence over future changes. Ofgem recognised the arguments for placing appropriate elements of the framework in licences, and noted that, as referenced in

the consultation, any provisions in licences would need to align appropriately with related or more detailed provisions in the SEC.

3.70 One consumer group strongly welcomed sector-specific legislation, but felt that clarity was needed about the respective roles of Ofgem, the Information Commissioner’s Office and the Energy Ombudsman, including in the process for resolving complaints. It also said that it would welcome more information on how supplier compliance would be monitored and what sanctions for non-compliance would apply. Some suppliers stated that they would require clarity on licence conditions and how these would interact with their obligations under the Data Protection Act. They were keen to avoid a “double jeopardy” situation where perhaps a supplier could be culpable under both statutory regimes for a single incident.

Consultation Question

12. Do you agree that the licence conditions as drafted would effectively implement the proposed policy approach to supplier access to data? Do any specific areas of the draft licence conditions need amendment or clarification?

3.71 In general, the sense from responses was that the licence conditions as drafted would effectively implement the proposed policy, although there was continued disagreement from some suppliers about the use of licence conditions in principle. One consumer group felt that some of the licence conditions needed redrafting, to ensure that they adequately reflected the policy intention, were not drafted too widely to allow unintended loopholes, and were consistent with the Data Protection Act.

3.72 Several detailed amendments were suggested, including that

- The distinction between “using” and “obtaining” consumption data was confusing and not consistent with the Data Protection Act (which refers only to “processing”);
- Phrases used in the licence conditions such as “a period of less than one month” or “a period of less than a day” were ambiguous and needed clarification;
- The licence conditions should enable consumers to give or refuse consent to suppliers to access data for individual “specified purposes” separately;
- The definition of marketing needed to be re-examined;
- The exception to allow the collection of daily data on an ad-hoc basis for the purpose of accurate billing was drafted too widely; and
- Clarity was needed on certain terms such as “relevant condition” and “consumption data”.

Consultation Question

13. Is there a need for any consequential changes to existing licence conditions or codes to ensure that the proposed requirements on suppliers work as intended?

3.73 Few respondents answered this question affirmatively, with those that did mostly referring to codes and areas of regulation where they had an expert understanding. Potential changes to the Master Registration Agreement (MRA), the Balancing and Settlement Code (BSC) and Distribution Connection and Use of System Agreement (DCUSA) were all identified, as was a suggested change to Supply Licence Condition 31 which covers information for domestic consumers. One supplier felt that significant changes would be required to industry codes

and agreements, and that this should be considered properly by the Smart Metering Regulatory Group (SMRG) Working Group 4.

Consultation Question

14. Do you have any comments on the proposed approach to timing of implementation of proposals relating to supplier access to data?

- 3.74 There was a mix of answers in response to this question. One consumer group, the Information Commissioner's Office and an industry organisation were of the view that the framework should be implemented as soon as possible. Ofgem and a consumer group commented on the proposal that the framework should not apply to smart meters that had already been installed. They felt that the framework should apply to all compliant smart meters, regardless of when they were installed, so that every consumer with such a meter had the same protections.
- 3.75 Some suppliers and one industry organisation said that the framework could not be enacted before the Foundation Stage was completed, and before many outstanding questions around security and technical specifications were answered. Other suppliers suggested timings for implementation between late 2012 and mid-2013. Some supplier respondents also said that they would need between four and nine months' lead time to ensure that their internal systems and processes were able to accommodate the framework.
- 3.76 There was also overwhelming support for the suggestion that the framework should be kept under review. One energy industry trade association and a supplier advised that a review two to three years after initial implementation would be appropriate.

Government conclusions

Use of licence conditions

- 3.77 On balance, the Government has decided to implement the framework for supplier access to data through licence conditions, in the gas and electricity supply licences, as proposed in consultation. Research has indicated support from consumers for the framework being implemented in licence and regulated by Ofgem, rather than in a voluntary agreement or through self-policing³³. Finalised licence conditions are attached at Annex A.
- 3.78 Consideration was given to whether some aspects of the licence conditions on suppliers – for example, information requirements – would sit better in the Smart Energy Code, where requirements for third parties will be set out. However, because requirements on suppliers and third parties are different, and because the licence is a more appropriate means of regulating consumer protection issues, the Government considers it appropriate to keep the full set of requirements on suppliers in the licence. (See also Chapter 5 on application of audit to suppliers).
- 3.79 Nevertheless, in order to establish a link between the rules around supplier access to data and use of the Data and Communications Company (DCC) smart meter communication service, and in line with the position proposed for third parties (see Chapter 5), the

³³ Navigator, Smart Metering Data Access and Privacy: Public Attitudes Research
http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (December 2012)

Government proposes that there should be a basic requirement in the Smart Energy Code that *any* user of the DCC must have obtained the appropriate permission before requesting data via the DCC. For suppliers acting in their capacity as registered supplier for a premises, this would mean only requesting data via the DCC where they were obtaining that data in accordance with the licence conditions. In all other cases where access to consumption data was requested, explicit opt-in consent would need to be obtained from the consumer before the request was made to the DCC. Compliance with this Smart Energy Code requirement would be capable of being audited and such audits could be commissioned by the SEC Panel.

3.80 The Government has considered the more detailed amendments to licence conditions suggested by respondents to consultation. Without commenting on each individual suggestion, and in addition to the changes referenced elsewhere in this chapter, it is worth noting the following particular points and areas where minor adjustments to the licence conditions have been made:

- Licence conditions on data access and privacy in no way usurp or replace the provisions of the Data Protection Act 1998 - energy suppliers (insofar as they are data controllers) would need to meet the requirements of both. It is not necessary to duplicate provisions of the Act in licence. Ofgem and the Information Commissioner's Office have been discussing how they will work together, as well as considering the roles and responsibilities of other organisations (such as the role of Energy Ombudsman in handling individual complaints), as appropriate;
- A minor amendment has been made to the licence conditions to clarify that daily data can only be collected on an ad-hoc basis without consent for the purpose of accurate billing if indeed a bill is then sent to the consumer (i.e. such data cannot be held in perpetuity without being used);
- It is not necessary to clarify standard terms used in the licence conditions – such as “relevant requirement” – these are defined elsewhere in legislation;
- The licence conditions have been amended such that suppliers are also required to give notice to their consumers about the usage of their energy consumption data, even where only monthly data is being collected;
- A minor adjustment has been made to enable more regular readings from pre-payment meters as top-ups are made, in line with current practice and the proposal in the consultation document; and
- Some other minor structural amendments have been made to improve the flow and ordering of the licence conditions.

Consequential changes

3.81 In line with responses to consultation, the Government recognises that consequential changes may be needed to other industry codes and agreements to reflect the data access and privacy requirements. The Government will continue to engage closely with industry stakeholders, including other code experts, to ensure that these consequential changes will be considered, developed and implemented as necessary.

Application of the framework and transitional period

3.82 The proposal in the consultation on data access and privacy was that the regime for supplier access to domestic consumers' energy consumption data should be implemented as soon as possible, and that it should apply to all smart meters installed from the point at which the regime comes into force, but not apply to smart meters that have already been installed.

- 3.83 Responses to consultation and discussions with stakeholders have shown that there is a high degree of concern about this approach. It was felt that this could create a two-tier system, where consumers were afforded different levels of protection, depending on when their smart meter was installed. In light of the concerns expressed, the Government wrote to energy suppliers, via Energy UK, to explore what the implications would be if the position were changed such that the framework applied to *all* SMETS-compliant meters, regardless of when they were installed. This request for information was copied to all consultation respondents.
- 3.84 With support from all suppliers, as well as the Information Commissioner's Office and Ofgem, the Government has decided to change the position such that the framework for supplier access to data, once implemented, will apply to all SMETS-compliant meters, regardless of their installation date. Energy UK noted that some of its members might anyway choose voluntarily to align their systems for all meters, even if the Government did not make the change to regulation. All of Energy UK's members agreed that any increase in costs as a result of the change were likely to be minimal.
- 3.85 In addition, in light of stakeholder views, the Government believes it would be appropriate to allow a transitional period of around six months, following Parliamentary scrutiny of the regulations, before the regime for supplier access to data comes into force. Subject to successful completion of the Parliamentary process, the licence conditions on suppliers will therefore come into force at the end of June 2013. This time will enable suppliers to make necessary adjustments to systems and processes to ensure that they are compliant – both for already installed meters and meters they have yet to install. The Government is keen to avoid a situation where suppliers delay rolling out smart meters because they are not or would not be compliant with the data access and privacy framework.
- 3.86 Where suppliers do not need to make systems changes to comply, the Government would expect suppliers to be able to implement the data access and privacy framework ahead of the licence conditions formally coming into force. In particular, the Government's view is that the requirement only to collect half-hourly data with explicit consent could and should be implemented more quickly.
- 3.87 Whilst the regime for supplier access to data will not apply formally to advanced domestic/"smartish" meters at this stage, application of the regime to these meters has been supported by a couple of suppliers, and consumer groups have argued for this. The Government is therefore keen to explore the possibility of a clear voluntary commitment from suppliers that they would also apply the framework to advanced domestic meters that do not meet the SMETS requirements. Ofgem has also said that it will consider whether similar protections to those in the data access and privacy framework should be extended to consumers with such meters.

Chapter 4 – Network operator access to data

This chapter sets out the Government’s conclusions on the framework for network operator access to smart meter energy consumption data.

Electricity and gas distribution network operators have obligations relating to the planning, building and operation of networks. It is important that they do this cost effectively. Smart meter data may help network operators fulfil these obligations, maintain continuity of supply and respond to the changing requirements of smart grids, increased distributed generation and electrification of heat and transport.

Network operators will be able to access domestic consumers’ energy consumption data, including half-hourly energy consumption data, for regulated purposes, provided that they aggregate or otherwise treat the data such that it can no longer be associated with an individual premises, and provided that they have plans for such access approved by DECC or Ofgem.

Framework for network operator access to data

Consultation proposals

4.1 The position in the consultation document was that network operators should be able to access half-hourly energy consumption data from all domestic customers without consent, provided that:

- The data was only used for regulated purposes (e.g. developing and maintaining an efficient, co-ordinated and economical network etc.);
- Network operators submitted plans detailing which data they would access, for which purposes, and how the data would be treated to address privacy concerns (for example, through aggregation); and
- That these plans were approved by DECC/Ofgem, before access was granted.

4.2 The consultation document went on to propose that if plans for aggregation had not been submitted or approved, then network operators would need to give consumers choice about the granularity of energy consumption data that was accessed, in the same way as proposed for energy suppliers. It was recognised, however, that this approach would present some important practical issues for network operators and suppliers.

4.3 It was proposed that network operators should be able to access energy consumption data on an opt-out basis for trial purposes, and access data without consent for the purpose of detecting and preventing theft – in the same way as was proposed for suppliers.

Summary of responses to consultation

Consultation Question

- 15. Do you agree with the proposal to allow network operators to access half-hourly energy consumption data, without customer consent, for the purposes of developing and maintaining efficient, co-ordinated and economical systems for the distribution of electricity and gas, if they have had plans for aggregation approved? To what extent would this approach address potential consumer concerns about privacy in relation to network operator access to data?**

4.4 There was broad agreement to the proposal in principle from a wide range of stakeholders, including network operators, suppliers, regulators and consumer groups. Two respondents (a privacy group and consumer group) opposed the proposal but did not provide substantive new argument or evidence to challenge it. Three respondents pointed out that as well as through aggregation of data, there may be other ways of protecting consumers' privacy, such as through anonymisation of data, temporary storage of data by the Data and Communications Company, or by transformer 'balancing' metering.

4.5 Whilst supportive of the approach in principle, several respondents did however comment that network operators needed to provide more clarity about their plans, in particular:

- precisely what data would be collected, in which format, how long it would be retained for, and which purposes it would be used for;
- how, when and by whom aggregation would take place securely and cost-effectively; and
- the benefits and risks to consumers of network operator access to data, and how benefits would flow down to consumers.

4.6 There was a view that the process for approving plans for aggregation needed to be appropriate, timely and not unduly onerous. It was also suggested that network operators might look to develop a single common approach which could be approved, avoiding the need for approval of several separate, individual plans. There was suggestion that Ofgem was well-placed to approve plans, given the role it had played in approving Low Carbon Networks Fund projects.

4.7 A few respondents argued that gas networks would want to be able to access six-minute energy consumption data for demand modelling purposes, but that this would only be needed from a limited number of specific locations for a short period of time (not from the entire population all of the time). This data would allow gas network operators to develop better views of network utilisation and investment requirements to help improve efficiency, reduce costs to consumers and maintain security of supply.

4.8 It was also suggested that network operators might need to access energy consumption data from specific individual households at specific times (such as peak and low demand periods) for network modelling and planning purposes. Some felt that, as an alternative to deriving half-hourly load profiles, it would be helpful for network operators to be able to monitor peak demand at each household served by a particular low-voltage circuit. This would enable an estimate of peak demand on that low-voltage network, and may obviate the need for aggregating half-hourly consumption data, or at least enable aggregation of data to be targeted at particular areas of most concern. More generally, it was felt that aggregation of data may have an impact on the accuracy of calculations relating to network utilisation and the availability of spare capacity, and that there were other factors such as topography of a

network (e.g. low numbers of customers on a particular circuit), cost, and management of raw data that could affect the ability to aggregate.

4.9 National Grid Electricity Transmission argued that it should also be able to access aggregated half-hourly data in the same way as proposed for distribution network operators, for demand forecasting and other purposes. One supplier felt that the principle of allowing network operators to access aggregated half-hourly data from all customers should also be extended to suppliers.

4.10 Some suppliers commented that it would be particularly important to ensure that data was only used for network management purposes and not, for example, for offering demand side response services. It was also noted that network operators would need to process personal data in line with the Data Protection Act.

Consultation Question

16. If network operators' plans for aggregation have not yet been submitted or approved, do you agree that the proposed framework for supplier access to data should also apply to network operators? Would any alternative approach be more effective?

4.11 A clear majority of respondents from across the range of stakeholder interests disagreed with the proposal that in the absence of approved plans for aggregation, the framework for supplier access to data should apply to network operators. Building on the reservations expressed in the consultation document, the proposed alternative process to aggregation would according to many respondents be onerous, costly, impractical and confusing for consumers. One consumer group also felt that the case for network operator access to individual data had not been made.

4.12 Network operators were clear that they intended to get approval for plans for aggregation, to avoid the need for any alternative arrangement – and work on this was already underway. However, several respondents felt that in the interim, network operators could be permitted to access monthly data from all consumers for regulatory purposes, without the need to obtain consent, consistent with the proposed position for suppliers – although there were questions about how useful this would be. Another respondent also noted that sample daily data was currently permitted through the Uniform Network Code (UNC).

Government conclusions

Key principles

4.13 The Government has decided to retain the basic framework, under which network operators could access energy consumption data, including half-hourly energy consumption data, for regulated purposes without consent if they have had plans approved to address potential privacy concerns (for example, through aggregation or anonymisation of data)³⁴. In light of responses to consultation, the alternative option – in the absence of approved plans

³⁴ For ease, such plans are hereafter referred to as “plans for aggregation”.

for aggregation - of applying the same framework as proposed for suppliers, is considered to be impractical and has been discounted.

Plans for aggregation

- 4.14 DECC will be responsible for approving network operators' plans for aggregation submitted on or before 31 December 2014. Ofgem will be responsible for approving plans for aggregation submitted after this date. (This timing is chosen to align broadly with the timing of the end of Foundation Stage/start of mass roll-out).
- 4.15 DECC will work with Ofgem, as appropriate, to consider plans submitted, calling on the advice of others (such as the Information Commissioner's Office), as appropriate. Applicants would be advised to discuss prospective plans with DECC early, prior to submission.
- 4.16 More detailed, current expectations about the process for approval by DECC of network operators' plans for aggregation are set out in the box below. This process may be revisited and adjusted, depending on the types of plans that are submitted and experience of the process working in practice.

Process for approval by DECC of network operators' plans for aggregation

- i. Plans would either be approved or rejected, with reasons given where rejected. However, recommendations may be made that further work be carried out on rejected plans so that they could be resubmitted for consideration again at some future point.
- ii. Network operators would need to resubmit plans for approval if they intended to make any material changes to the collection, treatment or usage of energy consumption data, before such changes could be implemented.
- iii. For transparency and in order to provide public reassurance, approved plans should be published by network operators, and DECC would look to maintain online a list of plans that had been approved.
- iv. The current expectation is that plans for aggregation would need to meet the following criteria:
 - a) Explain clearly **what energy consumption data** will be accessed, in what format, over what period of time, from which consumers, and for which specific purposes. Those purposes must be relevant to the regulatory requirement to develop and maintain efficient, co-ordinated and economical systems for the distribution of electricity and gas;
 - b) Identify and quantify the **benefits** that could be delivered for different groups through access to this data (e.g. network benefits, consumer benefits, future development of smart grids etc.);
 - c) Demonstrate that practices, procedures and systems can be implemented to **aggregate or otherwise treat the data** to ensure as far as is reasonably practicable that it can no longer be associated with an individual premises³⁵;

³⁵ A fuller description of this criterion is included in licence conditions.

- d) Explain clearly how, where, when and by whom **collation, maintenance, usage and deletion** of the data would take place securely and cost-effectively;
- e) Show that consideration has been given to **best available techniques** for minimisation, aggregation, anonymisation and/or other treatment of data;
- f) Be accompanied by a **Privacy Impact Assessment**, as recommended by the Information Commissioner's Office.

4.17 Ofgem has said that it will consider in due course how to exercise its power to approve plans from 2015 onwards.

Access to other data

4.18 The Government recognises that network operators are continuing to develop their thinking on the need for more detailed energy consumption data from individual premises (including six-minute gas data), the limitations of aggregated data, and potential alternative approaches (such as the use of peak demand data). However, whilst it is understood that there may be some benefits of access to energy consumption data from individual premises in future, the Government believes on balance that it would be premature to open up significantly the framework for network operator access to energy consumption data at this stage. Network operators would be expected to develop further evidence and make the case for access to energy consumption data from individual premises, taking particular account of privacy issues, before any decisions could be taken about opening up the framework. The case for access to energy consumption data from individual premises would be considered as part of the planned broader review of the data access and privacy framework (see Chapter 3).

4.19 It is also worth being clear on several other aspects of the framework, which will provide network operators with flexibility in terms of the data that they will in any case be able to access:

- The data access and privacy framework would apply only in relation to energy consumption data: it will not introduce any restrictions on network operator (or supplier) access to technical data, such as voltage reads (although clearly network operators and suppliers would need to satisfy any other conditions of access via the DCC, and comply with the requirements of the Data Protection Act, as appropriate);
- Gas network operators could access aggregated six-minute energy consumption data, in the same way as proposed for half-hourly data, provided that it was used for regulated purposes and the relevant conditions around approval of plans were met;
- Network operators could access monthly energy consumption data from individual households for regulated purposes without the need for consent, in the same way as suppliers will be able to; and
- The framework does not prevent network operators from accessing more detailed energy consumption data from individual households where the consumer has given their explicit consent to this. This would allow network operators to have more visibility of loads in particular cases such as where electrical vehicle charging is involved.

4.20 The Government is keen to ensure that network operators continue to make progress on their thinking in relation to their requirements for smart meter data. In order to ensure that, in

line with their regulatory obligations, network operators are maximising benefits by taking full advantage of the opportunities of smart meter data, Ofgem will, as usual, monitor progress.

Access by National Grid

4.21 In response to consultation, National Grid Electricity Transmission (NGET), in its capacity as the National Electricity Transmission System Operator, stated that it would also wish to be able to access energy consumption data in the same way as network operators. The Government's understanding is that National Grid and other transmission companies may only need to access high-level aggregated data, which they may be able to access more easily directly from network operators. In addition, National Grid is currently not designated as a Smart Energy Code Party, but has been encouraged to develop its case to be one and revert with this in due course. For these reasons, the Government has decided not to extend the framework for network operator access to data to National Grid or other transmission companies at this stage, and encourages National Grid to develop its case and work with distribution network operators to understand better how any potential data needs could be met. This position could be reconsidered as part of the broader review of the data access and privacy framework.

Implementation

Consultation proposals

4.22 In the consultation document, the Government proposed that the framework for network operator access to data should be implemented through licence conditions, but recognised that some aspects of it may need to be reflected in other documents – particularly if it were necessary to establish rights for network operators to access consumption data from consumers.

Summary of responses to consultation

Consultation Question	
17.	Do you agree with the proposed approach to implementation of requirements relating to network operator access to data? What would be the practical implications of the proposed approach to implementation, and how could any problems be overcome?

4.23 Consistent with the thrust of responses to Question 16, a good degree of doubt was cast over the workability of the proposal that in the absence of approved plans for aggregation, network operators should seek consent to access consumer data via suppliers. In particular, it was felt by many that it would not be practicable for network operators to have to manage individual consumer preferences, or for suppliers to be responsible for procuring rights on behalf of network operators.

4.24 There was very limited comment on the proposed use of licence conditions in principle – with two respondents supportive and one against. Another comment was that the best way of notifying consumers of network operator rights to data was through the connection agreement – which might bring about a need for changes to National Terms of Connection and the Distribution Connection and Use of System Agreement (DCUSA).

Consultation Question

- | | |
|------------|--|
| 18. | Do you agree that the licence conditions as drafted (including the proposed amendment to supply licence condition 22) would effectively implement the proposed policy approach to network operator access to data? Do any specific areas of the draft licence conditions need amendment or clarification? |
|------------|--|

4.25 Most respondents either did not comment on this question, or pointed to their answers to Questions 16 and 17, noting that the licence conditions would need amending if the policy position changed.

- 4.26 Responses that were received raised a few detailed issues, including suggestions that:
- It was unclear whether or not the proposed changes to Supply Licence Condition 22 were necessary for gas transporters;
 - Clarity was needed on certain terms such as “relevant condition” and “quantity of electricity”;
 - The relevant provision needed to be broadened out to enable network operators to investigate theft upstream of premises; and
 - The drafting relating to requirements for approval of plans for aggregation was too restrictive.

Consultation Question

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|------------|--|
| 19. | Is there a need for any consequential changes to existing licence conditions or codes to ensure that the proposed requirements on network operators work as intended? |
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4.27 Most respondents did not respond to this question, with a small number saying that they were not aware of any consequential changes that needed to be made. However, one network organisation and one supplier felt that significant consequential changes to industry codes, other aspects of licences, related documents and processes may be required – with one suggestion that a co-ordinated package of work to examine this was required. Specific documents that were highlighted included the Balancing and Settlement Code (BSC), Distribution Connection and Use of System Agreement (DCUSA), Uniform Network Codes (UNC), Data Transfer Service Agreement (DTSA), Master Registration Agreement (MRA) and Supply Point Administration Agreement (SPAA).

Consultation Question

- | | |
|------------|---|
| 20. | Do you agree that technical data (such as electricity quality and voltage readings) which does not show energy consumption data should be outside the scope of the Government’s data access and privacy framework? |
|------------|---|

4.28 There was a good degree of agreement that technical data should be outside the scope of the Government’s data access and privacy framework – in other words, that the Government should not seek to regulate access to this data in the way proposed for energy consumption data. Some commented that it was difficult to see how technical data such as

that described could generate privacy concerns. One supplier said that suppliers would also need access to other types of data that was not energy consumption data, such as alerts and alarms, and queried where this fitted in the overall framework.

4.29 It was, however, noted that, whatever its status in the Government's data access and privacy framework, responsibility for determining whether technical (or any other) data constituted personal data according to the Data Protection Act lay with the party accessing it, and network operators would need to take legal advice on this. One consumer group also suggested that there may be benefit in enabling consumers to access their electricity voltage data to monitor quality of supply.

Government conclusions

Use of licence conditions

4.30 The framework for network operator access to data will be implemented through licence conditions, as originally proposed. Finalised licence conditions are attached at Annex A.

4.31 As noted earlier in this Chapter, the alternative option – in the absence of approved plans for aggregation - of applying the same framework as proposed for suppliers, is considered to be unworkable and the relevant provisions have been removed from the licence conditions.

4.32 In the same way as for suppliers, the licence conditions also enable network operators to access energy consumption data for trial purposes provided the consumer does not object. In light of consultation responses, the licence condition enabling network operators to use energy consumption data for the purpose of detecting and preventing theft has been adjusted to refer to theft from that part of the network through which the premises are being supplied. The criterion for approval of network operator plans for aggregation has also been adjusted slightly to ensure that it is deliverable and not unduly onerous.

4.33 As proposed in the consultation document, in order to establish in-principle rights for network operators to access energy consumption data directly from consumers, changes will need to be made to Supply Licence Condition 22 in the gas supply licence, and to the National Terms of Connection (via a modification to the Distribution Connection and Use of System Agreement (DCUSA)) in respect of electricity. These changes will be made in due course, in advance of network operators being able to access energy consumption data directly from consumers via the DCC.

Consequential changes

4.34 The Government recognises that other consequential changes may be needed to industry codes and agreements to reflect the arrangements for network operator access to data. The Government will continue to engage closely with industry stakeholders, including other code experts, to ensure that these consequential changes will be considered, developed and implemented as necessary.

Application of the framework

4.35 The licence conditions on network operators would come into force following successful completion of the Parliamentary process. However, in practice, network operators would be unable to access smart meter energy consumption data remotely and directly from consumers before the DCC is established. In advance of the DCC being available, network operators would continue to be able to access any data that was required via suppliers,

provided that this was in line with the licence conditions, and depending on what arrangements suppliers had in place with consumers about this.

Technical data

- 4.36 As made clear earlier in this Chapter, and in line with the views expressed in consultation responses, the data access and privacy framework would apply only in relation to energy consumption data: it will not introduce any restrictions on network operator (or supplier) access to technical data, such as voltage reads (although clearly network operators and suppliers would need to satisfy any other conditions of access via the DCC, and comply with the requirements of the Data Protection Act, as appropriate).
- 4.37 As noted in Chapter 1, technical data may still constitute personal data according to the Data Protection Act, and in these cases, the Data Protection Act would apply.

Chapter 5 – Third party access to data

This chapter sets out the Government’s conclusions on third party access to smart meter energy consumption data. It also covers Government and other uses of data.

The ability for domestic consumers to share their energy consumption data with third parties will help to deliver benefits and be important in promoting innovation and competition in the developing energy services market. The Government wishes to ensure that there are appropriate arrangements in place to facilitate third parties’ transactions with consumers and the Data and Communications Company (DCC), and that consumers are properly protected.

Arrangements around third party access to data will be set out in the Smart Energy Code, to which all DCC users will have to accede. The arrangements will ensure that third parties only request data where they have consumer consent, and that consumers are kept informed about the use of their data. Third parties will be audited against these requirements.

Introduction

5.1 The term “third party” generally refers to non-licensed parties, such as energy services companies and switching sites. However, suppliers wishing to provide services to a customer for whom they are not currently the registered supplier (for example, for a tariff quote) should also be considered to be a third party for these purposes.

5.2 The consultation document explained that if consumers have already accessed their own energy consumption data themselves (for example, by capturing it via a consumer access device connected to the Home Area Network), then they would be able to send it on directly to third parties (such as energy services companies and switching sites), should they wish to. The Government is not introducing any new measures in relation to these direct exchanges between consumers and third parties. However, it is important that consumers are clear about what is involved when accessing data via the HAN, since this could include more granular data which prompts the greatest privacy concerns, and the Government will therefore continue to discuss good practice with manufacturers of devices which enable such access. Proposals for a secure and consumer-friendly method of linking consumer access devices to the HAN were set out in the consultation document on the second version of the Smart Metering Equipment Technical Specifications (SMETS)³⁶.

³⁶ DECC, Smart Metering Implementation Programme. Consultation on the second version of the Smart Metering Equipment Technical Specifications <http://www.decc.gov.uk/assets/decc/11/consultation/smart-metering-equipment-technical-specifications-2/6129-consultation-second-version-smets.pdf> (August 2012)

5.3 In terms of enabling third parties to access energy consumption data remotely, via the Data and Communications Company (DCC), the Government proposed that it would be necessary to introduce certain measures to ensure that consumers' interests are protected.

Verification of the individual consumer

Consultation proposals

5.4 It was proposed in the consultation document that when accessing data remotely via the DCC, third parties should be required to take steps to verify that the request for their services had in fact come from the individual living in the premises in question (and not from someone else purporting to be that person).

5.5 A particular model – using a Customer Identification Number (CIN) – was put forward. On receipt of the request for data access from a third party, the DCC would generate a four-digit number (a CIN) and send it to the consumer's meter (and/or In-Home Display). The consumer would send this CIN on to the third party (for example, by entering it on a website), who in turn would send it back to the DCC. Once the loop had been completed, the DCC could grant access to the third party. A variant on this approach would involve the DCC sending the CIN to both the consumer and the third party, with the third party responsible for checking that the CINs matched.

Consultation Question

21.	Do you agree with the proposal to require third parties to take steps to verify that the request for third party services has come from the individual living in the premises in question?
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5.6 There was a good degree of support from across stakeholder groups for the principle of requiring third parties to take steps to verify the individual, as part of broader obligations in the Smart Energy Code. A couple of suppliers suggested that not having such a requirement could put the reputation of the Smart Meters Programme at risk. Others agreed in principle, but were looking for more detail on precisely how the requirement would work in practice, so that it was both secure and not a barrier to entry. One technical solutions company felt that the proposal added a further layer of complexity and argued that the DCC should manage all access requests.

5.7 A query was raised about what would happen in the case of landlords – for example, whether landlords would be able to see consumption data relating to their tenants, or verify a request for third party services on their tenants' behalf?

Consultation Question

22.	Do you agree that the Customer Identification Number (CIN) process would enable third parties adequately to demonstrate verification of the individual consumer? Which of the two CIN models described is preferable? Would any alternative approach be more effective?
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5.8 Most respondents felt that the Customer Identification Number (CIN) process would be a way of verifying the individual. Limitations of CIN – for example, that it would not necessarily

verify the bill payer – were recognised. Several respondents were unclear about whether capability for CIN was currently included in SMETS.

- 5.9 Of the two potential models put forward, a majority preferred the first, where the Data and Communications Company (DCC) would check that the CIN loop had been completed through the consumer and third party. It was felt that this was more robust and offered greater protection to the consumer. Several commented that the second model was unacceptable, because it relied on the third party itself matching CINs (i.e. the third party simply had to declare to the DCC that the CINs did match, which would be easy to do).
- 5.10 A range of stakeholders felt that, whilst robust, the CIN process might not be very consumer-friendly – for example, if meters were inaccessible, if consumers were looking to access third party services while away from home, or if the process took a long time. These groups urged consideration of alternative options, which might be simpler, such as using the current meter reading from the IHD or meter, or password or email verification, instead of a CIN.
- 5.11 Other comments were that there was a need to differentiate between use of CIN for short-term and ongoing requests, that a CIN should cease on change of supplier, and that in order to prevent it becoming identifiable, the CIN should change every 48 hours.

Government conclusions

- 5.12 The Government is clear that there should be some form of obligation on third parties to verify that the request for their services has come from the individual living in the premises in question. This obligation would complement others, such as the requirement on third parties only to request data from the DCC where consent has been obtained, as described later in this chapter.
- 5.13 Capability for smart meters and In-Home Displays to display Customer Identification Numbers has been built into SMETS, and data and communications services are being procured on the basis that the DCC will need to be able to send CINs. However, the Government has not yet decided whether the CIN approach should be purely optional, as one way for third parties to verify the individual, or whether it should be mandatory. There are also questions about whether the DCC or the third party should be responsible for matching CINs, and how the CIN process itself should be triggered (for example, whether successful completion of the process would be a pre-requisite for accessing data). Related issues that would need addressing are how verification of the individual would work in rented properties, and whether verification would count on a one-off or ongoing basis.
- 5.14 The Government will continue to consider the possible approaches in this area, and intends to finalise the position so that appropriate requirements can be included in Stage Two of the Smart Energy Code, due to be published in 2013.

Verification that consumer consent has been properly obtained

Consultation proposals

- 5.15 Verification of the individual consumer, as discussed above, could essentially only confirm at a single point in time that a third party was “talking” to the right person when accessing data and delivering a service. For example, use of a Customer Identification Number would only show that someone with access to the meter point (which in many cases may be outside the locked portion of a premises) had relayed a number back to the DCC or the third party.

Whilst this offers some degree of implicit assurance that the consumer was in communication with the third party, it does not necessarily verify that the consumer understood fully what data the third party would be accessing, for which particular purpose(s), or that the consumer had given their consent to this.

5.16 For this reason, the Government proposed in the consultation document a separate requirement that any third party accessing data via the DCC had to confirm, or “self-certify”, that it had properly obtained consent from the consumer. There would be robust audit arrangements to ensure that third parties were meeting the requirement.

Summary of responses to consultation

Consultation Question	
23.	Do you agree with the proposal to require third parties wishing to access data via the DCC to self-certify that where it is required, customer consent has been properly obtained?

5.17 Most respondents generally supported the concept of self-certification, but felt that this was a minimum requirement, which would need to be coupled with other measures and safeguards, such as the CIN process, a requirement to maintain records, a robust independent audit of compliance, and robust criteria for third party accession to the Smart Energy Code (including security checks).

5.18 Two suppliers felt that self-certification was insufficient, with one of those expressing concerns that breaches might only be detected long after the event, by which point damage to the programme might have been done.

Government conclusions

5.19 Third parties will be required to ensure that before accessing data remotely via the DCC, they have obtained consent from the consumer. They will also have to keep records to demonstrate that they are complying with this requirement. Provision for this will be included in the Smart Energy Code, draft legal text for which was published for public consultation in November 2012³⁷.

Consumer awareness of ‘active’ consents

Consultation proposals

5.20 In the consultation document, the Government proposed that third parties should be required to provide annual reminders to domestic consumers about the data that they were accessing, and how consumers could change arrangements should they wish to, where data was being accessed on an ongoing basis. Equivalent requirements were proposed for suppliers (see Chapter 3).

Summary of responses to consultation

³⁷ DECC, Smart Metering Implementation Programme. Stage 1 of the Smart Energy Code – a Government response and a consultation on draft legal text

http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (November 2012)

Consultation Question

24. Do you agree with the proposal to require third parties to provide annual reminders to customers from whom they are collecting data on an ongoing basis?

- 5.21 The vast majority of respondents from across stakeholder groups agreed with this proposal, with several pointing out that it was consistent with the approach proposed for suppliers. One respondent representing the non-domestic sector was unconvinced about the usefulness or need for the measure.
- 5.22 In supplementary comments, it was suggested that the reminder should include an explanation of how consumers could change their data access arrangements, and that they should be able to exercise this choice at any time – and of course that the annual reminder should not deprive customers of the right to information at other times. An energy services company and a consumer group went further, arguing that consent should be time-bound, such that third parties should actively contact customers annually to invite them to renew the contract, or otherwise stop collecting the data.
- 5.23 A few respondents queried what would happen on change of tenancy and change of supplier, with the general assumption being that third party access would cease after these events.

Government conclusions

- 5.24 As explained in Chapter 3, in light of consultation responses, the proposed requirement on suppliers will be adjusted so that rather than specifying that reminders must be issued once per year, suppliers will be required to ensure that consumers are reminded about the collection of their data at appropriate, regular intervals. In order to ensure a level playing field between suppliers and third parties, the requirement for third parties to issue reminders to their customers will be adjusted in the same way. Third parties will also have to keep records to demonstrate that they are complying with this requirement. The way in which the requirement was being met would be assessed as part of the broader review of the data access and privacy framework.
- 5.25 In the same way as for suppliers, third party access to data from a particular smart meter should cease if that consumer moves house. This could be achieved by a “flag” being put on the smart meter to mark the change of tenancy event, although this would rely on the consumer informing their energy supplier that they were moving house.

Implementation

Consultation proposals

- 5.26 The Government proposed in the consultation document that the three requirements relating to third party access to data – verification of the individual consumer, verification that consumer consent has been properly obtained, and reminders – should be set out in the Smart Energy Code. It was also suggested that audit arrangements may be required to ensure that third parties were complying with the requirements, and that the SEC Panel could be charged with appointing an independent auditor to conduct audits on a random sampling basis.

Summary of responses to consultation

Consultation Question

25. Do you agree with the proposed use of the Smart Energy Code to set out requirements relating to third party access to data?

5.27 All respondents to this question agreed that the Smart Energy Code was the appropriate place to set out arrangements relating to third party access to data. However, some (but not all) suppliers went further, arguing that requirements on energy suppliers should sit in SEC, too. In a similar vein, Ofgem warned against unjustified differential treatment between licensed and unlicensed parties. Conversely, one of the consumer groups and the Information Commissioner's Office agreed that third party and energy supplier usage of data was different and so justified a different approach to implementation.

Consultation Question

26. Do you have any comments on the proposed option of the SEC Panel arranging an independent audit function to check third party compliance with data access requirements? Would any alternative approach be more effective?

5.28 There was a good degree of support for the proposal in the consultation document that the SEC Panel should arrange an audit function to check third party compliance with data access arrangements. Common themes from responses were that the audit should be independent, public and transparent, on a random sampling basis (with no need to give notice), informed by records and backed up with robust remedies for breach (such as withdrawal of DCC services). Several queried precisely what remedies would be applicable where a breach was identified, and what the compliance/enforcement regime would look like in this instance.

5.29 A couple of respondents felt that suppliers should also be subject to audit – particularly where they were accessing data for non-supplier related reasons. Another wanted to ensure that suppliers' influence over the SEC Panel was proportionate. One technical solutions company felt that whilst it was right for the SEC Panel to arrange the audit, the Government should be more directive about the checks to be made. Other individual views were that the costs of audit should be borne by the target of the audit, and that consumers should be able to draw complaints to attention of the SEC Panel. Questions were also raised about what redress would be open to consumers in the event of breach by a third party, and about whether data would be available under the Regulation of Investigatory Power Act (RIPA).

5.30 There was a view that there needed to be robust checks on entry to SEC (for example in meeting recognised security standards), although some respondents also warned against this process becoming a barrier to entry, particularly for new entrants to the market.

Government conclusions

5.31 Data access and privacy requirements on third parties, as set out in this chapter, will be implemented through the Smart Energy Code. Third parties will have to keep records to demonstrate that they are complying with the requirements. It is proposed that the Code will also include provision for the SEC Panel to appoint an independent auditor to audit

compliance by third parties. A draft of the Code was published for public consultation in November 2012³⁸. All users of the DCC, including licensed energy suppliers, will need to accede to the Smart Energy Code.

- 5.32 Where energy suppliers are acting as third parties (for example, to provide energy services to a customer for whom they are not currently the registered supplier), then they will also be required to comply with the full set of data access and privacy requirements in the Code (as set out in this Chapter), and be subject to audit by the SEC Panel, in the same way as other third parties.
- 5.33 As explained in Chapter 3, even where they are acting in their capacity as registered supplier for a premises, energy suppliers would be required to meet the basic requirement in the Smart Energy Code only to request data from the DCC where they had the appropriate permission (as set out in the licence), and they would be subject to audit against this requirement in the same way as other third parties.
- 5.34 Alongside requirements in the Smart Energy Code, third parties (and any other DCC user) would need to meet the requirements of the Data Protection Act, and any other relevant legislation, to the extent that these applied.

Government and other uses of data

- 5.35 The Government has asked energy suppliers to provide information on the roll-out of smart meters in order to monitor and evaluate the roll-out and inform the benefits realisation. A consultation document published in May 2012 sought views on:
- Draft licence conditions that would require suppliers and network operators to submit information and data to DECC on plans, progress and impacts (including costs and benefits) of smart metering;
 - How DECC intends to exercise those powers;
 - Draft licence conditions that would allow Ofgem to request information from suppliers to monitor compliance with smart metering obligations; and
 - General issues, including: the cost burden to suppliers of the proposed reporting arrangements; the granularity at which data should be requested; and arrangements for publication of data and information³⁹.
- 5.36 A response to that consultation is being published alongside this document⁴⁰.
- 5.37 Smart meter data potentially offers more detailed information about energy usage than had previously been available, and this may lead to increased requests for access to personal data from law enforcement agencies (such as the police), for example under section 29 of the Data Protection Act. Data controllers should ensure they have procedures in place to deal with such requests and ensure appropriate safeguards are established before

³⁸ DECC, Smart Metering Implementation Programme. Stage 1 of the Smart Energy Code – a Government response and a consultation on draft legal text

http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (November 2012)

³⁹ DECC, Smart Metering Implementation Programme. Strategy and consultation on information requirements for monitoring and evaluation <https://www.decc.gov.uk/assets/decc/11/consultation/smart-meters-monitoring-evaluation/5454-strategy-cons-smart-meters-monitor-eval.pdf> (May 2012)

⁴⁰ DECC, Smart Metering Implementation Programme. Government Response to Consultation on Information Requirements for Monitoring and Evaluation

http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx (December 2012)

disclosure of data. Data controllers should take care to verify that the request is from an appropriate authority and be satisfied that the disclosure of the data is necessary for the purposes of crime prevention or detection, or the apprehension or prosecution of offenders.

Chapter 6 – Non-domestic sector

This chapter sets out the Government’s conclusions on smart metering data access and privacy in the non-domestic sector.

The variety of current and future metering arrangements in the non-domestic market arguably makes considerations about data access and privacy more complex than in the domestic sector. Nevertheless, similar issues around privacy (or commercial confidentiality), delivery of benefits, and promoting competition are important in the non-domestic sector, and data access is important for a similar range of parties, including non-domestic consumers themselves, suppliers, network operators and third parties.

Micro-businesses will be able to object to their supplier accessing more granular than monthly energy consumption data. The Government is also of the view that all non-domestic smart meter customers should have timely access to their own energy consumption data.

Background

6.1 As for domestic customers, the considerations around data access and privacy for non-domestic customers involve balancing potential concerns around privacy or commercial confidentiality, with promoting competition and delivering benefits. However, there are a number of factors which might point to the balance being struck in a different way for non-domestic customers, including: the extent of potential concerns about privacy and the need for protection; the fact that there is an existing market for energy services in the non-domestic sector; and the expectation that energy savings benefits will be proportionately higher than in the domestic sector, but with no In-Home Display (IHD) provided. The presence of advanced meters and the ability to opt out of the Data and Communications Company (DCC) also creates a more complex market structure in the non-domestic sector.

6.2 The consultation document discussed whether any intervention in data access and privacy was necessary in four key areas of the non-domestic sector:

- Non-domestic customer and third party access to energy consumption data;
- Supplier access to non-domestic customers’ energy consumption data;
- Network operator access to non-domestic customers’ energy consumption data; and
- Building consumer understanding of the options.

Non-domestic customer and third party access to data

Consultation proposals

6.3 The consultation document made clear that all customers (domestic and non-domestic) should be able easily to access their own energy consumption data and share it with third parties, should they choose to. However, it was recognised that in the non-domestic sector

the range of different approaches to metering (“Advanced”, opted in, opted out) and meter providers (suppliers, service providers, meter operators) made this more complex.

6.4 It was noted that Supply Licence Condition 12 contains requirements that Advanced Meters must be able to provide measured consumption data for at least half-hourly time periods (electricity) or hourly time periods (gas), and that customers (or their nominated agents) should, on request, have timely access to that data. The Government said that it was not proposing any further arrangements in this area, but welcomed views.

6.5 For meters opted in to the DCC, the Government said that the same basic arrangements would apply as in the domestic sector (i.e. consumer access over the Home Area Network, and third party access via the DCC). For meters opted out of the DCC, a question was posed about whether it would be appropriate to require suppliers to provide third parties with energy consumption data on request of the customer.

Summary of responses to consultation

Consultation Question

27.	Is there a need for any specific arrangements to enable non-domestic customers to allow third parties to access their data? Should such arrangements apply only to opted-in smart meters or more widely?
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6.6 There was a body of support for the suggestion that suppliers who have opted out of the DCC should be required to contract with their meter operators to provide energy consumption data to customers in a standard format, and to whomever the customer instructs. However, several respondents took the opposite view that arrangements for opted-out meters should be left to customers to negotiate with the appropriate provider. One non-domestic trade association noted that, as data services from opted-out meters were likely to be provided by third parties, suppliers would not control access (so it would make no sense to put a requirement on them). One supplier commented that the third party market was already functioning and warned against extra arrangements.

6.7 Of service providers, one argued for third party access via the HAN or DCC, while another added concerns about DCC charging arrangements for third parties. Two respondents felt that third parties accessing data via the DCC needed the same assurance process as in the domestic sector. One supplier felt that only applying rules to opted-in meters could create confusion and a two-tier market.

6.8 A trade association and a consumer group raised the problem of different data formats, which third parties could have difficulty in accessing – another respondent suggested that requirements in that area could be set on meter operators via suppliers. One suggestion from a trade body was that Ofgem should have a role in ensuring that suppliers did not put barriers in the way of third party access. Consumer groups were concerned about the scope for charging for data.

Government conclusions

6.9 No changes are proposed to existing arrangements for Advanced Meters – including the requirement in Supply Licence Condition 12 that Advanced Meters (including those installed under the relevant exceptions to the main roll-out obligation) must be able to provide

measured consumption data for at least half-hourly time periods (electricity) or hourly time periods (gas), and that customers (or their nominated agents) should, on request, have timely access to that data.

6.10 For other meters, it is difficult to tell whether or not there is a problem in relation to consumer and third party access to energy consumption data, and if so, the extent of the problem:

- For opted-in meters, consumers would be able to access their energy consumption data over the Home Area Network (via a consumer access device) and third parties would be able to access data via the DCC;
- Opted-out meters would still need to be SMETS-compliant. The consultation on the second version of SMETS proposes that there will be a standard HAN, even for opted-out meters, which will mean that the consumer can get access to their energy consumption data; and
- For opted-out meters provided by a service provider, the assumption is that the consumer would anyway have made separate arrangements with that provider around access to data, so there should be little need for any additional intervention.

6.11 Nevertheless, the Government feels that there would be merit in extending the provision for Advanced Meters (that consumers should have “timely access” to half-hourly electricity consumption data and hourly gas consumption data) to all opted-in and opted-out smart meters in the non-domestic sector, as a minimum requirement. The Government’s view is that it would be inappropriate not to extend to non-domestic customers with smart meters the same minimum rights that those with Advanced Meters enjoy. This could also help ensure consumer engagement with the metering system, given that an IHD will not be mandatory for non-domestic customers. The Government will consider how best to give effect to this, for instance, in tandem with any Operational Licence Conditions, on which it has sought views as part of the consultation on the second version of SMETS.

6.12 The Government also intends to consider further with both suppliers and energy service providers how third party access might be achieved through data rules in existing industry agreements, such as the Automated Meter Reading Service Provider Code of Practice (ASPCoP), which it is understood already has some provisions for third party access.

6.13 Third parties accessing data from non-domestic meters via the DCC would need to comply with general requirements in the Smart Energy Code. However, it may be unnecessary at this stage to apply wholesale the same level of specific requirements around third party access as are proposed in the domestic sector (set out in Chapter 5). In particular, requiring use of the Customer Identification Number (CIN) process may be particularly difficult in the non-domestic sector, because the account holder is less likely to be on the premises. It may, however, be appropriate to mirror the requirement that before requesting access to consumption data, third parties have to have received consumer consent. The Government will consider this further ahead of any obligations being placed in the Smart Energy Code.

Supplier access to non-domestic customers’ data

Consultation proposals

6.14 The consultation document explained that on the one hand, in the absence of protections under the Data Protection Act for many non-domestic customers, there may be a case for

sector-specific provisions to ensure that the position around supplier access to energy consumption data was clear. In addition, for micro-businesses, many of the same competition considerations may apply as for domestic customers. On the other hand, given that privacy concerns were expected to be lower in the non-domestic sector, and that access to granular energy consumption data was likely to be more important in this sector to enable provision of indirect feedback and potentially time-of-use tariffs, it was felt that there may be a case for a more permissive framework (for example, a framework that allowed non-domestic suppliers to access half-hourly energy consumption data, unless the customer objected). There was also a question as to whether the approach taken should apply only in respect of smaller non-domestic sites that used the DCC, or apply to other non-domestic sites as well.

6.15 Given that Advanced Meters are exempt from the roll-out obligation and part of an existing landscape of metering arrangements, the position taken in the consultation document was that it would not be appropriate to restrict supplier access to energy consumption data from these meters. However, this may create a concern that restricting supplier access to energy consumption data from non-domestic customers using SMETS-compliant meters could create perverse incentives on suppliers to install Advanced rather than smart meters. Similarly, if a more restrictive approach were to apply to meters that were opted in to the DCC, then this could create perverse incentives on suppliers to opt out of the DCC.

Summary of responses to consultation

Consultation Question

28.	What would be the advantages and disadvantages of applying the data access framework proposed for domestic customers equally to the non-domestic sector? Should this apply only to opted-in smart meters or more widely?
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6.16 There was some support for replicating the domestic data access framework in the non-domestic sector, some suggestions that it could be applied in modified form, and some outright opposition. Most suppliers opposed the idea, although one was supportive, and another could accept it if the data access framework were more permissive. One trade organisation emphasised the long experience of non-domestic suppliers handling data for customers for whom confidentiality could be important, and the absence of any complaints about data-handling/privacy. Others made the more general point that the non-domestic market had functioned well for years, and did not need changing.

6.17 Network organisations drew a distinction between opted-in meters and micro-businesses, which could have the same arrangements as in the domestic sector, and opted-out and Advanced meters (i.e. larger customers) where similar arrangements would be unnecessary and a more permissive framework would be appropriate. Similarly, a consumer group said that as a general rule, small businesses should be offered the same level of protections as domestic customers. It was argued that small businesses face similar challenges to householders when it comes to engaging with services and becoming more energy efficient, and face similar privacy issues where they live in the same premises as their business.

Government conclusions

6.18 The Government recognises the mixed views in consultation responses about whether to transpose the domestic framework into the non-domestic sector, and accepts that there were some reservations about doing so.

6.19 However, on balance, the Government feels that a basic level of protection is justified and necessary for micro-businesses, given that there are similarities between micro-businesses and domestic premises. In many cases, privacy concerns may be as acute for micro-businesses as for domestic consumers, because there will be fewer people in the organisation and because the premise itself may be shared living/working space. Micro-businesses may also be less able to negotiate different arrangements with alternative providers, and so offering suppliers unfettered access to their energy consumption data may inhibit competition. Information that relates to a business and its activities can be personal data under the Data Protection Act, if it can be related to or identifies an individual, and this is more often the case when the business is a sole trader or a smaller enterprise where the information may be easily linked to an individual.

6.20 Suppliers of non-domestic smart meters will therefore be prohibited in licence from accessing energy consumption data from micro-businesses at a level more granular than monthly, unless the supplier has given the micro-business advance notice that it intends to do so and the micro-business has not objected. This mirrors the type of provision made around supplier access to energy consumption data in the domestic sector, but is set at a more permissive level (suppliers in the domestic sector need explicit consent to access energy consumption data at a level more granular than daily). Finalised licence conditions are attached at Annex A.

6.21 More generally, the sense is that the issues around data access in the non-domestic sector may have more to do with competition than privacy per se – involving issues which go beyond the scope of the data access and privacy framework (for example, the bundling together of meter provision and other services). The Government will remain open to further evidence and learning about supplier access to data in the non-domestic sector, and reassess the position on data access and privacy as part of the broader review of the framework.

Network operator access to non-domestic customers' data

Consultation proposals

6.22 For meters opted in to the DCC, the assumption in the consultation document was that network operators would be able to access consumption information from non-domestic customers via the DCC. A question was posed about whether any restrictions on this were necessary, as were being proposed in the domestic sector. For opted-out and advanced meters, the position in the consultation document was that suppliers would be expected to honour any obligations they currently had to pass data to network operators, and views were invited on whether any additional arrangements were necessary.

Summary of responses to consultation

Consultation Question

29.	Is there a need for any additional obligations to ensure that network operators can gain access to non-domestic customers' energy consumption data and other data, even where meters are opted out of the DCC, or in the case of advanced
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	meters? What would be the practical challenges in facilitating such access?
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6.23 Respondents came closest to consensus on this question. There was broad agreement that access to energy consumption data from opted-out or Advanced Meters could be useful, especially where there was a concentration of non-domestic premises within a network area. However, there was also acceptance that access to such data, where requirements went beyond those in current rules, would carry costs, and that arrangements for cost recovery would be needed. Some network operators were wary of requirements to provide data to them, as that would also expose them to costs that could exceed benefits – although two network operators felt that it would be reasonable to require suppliers to provide network operators with energy consumption data on request, or where this was reasonably required to fulfil regulated duties. One supplier felt that where network operators needed data from customers not using the DCC, the network operators should clearly explain to those customers the benefits of them having that data.

Government conclusions

6.24 The Government does not at this stage propose introducing any restrictions on network operator access to energy consumption data from opted-in non-domestic meters via the DCC. However, any network operators accessing data remotely via the DCC would be subject to the requirements of the Smart Energy Code, in the usual way. And while there would be no formal obligation on network operators to aggregate non-domestic customers' energy consumption data, network operators would be expected to consider the potential for such an approach in developing their plans to minimise any non-domestic customers' potential concerns.

6.25 Consistent with the views expressed in response to consultation, the Government feels that network operator access to non-domestic data from opted-out meters should remain a matter for agreement between networks and suppliers or energy service providers. The Distribution Connection and Use of System Agreement (DCUSA) provides arrangements that guarantee a minimum set of data to network operators, and these are likely to suffice in the short term. In the longer term, if information at individual site level or at a group of sites within a small geographical area became essential for network operators, then network operators could negotiate appropriate terms with suppliers or service providers.

6.26 Going forwards, the Government will consider the necessity and merits of introducing at some point in the future, as smart grids develop, a requirement to ensure that energy consumption data of appropriate granularity is transferred to network operators.

Building consumer understanding

Consultation proposals

6.27 The consultation document explained that it would be important for non-domestic customers to understand properly the choices they have about smart metering, and the implications that such choices (for example, between Advanced or smart metering, and opting in or out of the DCC) might have on their ability to access their own energy consumption data or share it with third parties. Views were sought on the need for any form of information obligation on suppliers.

Summary of responses to consultation

Consultation Question

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| 30. | Is there a need for any form of information obligation on suppliers to ensure that non-domestic consumers are aware of the potential for particular choices to limit their ability to access their own data or share this with third parties? |
|-----|--|

6.28 There was a view that, on the whole, larger non-domestic customers are typically better-informed about smart metering than domestic customers. There was limited support for an information obligation, although a couple of suppliers were sympathetic to improving customer understanding in general terms, perhaps via the Consumer Engagement Strategy and Central Delivery Body, or as part of industry-wide work on enhancing understanding of benefits and how data is used and protected.

Government conclusions

6.29 It is unclear that there would be value in a new, self-standing information obligation on suppliers in respect of non-domestic data access. However, the provision of information in this area should be considered in the context of the Consumer Engagement Strategy, recognising that the Central Delivery Body will initially only focus on micro-businesses. The Government would in any case expect suppliers and other metering providers to explain to their customers the choices they have, and the implications of different choices (for example, what the implications of opting in or out are).

Implementation

6.30 The provisions giving micro-businesses choice about the levels of energy consumption data that suppliers can access will be implemented through licence conditions. Finalised licence conditions are attached at Annex A. Following successful completion of the Parliamentary process, these licence conditions would come into force at the same time as the requirements on suppliers in the domestic sector (i.e. at the end of June 2013).

6.31 The Government will consider how best to extend the provision for Advanced Meters (that consumers should have “timely access” to half-hourly electricity consumption data and hourly gas consumption data) to all opted-in and opted-out smart meters in the non-domestic sector, for instance, in tandem with any Operational Licence Conditions, on which the Government has sought views as part of the consultation on the second version of SMETS.

Annex A – Licence conditions

Modifications to the standard conditions of electricity supply licences

1. The standard conditions of electricity supply licences granted, or treated as granted, under section 6(1)(d) of the Electricity Act 1989 are—
 - (a) with effect from [date to be inserted], modified in accordance with paragraphs 2 and 3; and
 - (b) with effect from 30 June 2013, modified in accordance with paragraphs 4 and 5.

4. In standard condition 2—
 - (a) in paragraph 2.12, after “any power of the Secretary of State under standard condition 1, 12, 39, 40, 45 or 46 of this licence to give a direction”, insert “, and any power of the Secretary of State under standard condition 47 of this licence to give an approval,”;
 - (b) in paragraph 2.13 after “Any direction given by the Secretary of State under standard condition 1, 12, 39, 40, 45 or 46 of this licence”, insert “, and any approval given by the Secretary of State under standard condition 47 of this licence,”; and
 - (c) in paragraph 2.15, after “every direction given by the Secretary of State in relation to standard condition 1, 12, 39, 40, 45 or 46 of this licence”, insert “, and every approval given by the Secretary of State under standard condition 47 of this licence”.

5. After standard condition 46, insert—

“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; and
 - (b) 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; and
- (b) 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 at the relevant premises is a Prepayment Meter, and the Electricity Consumption Data:

- (i) is obtained only by virtue of the 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) 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**);
- (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 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 paragraph 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) the Micro Business Consumer has not objected to the licensee obtaining that Electricity Consumption Data for the purposes set out in the Notice.

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.”

Modifications to the standard conditions of gas supply licences

6. The standard conditions of gas supply licences granted, or treated as granted, under section 7A(1) of the Gas Act 1986 are—
- (a) with effect from [date to be inserted], modified in accordance with paragraphs 7 and 8; and
 - (b) with effect from 30 June 2013, modified in accordance with paragraphs 9 and 10.
9. In standard condition 2—
- (a) in paragraph 2.12, after “any power of the Secretary of State under standard condition 1, 12, 33, 34, 39 or 40 of this licence to give a direction”, insert “, and any power of the Secretary of State under standard condition 41 of this licence to give an approval,”;
 - (b) in paragraph 2.13 after “Any direction given by the Secretary of State under standard condition 1, 12, 33, 34, 39 or 40 of this licence”, insert “, and any approval given by the Secretary of State under standard condition 41 of this licence,”; and
 - (c) in paragraph 2.15, after “every direction given by the Secretary of State in relation to standard condition 1, 12, 33, 34, 39 or 40 of this licence”, insert “, and every approval given by the Secretary of State under standard condition 41 of this licence”.
10. After standard condition 40, insert—

“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; and
 - (b) 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; and
 - (b) 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 at the relevant premises is a Prepayment Meter, and the Gas Consumption Data:
 - (i) is obtained only by virtue of the 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 the licensee requires the Domestic Customer's consent to obtain that Gas 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 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) the Secretary of State has approved 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 (the **Trial**);
- (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 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) the Micro Business Consumer has not objected to the licensee obtaining that Gas Consumption Data for the purposes set out in the Notice.

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 Data means, in respect of a relevant premises or a micro business 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:

- (c) 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;

- (d) 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.”.

Modifications to standard conditions of electricity distribution licences

11. The standard conditions of electricity distribution licences granted, or treated as granted, under section 6(1)(c) of the Electricity Act 1989 are, with effect from [date to be inserted], modified in accordance with paragraphs 12 and 13.

13. After standard condition 10, insert—

“Condition 10A. Smart Metering – Matters Relating to Obtaining and Using Consumption Data

Application

10A.1 This condition applies in respect of each Domestic Premises supplied with electricity through the licensee’s distribution system (the **relevant premises**):

- (a) to which the electricity is supplied through an Electricity Meter that forms part of a Smart Metering System; and
- (b) in respect of which the quantity of electricity supplied is measured by that Electricity Meter.

Prohibition on obtaining consumption data

10A.2 Subject to paragraph 10A.3, 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.

10A.3 Paragraph 10A.2 does not apply where the requirements of any of paragraphs 10A.4, 10A.6, 10A.7 or 10A.8 are satisfied.

Exceptions to the Prohibition

10A.4 The requirements of this paragraph are that:

- (a) the licensee has submitted proposals to demonstrate to the satisfaction of the Secretary of State (or, in respect of proposals submitted after 31 December 2014, to the satisfaction of the Authority) that it can implement practices, procedures and systems which are designed to ensure that, so far as is reasonably practicable, the outcome described at paragraph 10A.5 is achieved;
- (b) the Secretary of State or the Authority (as the case may be) has given approval to the licensee to obtain, once it has implemented such practices, procedures and

systems, Electricity Consumption Data which relates to any one or more periods of less than one month; and

(c) the licensee has implemented those practices, procedures and systems.

10A.5 The outcome described at this paragraph is that, except to the extent that the requirements of any of paragraphs 10A.6, 10A.7 or 10A.8 have also been satisfied, Electricity Consumption Data which is obtained by the licensee and which relates to a period of less than one month ceases (through its aggregation with other Electricity Consumption Data or by means of any other process) to be data which is capable of being associated with a Domestic Customer at relevant premises.

10A.6 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 that:

(i) the licensee intends to obtain Electricity Consumption Data which relates to any one or more periods of less than one month;

(ii) the licensee requires the Domestic Customer's consent to obtain that Electricity Consumption Data; and

(iii) where the Domestic Customer gives consent he may withdraw it at any time; and

(b) the Domestic Customer has given explicit consent to the licensee obtaining that Electricity Consumption Data and such consent has not been withdrawn.

10A.7 The requirements of this paragraph are that the licensee has reasonable grounds to suspect that any person is taking, from that part of the licensee's distribution system through which the relevant premises are supplied, a supply of electricity which is in the course of being conveyed by the licensee (for the purposes of this paragraph referred to as the suspected theft or abstraction of electricity), and it obtains Electricity Consumption Data which relates to any one or more periods of less than one month only for the purposes of investigating that suspected theft or abstraction of electricity.

10A.8 The requirements of this paragraph are that:

- (a) 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 month, 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**);
- (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

10A.9 The licensee must not use any Electricity Consumption Data which is obtained by it in respect of any relevant premises other than:

- (a) for the purpose of complying with a relevant condition or a relevant requirement;
- (b) where the requirements of paragraph 10A.7 are satisfied, for the purpose of investigating a suspected theft or abstraction of electricity;
- (c) where the requirements of paragraph 10A.8 are satisfied, for the purpose of the Trial.

10A.10 The licensee must not use any data which is derived (whether in whole or in part) from Electricity Consumption Data by means of practices, procedures and systems implemented in accordance with paragraph 10A.4 other than for the purpose of complying with a relevant condition or a relevant requirement.

Interpretation and Definitions

10A.11 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.

10A.12 In this condition:

- (a) any power of the Secretary of State or of the Authority to give an approval is a power:
 - (i) to give it to such extent, for such period of time and subject to such conditions as the Secretary of State or the Authority (as the case may be) thinks reasonable in all the circumstances of the case; and
 - (ii) to revoke or amend it (after consulting with the licensee) or give it again under that power;
- (b) any approval given by the Secretary of State or the Authority will be in Writing; and
- (c) every approval given by the Secretary of State or the Authority, which is in effect immediately before this condition is modified, has continuing effect for so long as it is permitted or required by or under the modified condition.

10A.13 For the purposes of this condition:

Electricity Consumption Data means, in respect of a relevant premises, the quantity of electricity measured by the Electricity Meter as having been supplied to the relevant premises.”.

Modifications to standard conditions of gas transporters' licences

14. The standard conditions of gas transporters' licences granted, or treated as granted, under section 7(2) of the Gas Act 1986 are, with effect from [date to be inserted], modified in accordance with paragraphs 15 and 16.
15. After standard condition 14, replace standard condition 15 (which is not presently used) with the following standard condition 15—

“Condition 15. Smart Metering – Matters Relating to Obtaining and Using Consumption Data

Application

- 15.1 This condition applies in respect of each Domestic Premises supplied with gas through the licensee's pipeline system (the **relevant premises**):
- (a) to which the gas is supplied through a Gas Meter that forms part of a Smart Metering System; and
 - (b) in respect of which the quantity of gas supplied is measured by that Gas Meter.

Prohibition on obtaining consumption data

- 15.2 Subject to paragraph 15.3, 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.
- 15.3 Paragraph 15.2 does not apply where the requirements of any of paragraphs 15.4, 15.6, 15.7 or 15.8 are satisfied.

Exceptions to the Prohibition

- 15.4 The requirements of this paragraph are that:
- (a) the licensee has submitted proposals to demonstrate to the satisfaction of the Secretary of State (or, in respect of proposals submitted after 31 December 2014, to the satisfaction of the Authority) that it can implement practices, procedures and systems which are designed to ensure that, so far as is reasonably practicable, the outcome described at paragraph 15.5 is achieved;
 - (b) the Secretary of State or the Authority (as the case may be) has given approval to the licensee to obtain, once it has implemented such practices, procedures and

systems, Gas Consumption Data which relates to any one or more periods of less than one month; and

(c) the licensee has implemented those practices, procedures and systems.

15.5 The outcome described at this paragraph is that, except to the extent that the requirements of any of paragraphs 15.6, 15.7 or 15.8 have also been satisfied, Gas Consumption Data which is obtained by the licensee and which relates to a period of less than one month ceases (through its aggregation with other Gas Consumption Data or by means of any other process) to be data which is capable of being associated with a Domestic Customer at relevant premises.

15.6 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 that:

(i) the licensee intends to obtain Gas Consumption Data which relates to any one or more periods of less than one month;

(ii) the licensee requires the Domestic Customer's consent to obtain that Gas Consumption Data; and

(iii) where the Domestic Customer gives consent he may withdraw it at any time; and

(b) the Domestic Customer has given explicit consent to the licensee obtaining that Gas Consumption Data and such consent has not been withdrawn.

15.7 The requirements of this paragraph are that the licensee has reasonable grounds to suspect that any person is taking, from that part of the licensee's pipe-line system through which the relevant premises are supplied, a supply of gas which is in the course of being conveyed by the licensee (for the purposes of this paragraph referred to as the suspected theft of gas), and it obtains Gas Consumption Data which relates to any one or more periods of less than one month only for the purposes of investigating that suspected theft of gas.

15.8 The requirements of this paragraph are that:

- (a) the Secretary of State has approved proposals submitted by the licensee for obtaining Gas Consumption Data which relates to any one or more periods of less than one month, 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**);
- (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

15.9 The licensee must not use any Gas Consumption Data which is obtained by it in respect of any relevant premises other than:

- (a) for the purpose of complying with a relevant condition or a relevant requirement;
- (b) where the requirements of paragraph 15.7 are satisfied, for the purpose of investigating a suspected theft of gas;
- (c) where the requirements of paragraph 15.8 are satisfied, for the purpose of the Trial.

15.10 The licensee must not use any data which is derived (whether in whole or in part) from Gas Consumption Data by means of practices, procedures and systems implemented in accordance with paragraph 10A.4 other than for the purpose of complying with a relevant condition or a relevant requirement.

Interpretation and Definitions

15.11 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.

15.12 In this condition:

- (a) any power of the Secretary of State or of the Authority to give an approval is a power:
 - (i) to give it to such extent, for such period of time and subject to such conditions as the Secretary of State or the Authority (as the case may be) thinks reasonable in all the circumstances of the case; and
 - (ii) to revoke or amend it (after consulting with the licensee) or give it again under that power;
- (b) any approval given by the Secretary of State or the Authority will be in Writing; and
- (c) every approval given by the Secretary of State or the Authority, which is in effect immediately before this condition is modified, has continuing effect for so long as it is permitted or required by or under the modified condition.

15.13 For the purposes of this condition:

Gas Consumption Data means, in respect of a relevant premises, the quantity of gas measured by the Gas Meter as having been supplied to the relevant premises.”.

Annex B – Summary of consultation questions

The following questions were included in the consultation on smart metering data access and privacy, published in April 2012.

Chapter 2 – Consumer access to data

Consultation Question	
1.	Do you have any comments on the arrangements for consumer access to data through the in-home display, Home Area Network or supplier? Do you foresee any problems with any of these mechanisms? If so, how could any problems be overcome?
2.	Is there a need for any additional arrangements to enable consumers easily to access their own energy consumption data directly from their supplier, free of charge and in a common format?

Chapter 3 – Supplier access to data

Consultation Question	
3.	Do you have any comments on the overall balance and workability of the proposals for supplier access to data?
4.	Do you agree with the proposed approach to defining supplier regulated duties, and that suppliers should be able to access monthly (or less granular) energy consumption data for these purposes without customer consent? Would the proposed approach restrict suppliers from undertaking any essential activity, or present any other problems?
5.	Do you agree with the proposal to enable suppliers to access daily (or less granular) energy consumption data, and use this for any purpose except marketing, provided that the customer is made aware of this and given the opportunity to opt out? What would be the implications for consumers and competition of this approach?
6.	Do you agree with the proposal to require suppliers to obtain explicit (opt-in) consent from the customer in order to access half-hourly energy consumption data?
7.	Do you agree with the proposal to require suppliers to obtain explicit (opt-in) consent from the customer in order to use energy consumption data for marketing purposes? Do you agree with the proposed definition of marketing,

Consultation Question	
	and in particular, that free advice should be excluded from the proposed definition?
8.	Do you agree with the Government's proposed exceptions to the basic framework for supplier access to data – to accommodate theft detection and prevention, accurate billing, customer queries and trials? Are there any other important uses of energy consumption data that need to be covered in exceptions to the basic framework?
9.	Do you agree with the proposal to require suppliers to explain clearly to customers what energy consumption data will be accessed, for which purposes, and the choices that customers have about this, and to provide annual reminders to their customers about this?
10.	Do you agree with the proposed approach to the way in which suppliers should facilitate opt-out and opt-in choice mechanisms?
11.	Do you agree with the proposed use of licence conditions to implement requirements relating to supplier access to data? Would any of the detailed arrangements, or any additional measures, be more effectively set out elsewhere, for example in an industry code, a standalone code of practice or guidance?
12.	Do you agree that the licence conditions as drafted would effectively implement the proposed policy approach to supplier access to data? Do any specific areas of the draft licence conditions need amendment or clarification?
13.	Is there a need for any consequential changes to existing licence conditions or codes to ensure that the proposed requirements on suppliers work as intended?
14.	Do you have any comments on the proposed approach to timing of implementation of proposals relating to supplier access to data?

Chapter 4 – Network operator access to data

Consultation Question	
15.	Do you agree with the proposal to allow network operators to access half-hourly energy consumption data, without customer consent, for the purposes of developing and maintaining efficient, co-ordinated and economical systems for the distribution of electricity and gas, if they have had plans for aggregation approved? To what extent would this approach address potential consumer concerns about privacy in relation to network operator access to data?
16.	If network operators' plans for aggregation have not yet been submitted or approved, do you agree that the proposed framework for supplier access to data

Consultation Question	
	should also apply to network operators? Would any alternative approach be more effective?
17.	Do you agree with the proposed approach to implementation of requirements relating to network operator access to data? What would be the practical implications of the proposed approach to implementation, and how could any problems be overcome?
18.	Do you agree that the licence conditions as drafted (including the proposed amendment to supply licence condition 22) would effectively implement the proposed policy approach to network operator access to data? Do any specific areas of the draft licence conditions need amendment or clarification?
19.	Is there a need for any consequential changes to existing licence conditions or codes to ensure that the proposed requirements on network operators work as intended?
20.	Do you agree that technical data (such as electricity quality and voltage readings) which does not show energy consumption data should be outside the scope of the Government's data access and privacy framework?

Chapter 5 – Third party access to data

Consultation Question	
21.	Do you agree with the proposal to require third parties to take steps to verify that the request for third party services has come from the individual living in the premises in question?
22.	Do you agree that the Customer Identification Number (CIN) process would enable third parties adequately to demonstrate verification of the individual consumer? Which of the two CIN models described is preferable? Would any alternative approach be more effective?
23.	Do you agree with the proposal to require third parties wishing to access data via the DCC to self-certify that where it is required, customer consent has been properly obtained?
24.	Do you agree with the proposal to require third parties to provide annual reminders to customers from whom they are collecting data on an ongoing basis?
25.	Do you agree with the proposed use of the Smart Energy Code to set out requirements relating to third party access to data?

Consultation Question

- | | |
|-----|--|
| 26. | Do you have any comments on the proposed option of the SEC Panel arranging an independent audit function to check third party compliance with data access requirements? Would any alternative approach be more effective? |
|-----|--|

Chapter 6 – Non-domestic sector

Consultation Question

- | | |
|-----|--|
| 27. | Is there a need for any specific arrangements to enable non-domestic customers to allow third parties to access their data? Should such arrangements apply only to opted-in smart meters or more widely? |
| 28. | What would be the advantages and disadvantages of applying the data access framework proposed for domestic customers equally to the non-domestic sector? Should this apply only to opted-in smart meters or more widely? |
| 29. | Is there a need for any additional obligations to ensure that network operators can gain access to non-domestic customers' energy consumption data and other data, even where meters are opted out of the DCC, or in the case of advanced meters? What would be the practical challenges in facilitating such access? |
| 30. | Is there a need for any form of information obligation on suppliers to ensure that non-domestic consumers are aware of the potential for particular choices to limit their ability to access their own data or share this with third parties? |

Annex C – List of respondents to consultation

Respondent	
1	BEAMA
2	Big Brother Watch
3	BPRG Kingston University
4	British Gas
5	British Standards Institution
6	Cable&Wireless Worldwide
7	Consumer Focus
8	E.ON
9	EDF Energy
10	Electralink
11	Electricity North West
12	ELEXON
13	Energy Action Scotland
14	Energy Networks Association
15	Energy Services and Technology Association
16	Energy UK
17	Federation of Small Businesses
18	First Utility

Respondent	
19	Gemserv and Capita
20	Haven Power
21	HP Enterprise
22	ICoSS
23	Information Commissioner's Office
24	Intellect
25	National Grid Electricity Transmission
26	Northern Gas Networks Limited
27	Northern Powergrid
28	npower
29	Ofgem
30	Open Pipe Group
31	Opower
32	Ovo Energy
33	SBGI Utility Networks
34	Scottish Power
35	Silver Spring Networks UK
36	SP Energy Networks
37	SSE and SGN
38	Stark

Respondent	
39	UK Power Networks
40	UPL
41	Wales and West Utilities
42	Western Power Distribution
43	Xoserve

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