

The Information Commissioner's response to the Department for Business, Energy & Industrial Strategy ("DBEIS")'s consultation 'Smart Metering Implementation Programme: A consultation on Smart Energy Code and Licence Amendments – September 2016'

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 ("DPA"), the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations ("EIR") and the Privacy and Electronic Communications Regulations 2003 ("PECR"). She is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can, and taking appropriate action where the law is broken.

The Information Commissioner welcomes the opportunity to respond to DBEIS's consultation 'Smart Metering Implementation Programme: A consultation on Smart Energy Code and Licence Amendments – September 2016', and her office continues to offer input where required to ensure that privacy matters are appropriately considered. This response focuses on the privacy requirements section of the consultation:

Summary of new SEC Provisions	
SEC Section H and Section I changes	<ul style="list-style-type: none"> Expanded scope of the requirements for a User Entry Guide, so that a User Entry Guide includes a reference to any relevant privacy guidance (Section H1.8) Introduction of a specific reference to the Data Protection Act (1998) (Section I1.1)

Consultation Questions

Privacy requirements	
Q14	<p>Do you have any comments on the proposed changes to Section H and Section I?</p> <p>Please provide a rationale for your views.</p>

Our understanding is that DBEIS has identified some scenarios where the existing wording of the Smart Energy Code ("SEC") could cause confusion for DCC Users from a data protection perspective and the intention is to tackle this issue without adding scenario-specific complexity to the SEC. A practical example where confusion may arise relates to rental properties which the landlord lets on "all-inclusive" tenancy basis, meaning that utility accounts are in the landlord's name rather than the tenant. In this sort of arrangement, the SEC's definition of "Energy Consumer" (the bill payer) is problematic as it is the Energy Consumer who must provide consents to access the energy consumption data stored on the HAN and accessible via the IHD, meaning that a person other than the data subject (the bill payer) has control over the data collected.

Rather than attempt to deal with this type of scenario in the SEC, we understand that DBEIS's intention is to prepare guidance – or encourage industry preparation of guidance. Consequently the proposed SEC amendment is intended to highlight that such issues arise and to encourage the sector consider privacy issues using any relevant guidance.

We recognise and acknowledge DBEIS's consistent efforts to ensure that the privacy considerations are integral to the UK's smart metering ecosystem. The proposed amendments promote the need to consider the requirements of data protection without being burdensomely prescriptive, and highlight that additional guidance and support may be available from several sources. We also note that the wording allows for forthcoming changes to the data protection regime under the EU's General Data Protection Regulation in 2018, and the potential subsequent impact of any Brexit legislation.

As a final point, we continue to offer our assistance in considering issues of data protection and privacy in the smart metering arena.

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