



SCOTTISHPOWER

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Director of Regulation

Smart Metering Implementation Programme
Department of Energy & Climate Change,
3 Whitehall Place,
London
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4 December 2013

Dear Sir or Madam,

CONSULTATION ON DRAFT LICENCE CONDITIONS (13D/267)

Thank you for this opportunity to respond to the above consultation.

With specific regard to Part 2 sections (ii) and (iii), we have nothing further to add to the comments expressed in our response to the original consultation on those matters.

In the case of Part 3, while we welcome the Government's pragmatic approach to implementing the data provision requirements of the European Energy Efficiency Directive (EED), we are concerned that the legal drafting does not exactly meet the intent of the policy as set out in the consultation document.

Most significantly, the present licence drafting appears to oblige a supplier to make available to a domestic customer consumption data relating to customers previously residing at the same address, should the 24 month period include a change of tenancy. This is not required by the EED (which refers to the start of the contract) and would be likely to contravene the Data Protection Act 1998.

Our detailed comments on the drafting are set out in Annex 1. Should you wish to discuss further, please do not hesitate to contact me.

Yours faithfully,

**SMART METERING IMPLEMENTATION PROGRAMME -
CONSULTATION ON DRAFT LICENCE CONDITIONS (13D/267)
SCOTTISHPOWER RESPONSE**

Question 1 *"Do you agree that the draft licence conditions fully reflect the policy intentions for Article 10(2)(b) of the EED? If not please provide comments on the legal drafting"*

Change of Tenancy

Our main point of concern is that the present licence drafting could oblige a licensee to make available to a domestic customer consumption data relating to customers previously residing at the same address if there has been a change of tenancy within the 24 month period. This is not required by the EED (which sets as a start point the start of the energy supply contract) and would be likely to contravene the Data Protection Act 1998.

Draft licence condition 4(b) obliges the licensee to make available Relevant Consumption Data following any request to do so from the Domestic Customer at those premises. Relevant Consumption Data is defined in the licence condition as follows:

Relevant Consumption Data means, in respect of any relevant premises, detailed data as to the quantity of electricity supplied to the premises in each day, week, month, and year for the period:

- (a) of 24 months prior to the date on which the Domestic Customer at the premises accesses the data;
 - (b) starting from the date on which the licensee became the Relevant Electricity Supplier at the relevant premises and ending on the date on which the Domestic Customer accesses the data; or
 - (c) starting from the date the Smart Metering System was installed at the relevant premises and ending on the date on which the Domestic Customer accesses the data,
- whichever is the shorter period on the date on which the Domestic Customer accesses the data.

Relevant Electricity Supplier means in relation to any premises, the Electricity Supplier that is supplying electricity to the premises.

A situation could arise where the licensee has been the Relevant Electricity Supplier at the premises for 24 months, but the Domestic Customer has only occupied the premises for 12 months. Under the above definition, the Relevant Consumption Data would comprise the full 24 months (assuming the smart meter has been installed for that time), even though the first 12 months related to the previous occupant of the premises (supplied by the same licensee).

The licensee would be in breach of the Data Protection Act if he provided data relating to previous occupants, and we do not think this is the intention of the drafting. Article 10(2)(b) of the EED refers to the start of the contract, which captures both change of supplier and change of tenancy. This could be rectified by amending sub paragraph (b) of the definition of Relevant Consumption Data on similar lines, perhaps so as to read as follows:

- (b) starting from the date the licensee became the Relevant Electricity Supplier supplying electricity to the Domestic Customer at the relevant premises and ending at the date on which the Domestic Customer accesses the data;

Question 2 "Do you agree that the draft licence conditions adequately reflect the exemption for consumer access to consumption data on change of supplier, for meters not operating in the smart mode? If not, please provide comments on the legal drafting and the rationale for this"

The exemption is at draft condition 8 which states the requirement to provide the consumption data does not apply where the licensee did not install the smart meter and there is no established Communications Link.

The current drafting allows relief from the obligation to provide data in any circumstance where the supplier did not install the meter and there is a failure of communications link – theoretically even at the supplier's own fault – which we do not think this is the policy intent. If the new Supplier chooses to operate in smart mode and a communications link should therefore be available, we think the intent would be that the obligation to provide data would still apply.

This could be rectified by referring directly to the exemption to operational requirements relating to change of suppliers during transition, i.e. where a supplier has opted under that operational condition (SLC49.6 and 49.7) not to operate the meter in smart mode.

Question 3 "Do you agree with the proposed approach to the implementation of Article 9(2)(d) and that the draft licence conditions fully reflect policy intentions? If not please provide comments and explain the rationale behind them."

In line with our comments above (Question 2), we wonder whether the exemption at condition 11 is intended to apply on any failure of the Communications Link (as per the drafting) or only where the absence of a Communications Link is the result of an opt-out of smart mode provisions under the transition arrangements.

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