



Department for
Business, Energy
& Industrial Strategy

Department for Business, Energy
& Industrial Strategy
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Dear SEC Party

Letter to SEC Parties regarding privacy and smart metering energy consumption data (in domestic and microbusiness premises)

Summary

In its September 2016 Smart Energy Code consultation response¹, the Government committed to working with Ofgem and other relevant parties to develop guidance in respect of data protection, and make it available to all relevant parties.

This letter:

- reminds SEC Parties² of some of their responsibilities under the Data Protection Act 1998;
- highlights some of the issues that may arise in situations where the bill-payer³ does not occupy the premises to which energy is supplied;
- encourages SEC Parties to take proactive steps to identify these situations and take appropriate action, which may include limiting the retrieval of detailed (i.e. half-hourly) energy consumption data.

This letter cannot and does not anticipate every possible scenario nor does it provide SEC Parties with guidance on compliance with the Data Protection Act.

Data Protection Act and Smart Metering Energy Consumption Data

The Data Protection Act establishes a framework of rights and duties which are designed to safeguard personal data generally. Personal data is information that relates to an individual and can be used to, directly or indirectly, identify a living individual⁴. Detailed energy consumption data from smart meters are likely to be

¹ September 2016 Smart Energy Code consultation response - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/576806/16_12_12_December_2016_SEC_Government_Response_final.pdf

² SEC Party means a Party that is signed up to the Smart Energy Code and has completed the entry requirements necessary to receive communication services from the Data Communications Company (DCC). All energy suppliers are obliged under standard conditions of their licences to become a party to the Smart Energy Code, and therefore have an obligation to become a DCC User before 25 November 2017.

³ In this letter we use the term 'bill-payer' to refer to the individual responsible for arranging a supply contract at a premises and identified as the 'Energy Consumer' under the Smart Energy Code and the 'Domestic Customer' or 'Micro Business Consumer' in supply and distribution licence conditions.

⁴ Personal data is defined in the Data Protection Act as "data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller".

personal data where the meters are installed in domestic or microbusiness⁵ premises, as the data relate to identifiable individuals.

The Data Protection Act protects the rights of data subjects – the individuals whom the data is about – by placing obligations on those organisations who process personal data. In the context of smart metering, the data subject is likely to be the individual living at or occupying the premises to which energy is supplied.

Situations may arise where the individual identified as the data subject under the Data Protection Act is not the bill-payer. This could include tenanted properties where the rental agreement includes payment by the landlord of the tenant's energy bills.

The smart metering Data Access and Privacy Framework⁶ establishes specific provisions relating to the processing of energy consumption data, which are designed to complement (but not replace) the Data Protection Act. Under this Framework, access to the most detailed energy consumption data generally requires consent⁷.

In line with the requirements of the Data Protection Act, consent must be specific, informed and freely given by the data subject⁸. **In those situations where the bill-payer does not also occupy the premises to which energy is supplied, obtaining their consent alone (i.e. without also obtaining the consent of the occupier) will not be sufficient for SEC Parties to discharge their obligations under the Data Protection Act.**

EU General Data Protection Regulation

A new data privacy regulation, the EU General Data Protection Regulation (GDPR), will directly apply in the UK from 25 May 2018⁹.

Compared with the current provisions of the Data Protection Act, the GDPR sets a higher standard for consent - it contains more detail on both the standard and processes for consent. The GDPR is clearer that an indication of consent must be freely given, unambiguous and involve clear, affirmative action. In relation to the requirement for consent to be freely given, the Information Commissioner's Office (ICO) notes that organisations or individuals in a position of power are likely to find it more difficult to get valid consent¹⁰. This has particular relevance when considering

⁵ Energy consumption data that relate to a business and its activities can be personal data if they can identify an individual; this is more likely the case when the business is a sole trader or a smaller business where the energy consumption data may be easily linked to an individual. Energy consumption data from non-domestic premises that are not microbusinesses are less likely to be personal data; however, in the event that they can be considered personal data, the protections of the Data Protection Act continue to apply.

⁶ The Data Access and Privacy Framework - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf

⁷ Please see page 6 of this letter for further information on the implementation of the Smart Metering Data Access and Privacy Framework.

⁸ The Information Commissioner's Office has produced guidance to aid compliance with the Data Protection Act - <https://ico.org.uk/for-organisations/guidance-index/data-protection-and-privacy-and-electronic-communications/>.

⁹ When the GDPR takes effect it will replace the Data Protection Directive (95/46/EC), which is transposed into UK law by the Data Protection Act. SEC Parties will be subject to the data protection provisions of the GDPR from 25 May 2018, and must comply with these requirements.

¹⁰ The ICO has published draft guidance on what counts as valid consent and how to obtain and manage consent in a way that complies with the GDPR. This is available at: <https://ico.org.uk/about-the-ico/consultations/gdpr-consent-guidance/>

access to smart metering energy consumption data, as it is unlikely that consent obtained from a tenant by a landlord in this context will be considered valid.

Next Steps

SEC Parties should develop processes to identify situations where the occupier of domestic or microbusiness premises is not also the bill-payer. Where such situations arise it will be necessary to implement appropriate procedures in relation to accessing energy consumption data and managing any change of occupancy. This includes ensuring that the contracts they are obliged by data protection law to have in place with DCC in respect of processing the personal data of such data subjects meet the requirements set out in data protection legislation¹¹.

To assist SEC Parties in this area we have provided some examples of approaches SEC Parties may want to consider adopting, in Annex A. For the avoidance of doubt, it remains the responsibility of SEC Parties to ensure compliance with the Data Protection Act and, from 25 May 2018, with the GDPR.

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¹¹ Paragraph 12 of Part II to Schedule 1 to the Data Protection Act 1998, in respect of compliance with the seventh data protection principle, requires a contract to be in place where processing of personal data is carried out by a data processor on behalf of a data controller and sets out certain minimum requirements for the contents of such contracts.

Annex A

Examples of approaches SEC Parties should consider.

1. Identifying situations where the bill-payer does not occupy the premises where the smart meter is located.

In situations where energy consumption data constitute personal data and access to the data relies on consent (e.g. half-hourly energy consumption data¹²), this consent must be valid under the Data Protection Act and, in future, the GDPR. This means that the consent of those occupying the premises is required. In situations where valid consent cannot be obtained, it would not be appropriate for detailed energy consumption data – i.e. the most granular data – to be accessed and/or processed.

Where data are processed, procedures should also be put in place to enable the relevant individual(s) to receive information about how the data will be used. This information must be clear and accurate, to enable an informed choice to be made regarding access to the data.

Example:

- Where a supply contract is entered into, or a smart meter installation is arranged, the bill-payer is asked to confirm whether they occupy the premises and their customer records are updated accordingly.

Example:

- Where a SEC Party is an Other User¹³, the person asking for data access is asked by the Other User if they are the occupier of the premises for which data is being requested.

2. Disclosing information to third parties or sharing with the bill-payer (where this individual is not the occupier).

It is necessary to ensure appropriate privacy safeguards are established and followed before disclosing personal data to third parties, which could include the bill-payer in situations where they do not also occupy the relevant premises. Where personal data are to be shared, this should be done in a way that is reasonable and that the occupier is likely to expect.

Example:

- Where a landlord is the bill-payer but does not live at the premises, only consumption data that are necessary to enable contractual and legitimate responsibilities/functions to be carried out, such as billing and tariff comparison, are shared with the landlord.

¹² Supply licence conditions require the supplier to obtain consent ("opt-in") from the customer in order to access energy consumption data relating to periods of time that are less than one day, or to use any energy consumption data for marketing purposes.

¹³ An 'Other User' may, or may not, have a direct relationship with a Customer, but will have obtained permission from that Customer to access their consumption data, e.g. energy services companies and switching sites.

3. Acting where a change of occupancy takes place.

Safeguards have been put in place within the Smart Energy Code to protect consumer privacy in the event of a change of tenancy¹⁴. In situations where the bill-payer does not occupy the premises, a change of occupancy may take place without a formal change of tenancy¹⁵ (i.e. the details of the bill-payer remain the same). Where such an event is identified, suppliers should take measures to ensure consumers' privacy in relation to energy consumption data is protected, so that the previous occupants' energy consumption data are not available to the new occupier. In order to enable this, suppliers will need to have a process in place for identifying changes of occupancy.

Example:

- Where a supply contract is arranged with a landlord or a smart meter is first installed, a clause is included in the contract to require notification by the landlord to the supplier when a tenant moves in/out. This will enable access to the outgoing tenants' consumption data to be appropriately managed.

The above examples are meant to serve as general guidance for SEC Parties, who should adopt the data access practices and approach most suitable for their organisations.

Further information and guidance are available on the Information Commissioner's Office website <https://ico.org.uk/for-organisations/guide-to-data-protection/conditions-for-processing/>¹⁶.

¹⁴ See Section H3.17 of the Smart Energy Code.

¹⁵ For clarity, use of the term 'change of occupancy' in this document refers to a situation where the occupier has moved out of the property, but the bill payer remains unchanged and so a 'change of tenancy' event is not triggered under the SEC.

¹⁶ Guidance from the ICO on the conditions for processing can be found here: <https://ico.org.uk/for-organisations/guide-to-data-protection/conditions-for-processing/>

Supplementary information on Smart Metering Data Access and Privacy Framework

Smart Metering Data Access and Privacy Framework

The Data Access and Privacy Framework was designed to complement the wider requirements of the Data Protection Act and introduce sector-specific provisions. The Framework was implemented in relevant licence conditions for energy suppliers and distribution network operators, and in the Smart Energy Code (SEC) for Other Users of the DCC.

a) Smart Energy Code (SEC)

The SEC is a multi-party agreement that defines the rights and obligations of energy suppliers, distribution network operators and other relevant parties involved in the end-to-end management of smart metering in Great Britain.

Section I of the SEC imposes requirements on SEC Parties to secure the consent of the Energy Consumer¹⁷ in order to carry out a number of actions, including:

- retrieval of energy consumption data from the meter;
- pairing Consumer Access Devices (CADs¹⁸); and
- accessing records regarding which SEC Parties have accessed consumption data.

b) Supply Licence Conditions

Supply Licence Conditions 41 and 47 for gas and electricity, respectively, set out the requirements around energy suppliers' access to domestic or microbusiness consumers' energy consumption data. It links the level of consumer choice to the granularity of data being accessed, and gives consumers control over how their data are used, except where these are required for billing or to fulfil regulated duties.

In summary, the licence conditions:

- allow suppliers to access monthly (or less granular) energy consumption data, for billing and for the purposes of fulfilling statutory requirements or licence obligations;
- allow suppliers to access energy consumption data relating to periods of not less than one day for any purpose, except marketing, but only where they have explained to the customer what the data will be used for and the customer has not objected ("opted out"), or the customer has given their consent; and
- require that suppliers must obtain consent ("opt-in") from the customer in order to access energy consumption data relating to periods of time that are less than one day, or to use any energy consumption data for marketing purposes.

¹⁷ Section I of the Smart Energy Code requires all Users of the DCC to obtain "Appropriate Permission" before requesting data from the DCC. Privacy Assessments are carried out, in accordance with a Privacy Controls Framework approved by the SEC Panel, to assess Users' compliance with these obligations.

¹⁸ CADs are any devices which operate the ZigBee Smart Energy profile and are able to communicate via ZigBee. These can connect to the smart meter and receive near real-time energy consumption data, and tariff data.