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MP234

‘Addition of GDPR Principles of Public Task and Legitimate Interests into the SEC’

Modification Report

Version 0.2

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Corporate member of
Plain English Campaign
Committed to clearer
communication

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About this document

This document is a draft Modification Report. It currently sets out the background, issue, and progression timetable for this modification, along with any relevant discussions, views and conclusions. This document will be updated as this modification progresses.

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1. Summary

This proposal has been raised by Matt Roderick of n3rgy.

Currently, to collect or obtain Consumption Data a Party must hold the Appropriate Permission or have the Unambiguous Consent of each Energy Consumer. This modification seeks to add the General Data Protection Regulation (GDPR) principles of 'Public Task' and 'Legitimate Interests' into the SEC as additional bases for collecting Consumption Data.

The Proposer believes this would help public authorities to fulfil their regulatory obligations to tackle fuel poverty, protect vulnerable households and uphold minimum standards of housing by identifying at-risk Energy Consumers through their Smart Metering Systems (SMS). The Proposer outlines that this would also enable SEC Parties to offer their services to a wider range of customers.

If public authorities sought to use these principles to collect data through SMS they would need to accede to the SEC.

2. Issue

What are the current arrangements?

Appropriate Permission within the SEC

At present the SEC does not support Parties obtaining Consumption Data without first holding the Appropriate Permission or having collected the Unambiguous Consent of each Energy Consumer.

The current definition of Appropriate Permission in SEC Section A 'Definitions and Interpretations' only allows for two scenarios as follows:

"In respect of a Communication Service or Local Command Service to be provided to a User in respect of a Smart Metering System at a premises that will result in the User obtaining Consumption Data, either:

- (a) (Where that User is the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System) that the User does not need consent to access that Consumption Data in accordance with its Energy Licence, or that the User has consent (whether explicit or implicit) in accordance with the requirements of its Energy Licence.*
- (b) (Where that User is not the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System) that the Energy Consumer has given the User Unambiguous Consent to obtain that Consumption Data and such consent has not been withdrawn."*

SEC Section I1.2 states:

"Each User undertakes that it will not request, in respect of a Smart Metering System, a Communication Service or Local Command Service that will result in it obtaining Consumption Data, unless:

- (a) *the User has the Appropriate Permission in respect of that Smart Metering System; and*
- (b) *where that User is not the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System the User has, at the point of obtaining Appropriate Permission and at such intervals as are reasonably determined appropriate by the User for the purposes of ensuring that the Energy Consumer is regularly updated of such matters, notified the Energy Consumer in writing of:*
 - (i) *the time periods (by reference to length) in respect of which the User obtains or may obtain Consumption Data.*
 - (ii) *the purposes for which that Consumption Data is, or may be, used by the User.*
 - (iii) *the Energy Consumer's right to object or withdraw consent (as the case may be) to the User obtaining or using that Consumption Data, and the process by which the Energy Consumer may object or withdraw consent".*

Although this legal text reflects the current arrangements, the Proposer has also raised [MP219 'Accessing Consumption Data on behalf of SEC Parties'](#). MP219 seeks to allow Other Users to collect Consumption Data on behalf of Parties which hold the Appropriate Permission. MP219 was approved by Change Board on 23 August 2023 and has been passed to OFGEM to make the final determination.

SECAS does not anticipate the changes in MP219 having an impact on this modification.

What are the GDPR Principles of Public Task and Legitimate Interests?

The definitions of 'Public Task', 'Legitimate Interests' and information about them have been taken from the GDPR (implemented in the United Kingdom as the 'UK GDPR') from the Information Commissioner's Office (ICO) website, which can be viewed [here](#).

Public Task

Article 6(1)(e) of the GDPR gives a lawful basis for processing where:

"Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller."

This legal basis can only apply if an organisation is:

- Carrying out a specific task in the public interest which is laid down by law; or
- Exercising official authority (for example, a public body's tasks, functions, duties or powers) which is laid down by law.

Legitimate Interests

Article 6(1)(f) of the GDPR gives a lawful basis for processing where:

“Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interest or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.”

Legitimate Interests is unlike other lawful bases for collecting information as it is not centred around a particular purpose and it is not for processing that the individual has specifically agreed to. Legitimate Interests is more flexible and could in principle apply to any type of processing for any reasonable purpose, provided that this is justified by the relevant organisation. Because of this, the onus is placed on the organisation seeking to collect the data to assess and balance their legitimate interests and the necessity of processing the personal data, against the interests, rights and freedoms of the individual considering the particular circumstances.

When are these GDPR Principles used?

Public Authorities, such as Social Landlords and Local Councils, have a duty to protect Energy Consumers and must prevent them from falling into fuel poverty. In doing so, it is argued that they must collect Consumption Data to identify whether the Consumer is at-risk. On some occasions, the Energy Consumer may not respond to the Local Authorities' attempts to collect their Consumption Data. When this occurs, the Local Authority can use the GDPR Principles of Public Task and Legitimate Interest to collect the Consumption Data without the Consumers Unambiguous Consent to fulfil their regulatory obligations.

What is the issue?

The GDPR Principles of Public Task and Legitimate Interests are not included in the SEC, due to the granular and potentially sensitive nature of Consumption Data and in line with similar limitations in Supplier and Network Party obligations. In addition, these GDPR principles are not included as they are not considered as best practice by the Information Commissioner Office (ICO) and European Commission.

This means that if a Public Authority wished to use these GDPR Principles and wanted to collect the Consumption Data they would need to accede to the SEC. In addition.

What is the impact this is having?

Without the introduction of the concepts of Public Task and Legitimate Interest into the SEC, it is argued that public authorities (e.g. Registered Social Landlords or Local Authorities) may be at risk of failing to fulfil their regulatory obligations to tackle fuel poverty, identify and protect vulnerable households as well as maintaining their property portfolio in compliance with the minimum standard on housing.

This also means that SEC Parties are unable to offer their services to Local Authorities who are using these GDPR principles to collect Consumption Data from these selected Energy Consumers, without relying on Appropriate Permission/Unambiguous Consent as required by Section I of the SEC.

Impact on consumers

If the public authorities mentioned above fail to fulfil their regulatory obligations this could impact consumers' standard of housing, health and economic security.

3. Assessment of the proposal

Areas for assessment

The Smart Energy Code Administrator and Secretariat (SECAS) believes further clarity is needed regarding how the GDPR principles will be applied by SEC Parties. In particular, when a SEC Party is acting on behalf of a non-SEC Party to collect Consumption Data, it will need to be determined whether using a GDPR principle which applies to the activities of this third party, rather than a SEC-Party, is compliant with SEC processes.

Additionally, it will need to be determined how additional GDPR Principles and legal bases which the SEC Party (or its third party) wish to rely on will be verified. This will include a need to determine the appropriateness of these additional GDPR Principles, including, where legal bases such as Legitimate Interests are used, how the SEC Party or third party demonstrably assesses and balances their legitimate interests and the necessity of processing the personal data, against the interests, rights and freedoms of the individual. In addition, SECAS will examine how Local Authorities currently collect Consumption Data from the Consumers they need to protect. SECAS will work with Local Authorities to determine the scale of the identified issue, as well as building a process of how this modification could work in practice if implemented.

The Working Group will also need to assess and investigate whether there could be any unintended consequences arising from this change, and the SECAS Privacy Experts and the SEC Lawyer will be engaged to support with this assessment. If the assessment confirms that other GDPR principles can be used, the SEC Lawyer will also provide an assessment of precisely which language must be used when adding the selected two GDPR principles into the SEC.

Sub-Committee input

The SEC Panel maintains responsibility for Section I 'Privacy' and as such will be engaged for advice and considerations with regards the issue and any potential solutions that are identified.

SECAS will engage with the Chairs from the Operations Group (OPSG), the Technical Architecture and Business Architecture Sub-Committee (TABASC), the Security Sub-Committee (SSC) and the Smart Metering Key Infrastructure Policy Management Authority (SMKI PMA) to confirm what input is required from these forums. SECAS believes the following Sub-Committees will need to provide the following input to this modification:

Sub-Committee input	
Sub-Committee	Input sought
OPSG	What impacts will this modification have on the collection of customer data?
SMKI PMA	No input sought.

Sub-Committee input	
SSC	Will this modification impact the current security arrangements?
TABASC	No input sought.

Observations on the issue

The Change Sub-Committee (CSC) recommended this modification be presented to the OPSG, as well as the SSC in order to discuss historic concerns about the collection of consumer data by Other Users. SECAS will engage with the Chairs of the sub-committees to determine precisely which groups this modification will be presented to.

Members also highlighted the need for clarity regarding when the consumer knows their data is being accessed by an Other User and where this information is stored. Other members noted the importance of this point as they believed consumers main concern about smart metering relates to who has access to their data.

[DP218 'Review of the SEC Charging Methodology'](#) was also discussed, with one member noting that the solution to DP218 be in place before DP234 reaches decision at Change Board.

Appendix 1: Progression timetable

Timetable	
Event/Action	Date
Draft Proposal raised	14 Feb 2023
Presented to CSC for initial comment	21 Feb 2023
CSC converts Draft Proposal to Modification Proposal	21 Mar 2023
Modification placed on hold	Mar 2023 – January 2025
Modification discussed with Privacy Sub-Committee	Jan 2025 - April 2025

Italics denote planned events that could be subject to change.

Appendix 2: Glossary

This table lists all the acronyms used in this document and the full term they are an abbreviation for.

Glossary	
Acronym	Full term
CSC	Change Sub-Committee
GDPR	General Data Protection Regulation
ICO	Information Commissioner's Office
OPSG	Operations Group
SEC	Smart Energy Code
SECAS	Smart Energy Code Administrator and Secretariat

Glossary	
Acronym	Full term
SMKI PMA	Smart Metering Key Infrastructure Policy Management Authority
SSC	Security Sub-Committee
TABASC	Technical Architecture and Business Architecture Sub-Committee