

Consultation

DCC Review: Process for Appointing the Successor Smart Meter Communication Licence holder

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| Publication date: | 19/07/2024 |
| Response deadline: | 23/08/2024 |
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We are consulting on considerations to seek changes to the way in which smart meter communications licences can be granted under the Gas Act 1986 and the Electricity Act 1989. We would like to invite views from people and organisations with an interest in smart metering. We particularly welcome responses from DCC customers, including energy suppliers and distribution network operators, and from consumer groups and other current or potential future users of DCC's services. We would also welcome responses from other stakeholders and the public.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider responses. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

Consultation – DCC Review: Process for Appointing the Successor Smart Meter
Communication Licence holder

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Executive Summary

The Data Communications Company (DCC) is responsible for establishing and operating a secure national communications network for smart metering in Great Britain. It currently operates under the Smart Meter Communication Licence ("the Licence"), held by Smart DCC Ltd, which was awarded by the government in 2013 for an initial period of 12 years. The objective of our work ("DCC review") is to put in place a new regulatory framework for a future DCC following the expiry of the Licence term and identify and appoint a Successor Licensee.

The process for identifying the Successor Licensee is set out in primary legislation and regulations,¹ which presently provide for the Licence to be granted on the basis of an application and a competitive tender. As with all competitive processes, it is important to cater to a range of outcomes, including that a suitable bid may not be forthcoming. We are therefore consulting on considerations of inclusion of measures in primary legislation to afford Ofgem more flexibility in the appointment process. This would help ensure that the appointment can happen via the most appropriate mechanism and as soon as reasonably practicable.

¹ Sections 6, 6A of the Electricity Act 1989 and Sections 7AB, 7B of Gas Act 1989; and The Electricity and Gas (Competitive Tenders for Smart Meter Communication Licences) Regulations 2012.

1. Introduction

Background

- 1.1 The first Smart Meter Communication Licences (consolidated into one “Licence”) were granted under the Gas Act 1986 and the Electricity Act 1989 in 2013 and effective for a period of twelve years until September 2025. The Authority² can extend this term by a period of up to six years. We are in the process of undertaking a programme of work to review the regulatory and licence framework for the next Smart Meter Communication Licensee (the ‘Successor Licensee’) following the expiry of the term of the current licence. This includes the appointment of the Successor Licensee.
- 1.2 In August 2023, we published our decision document concluding on the first, scoping, phase of our review.³ In it we set out several key features that should form the basis of the new regulatory model for the Successor Licensee, which included that the Core Mandatory Business should be conducted on a not-for-profit basis with sufficient mechanisms in place to assure effective governance, cost efficiency and quality of service under the enduring arrangements.⁴
- 1.3 In May 2024, we published our first consultation⁵ of phase 2 (“detailed design”) of our review. In this consultation we put forward, and invited views on, options for how the board of the Successor Licensee should be structured, and set out that a majority independent director model is our current preferred option. We also set out proposals for how the board appointments process should work; what requirements should be placed on directors of the Successor Licensee; and how the executive and key staff could be incentivised. Additionally, we set out proposals for transfer of the provision of the Switching service to the Retail Energy Code Company (RECCo). Our consultation closed on 16 July 2024.

² References to the “Authority”, “Ofgem”, “we”, and “our” are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work.

³ Ofgem (2023), DCC review: Phase 1 Decision. www.ofgem.gov.uk/publications/dcc-review-phase-1-decision. For details on the principles of our review, see Ofgem (2022), DCC review: Phase 1 Consultation, esp. p.26, table 2.1. www.ofgem.gov.uk/publications/dcc-review-phase-1-consultation

⁴ Ofgem (2023), DCC review: Phase 1 Decision, Chapter 2.

⁵ Ofgem (2024), DCC Review Phase 2: Governance and Centralised Registration Service arrangements – consultation. www.ofgem.gov.uk/consultation/dcc-review-phase-2-governance-and-centralised-registration-service-arrangements

What are we consulting on

- 1.4 This consultation focuses on the appointment process of the Successor Licensee to hold the next DCC Licence. Through this consultation, we are seeking views on considerations of inclusion of measures into primary legislation to afford Ofgem more flexibility in the appointment process.

Next steps

- 1.5 This consultation will stay open for 5 weeks and will close on 23 August 2024. Please provide your representation in writing by emailing DCCregulation@ofgem.gov.uk.
- 1.6 Following analysis of stakeholder responses, we anticipate publishing a conclusions document in September 2024 subject to responses to this consultation, setting out what we will do next.
- 1.7 We will start activities to prepare for a competitive tender to select the Successor Licensee. Our current intention is to commence the competition in spring 2025. Prior to this, we will aim to publish a second Prior Information Notice (PIN) in autumn 2024. The intent of the PIN will be to provide market with further details about the tender process and the new regulatory framework under the Successor Licence, and to understand the level of interest amongst prospective bidders.

2. Flexibility in the process for appointing the Successor Licensee

Consultation questions

Q1. Do you agree that it is in consumers' interests for Ofgem to have greater flexibility in the way in which the Successor Licensee may be appointed? Please provide an explanation for your views.

Q2. Do you have any other observations?

- 2.1 Our aim is to appoint a Successor Licensee as soon as possible to enable the benefits of the revised regulatory framework to accrue to future consumers at the earliest opportunity.
- 2.2 Current legislation⁶ provides for the Licence to be granted following an application for it, and for the running of a competitive process to enable applicants to come forward.
- 2.3 We are planning on running a competition to identify the Successor Licensee commencing in spring 2025. As with all competitive processes it is prudent to plan for all possible eventualities and associated mitigations, including the possibility that no suitable bid may be forthcoming. We are therefore publishing this consultation to seek stakeholder views on affording Ofgem greater flexibility to have the ability to adopt a different, more optimal, process, if we consider that the competitive process may not yield an appropriate outcome.
- 2.4 Considered in the context of the current powers to grant the Licence, such flexibility would help ensure the appointment can happen via the most appropriate mechanism and as soon as reasonably practicable.
- 2.5 Providing for such flexibility also ensures that subsequent future licensing activities beyond the Successor's Licence term can also be conducted in the manner that best serves the interest of consumers.
- 2.6 Consequently, we are now considering whether to seek the inclusion of measures in primary legislation that would modify the existing legislation to deliver greater flexibility in the appointment process of the Successor Licensee.

⁶ The Gas and Electricity (Competition for Smart Meter Communication Licences) Regulations 2012 made under the Electricity Act 1989 and the Gas Act 1986 apply to the process for identifying the Successor Licensee. www.legislation.gov.uk/ukxi/2012/2414/contents/made

Seeking such measures at the earliest opportunity, means that we would be in a position to use them, should this be required, in timescales that would facilitate the move to the Successor Licence framework as soon as reasonably practicable.

2.7 The purpose of any legislative measures would be to provide for the option to identify the Successor Licensee either via a competitive or non-competitive process. Similar flexibility is afforded to Ofgem in the process by which Code Managers are identified under the Energy Act 2023.

2.8 **We invite views on whether respondents agree that it is in consumers' interests for Ofgem to have greater flexibility in the process for the appointment of a Successor Licensee.** We value early engagement with stakeholders and this consultation will assist in developing our views.

3. Your response, data and confidentiality

Consultation stages

- 3.1 The consultation will be open until 23 August 2024. Responses will be reviewed and the consultation decision will be published in September 2024.

How to respond

- 3.2 We want to hear from anyone interested in this consultation. Please send your response to DCCregulation@ofgem.gov.uk.
- 3.3 We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.
- 3.4 We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

Your response, your data and confidentiality

- 3.5 You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.
- 3.6 If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.
- 3.7 If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 4.
- 3.8 If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we

receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

General feedback

3.9 We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

3.10 Please send any general feedback comments to stakeholders@ofgem.gov.uk

How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. Choose the notify me button and enter your email address into the pop-up window and submit.

[ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations)

Notify me +

Would you like to be kept up to date with *Consultation*
name will appear here? subscribe to notifications:

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Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

Upcoming > **Open** > **Closed** (awaiting decision) > **Closed** (with decision)

Appendix 1 – Privacy notice on consultations

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

4. With whom we will be sharing your personal data

(Include here all organisations outside Ofgem who will be given all or some of the data. There is no need to include organisations that will only receive anonymised data. If different organisations see different set of data then make this clear. Be as specific as possible.)

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for (be as clear as possible but allow room for changes to programmes or policy. It is acceptable to give a relative time e.g. 'six months after the project is closed')

6. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data

- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

7. Your personal data will not be sent overseas (Note that this cannot be claimed if using Survey Monkey for the consultation as their servers are in the US. In that case use “the Data you provide directly will be stored by Survey Monkey on their servers in the United States. We have taken all necessary precautions to ensure that your rights in term of data protection will not be compromised by this”.

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system. (If using a third party system such as Survey Monkey to gather the data, you will need to state clearly at which point the data will be moved from there to our internal systems.)

10. More information For more information on how Ofgem processes your data, click on the link to our “[ofgem privacy promise](#)”.