

The Information Commissioner's response to Ofgem's consultation: 'Extending the existing smart meter framework for data access and privacy to Smart-Type Meters and Advanced Meters: the way forward'

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000, the Environmental Information Regulations and the Privacy and Electronic Communications Regulations 2003 (PECR). He 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 he can, and taking appropriate action where the law is broken.

The Information Commissioner welcomes the opportunity to respond to Ofgem's consultation on the final proposals regarding the application of privacy rules to Smart-Type Meters and Advanced Meters.

As we set out in our response to Ofgem's initial proposal on this subject¹, we support equality of treatment for domestic and micro-business customers in terms of data access and privacy irrespective of the equipment installed on their premises. Principle 1 of the DPA requires that personal data be processed fairly and lawfully, and such fairness should extend to individuals' data not being arbitrarily treated differently solely on the basis of the equipment that has been installed in their properties (over which they may have had no control).

It is our view that it should be the nature and granularity of the consumption data that determines the rules for suppliers' and network companies' use of that consumption data, and not the nature of the equipment.

On this basis, we support the current proposal to roll out the same data access and privacy rules to domestic customers with Smart-Type and Advanced Meters, meaning that they are subject to the same treatment as customers with full Smart Meters. This is particularly the case in respect of permission for use of the data for marketing purposes, which may be intrusive for customers.

¹ Previous consultation response available on our website at: http://ico.org.uk/about_us/consultations/~media/documents/consultation_responses/ico-response-to-ofgem-consultation-on-extending-smart-meter-framework.pdf

In terms of micro-businesses, we understand from the current consultation that there may, in a small number of cases, be technical difficulties in aligning the domestic and micro-business procedures due to the type of equipment installed on some micro-business premises. The proposed workaround, whereby a third party intermediary (the 'head end provider') filters the data collected so that the supplier only receives consumption data in line with the customer's wishes, seems a sensible approach provided that safeguards are in place. Sensible safeguards might include having a robust framework in place to govern the data flow between meter, intermediary and supplier including restrictions on the intermediary's use of the data; and ensuring that the additional data (over and above what the customer has requested be shared with the supplier) is deleted as soon as practicable and is not used for any other purpose.

This workaround is certainly a better option than the supplier directly receiving data itself contrary to the customer's wishes (irrespective of whether the supplier then deletes the additional data), or the other alternative of the meter's smart functionality being disabled altogether.

Whilst this workaround (with the head end provider acting as a filter of the collected data) achieves a sensible outcome in the short term, in the longer term we would hope that future installations and/or updates would work towards the ideal position of the meter being capable of reflecting the customer's wishes.

At points 4.15-4.17 we note Ofgem's decision to not extend the data access and privacy proposals to cover network company access to Smart-Type and Advanced Meter data. We understand that the reasoning behind this is that, with such meters not currently enrolled in the DCC (and therefore the data not centrally available), network companies can only access consumption data from these meters by using existing access channels via the supplier or the customer. We would, however, expect this approach to be reviewed should the ability to enrol Smart-Type and Advanced Meters in the DCC change.