The Information Commissioner’s response to Smart Energy GB consultation “Smart energy for all - A consultation paper on identifying audience characteristics that may act as additional barriers to realising the benefits of a smart meter”

1. The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 ("DPA"), the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations ("EIR") 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.

2. The Commissioner welcomes the opportunity to respond to this consultation “Smart energy for all - A consultation paper on identifying audience characteristics that may act as additional barriers to realising the benefits of a smart meter”. As the questions asked in the consultation document do not directly relate to the legislation that we oversee, we have not answered them specifically. Instead, we have made the following comments on aspects of document that may have an impact on information rights.

3. The DPA applies to “personal data”. “Personal data” means any data that relates to and identifies (either itself or in combination with other information) a living individual¹.

4. Certain categories of personal data are defined as “sensitive personal data” under section 2 of the DPA². These categories include, amongst other things, personal data relating to an individual’s physical or mental health or condition, their racial or ethnic origin and their religious and/or cultural beliefs. The processing of personal data in relation to these sensitive categories is subject to extra controls under the DPA. For more information, please see the Commissioner’s guidance available on our website³.

5. The Commissioner recognises the potentially far-reaching and significant benefits that smart metering can bring to individuals, energy suppliers and other organisations operating in the energy sector. However, smart metering involves the processing of an increasing amount of personal data. This includes, but is not limited to, consumption data from the smart meter itself, which is likely to be personal data where it can be linked to a particular meter (see Opinion 12/2011 of the Article 29 Working Party).

6. It is therefore vital that all aspects of the roll out and use of smart meters properly take into account compliance with the DPA, and that any approach respects the right to private life that individuals have under Article 8 of the European Convention on Human Rights and Article 7 of the Charter of Fundamental Rights of the European Union (the “Charter”). Article 8 of the Charter also gives individuals a specific right to the protection of their personal data.

7. By taking a “privacy by design” approach to the implementation of smart meters, organisations and individuals can enjoy the benefits that smart meters can bring whilst also ensuring that individuals’ privacy rights are properly respected.

8. The Commissioner recognises that for certain groups of individuals, there may be barriers that prevent them from fully realising the full benefits of smart meters. The Commissioner is therefore supportive of the overall objective of ensuring that all individuals are able to benefit from the implementation of smart meters.

9. The Commissioner is unable to comment on which characteristics are or are not likely to prevent a barrier to realising the benefits of smart meters. This is ultimately something that the industry will have to decide, based on the research it has done and its own experience of dealing with vulnerable customers.

10. However, the processing of personal data to profile individuals and categorise them into particular groups is an activity that fully engages the requirements of the DPA, particularly where those characteristics are categories that would be considered “sensitive personal data” as described above. Organisations should therefore approach such profiling activities with care.

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11. A significant number of the 30 characteristics listed would fall into the definition of “sensitive personal data”. It is therefore vital that any processing of this information in relation to individuals is well justified, and in particular is able to satisfy an appropriate condition under schedule 2 (and in the case of sensitive personal data, schedule 3) of the DPA\textsuperscript{5}. Organisations must be transparent about the personal data that they are processing and the purposes for this.

12. The consultation paper does not go into detail about how suppliers or other organisations will remove the barriers to enjoying the benefits of smart metering present for the 30 categories that have been listed. The advice in this response therefore assumes that suppliers will be required to identify individual customers that fall into the categories in question and ensure that steps are taken in relation to those customers to remove those barriers (in a similar way to how the Priority Services Register currently operates).

13. It may of course be possible in some cases to use approaches that do not involve the processing of personal data. For example, it may be possible to profile a geographic area rather than individual customers for some categories. Another example would be explanatory literature that, whilst taking into account and addressing the barriers that certain groups of individual may face, is not specifically targeted at those groups. Energy suppliers and other organisations should consider whether less intrusive approaches such as this, which minimise or remove the necessity to profile individual customer, are possible as part of a privacy by design approach. More information on privacy by design and conducting privacy impact assessments is available from our website\textsuperscript{6}.

14. However, where personal data is being processed about individuals, they must be made fully aware of the purposes for which their personal data is being collected and processed. In some circumstances, it may be necessary to obtain their explicit consent to that processing, for example where sensitive personal data is involved.

\textsuperscript{5} \url{https://ico.org.uk/for-organisations/guide-to-data-protection/conditions-for-processing/}
\textsuperscript{6} \url{https://ico.org.uk/for-organisations/guide-to-data-protection/privacy-by-design/}
15. The DPA requires that any personal data being processed by an organisation should be adequate, relevant, and not excessive for the purpose or purposes for which it has been collected. Organisations involved in smart metering must therefore be clear about why they are collecting particular items of personal data, and ensure that they only collect what is necessary to achieve that objective.

16. The DPA also requires that personal data is not kept for longer than is necessary for the purposes for which it was collected. Organisations must therefore ensure that they have clear retention policies and that any retention of personal data is justified. For example, if personal data is collected specifically to ensure that a particular individual is able to make an informed decision whether to have a smart meter, it may not be appropriate to retain that information once they have made the decision to have a smart meter installed (or not).

17. Any sharing of personal data about individuals must be fully justified and again limited to the minimum necessary to achieve the objective for which the information is being shared. Although information sharing agreements are not required by the DPA, we would strongly recommend that they are put in place between organisations that regularly share personal data with each other. For more information, please see our data sharing code of practice.

18. Finally, it is important that the way in which personal data is collected and processed for the purposes detailed in this consultation is consistent across the energy sector. This will help to avoid individuals being confused by different practices between different suppliers or other organisations, resulting in their personal data being processed in a way that they would not expect. To this end, we consider it to be important that any processes for ensuring that customers are able to realise the benefits of smart meters are agreed at an industry wide level, with organisations such as Smart Energy GB, Energy UK and Ofgem being involved in the discussions.

19. The Commissioner looks forward to engaging further with Smart Energy GB and other key stakeholders going forward, as the processes for ensuring that all individuals can enjoy the benefits of smart metering are developed. We are happy to offer advice on the data protection aspects of smart metering and elaborate on any of the points made in this response.

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