

## **Submission of the Office of the Data Protection Commissioner:**

Firstly, we appreciate the opportunity to provide comments on the second consultation documentation in relation to Smart Metering. We again note the comprehensive nature of the material included in the consultation paper, which also provides valuable information on the feedback from interested parties which was received by the CER as part of the first consultation process.

The move from conventional to smart metering will bring about the availability of more detailed information which will be valuable to more third parties than previously. Until now suppliers recorded meter readings collected or estimated every two months and billed their customer on an aggregated basis. Smart metering will involve the communication of more detailed information which has the potential to create a picture of a person's lifestyle and habits and on this basis falls within the meaning of personal data covered by the Data Protection Acts.

This Office appreciates that the use of smart meters has the potential to give customers information and control around their energy usage. From a data protection perspective, its use will also involve additional processing of information and it is the function of this Office to ensure that this processing adheres to the requirements of data protection legislation so that an acceptable balance is reached and that both privacy and security considerations are adequately addressed. In this regard, we note and welcome the reference in relation to "data access for suppliers" regarding the need for organisations to meet the fair processing requirements of the Data Protection Acts and we look forward to engaging with you on this issue.

Once the basis for the programme is firmly established, we would also be anxious to ensure that any rollout of smart meters takes place on a consistent basis from the start so that all customers are given adequate information and choice in relation to how their data is used and that there is a robust governance structure in place for commercial and regulatory stakeholders (the nature and legal force of this structure needs to be discussed).

The changeover to an electronic communications device will also give rise to the need for detailed security considerations which we are glad to see is acknowledged frequently in the consultation document. We also look forward to working with the relevant parties in discussing how data protection obligations to keep data safe and secure will be addressed.

We would like to reiterate that from our engagements regarding the smart metering pilot projects that we were satisfied that individual data was only available to the consumer themselves with aggregate data of use patterns going to the supplier other than data necessary for billing purposes. Our position remains that there would need to be strong justification for the making available of detailed data on an ongoing basis. Our approach will be through our engagement with the relevant parties to identify and ensure that aggregated data is provided where possible and through further examination to identify and agree that any personal data processed is necessary and it is clear why the data is required. Customers should, to the greatest extent possible, have the decision-making powers in relation to how their energy usage data is processed and shared. We may as part of this have to consider if customer consent may be required and examine how this would work e.g. in relation to the use of data for marketing/profiling purposes. In particular, we would remain to be convinced that it is proportionate to supply consumption data on a half hourly basis to suppliers as this would certainly provide a very clear pattern of movement within a household over a 24 hour period.

In addition, in order for us to come to offer more detailed views, we will also need to explore the following considerations with you in due course as the project develops. You will see that these, in conjunction with the above, involve more than the specific data protection references made in the second consultation document.

- Proposed access rights to the data by different parties and the purposes for access by different parties and how this access is legitimised and whether it should be by push or pull format and how these processes are communicated to consumers
- Proposed retention periods for data
- How the data protection rights of access to and rectification of data will be addressed

We would like to thank you once again for providing us with the opportunity to comment and we look forward to further engagements in relation to the above-mentioned points.