

Attachment 1 to the P223 Requirements Specification: Legal advice

1. Summary

The Group should note that, subject to the detailed provisions set out below, nothing in the Primary Legislation reviewed appears to prevent BSC obligations of the type set out in this note being imposed on BSC Parties by the BSC. However Parties should be aware that it is the responsibility of each individual Party to ensure that, in complying with such BSC obligations, it does so within the framework established by relevant Primary Legislation.

2. Important interpretive note.

The answers to questions 2 and 3 will vary from Supplier to Supplier as the issues in question go to the heart of the Supplier / customer relationship. Suppliers will reach their own conclusions based on an the analysis by each Supplier of, amongst other things, its own terms and conditions of contract, reputational considerations, internal policies, attitude to customer service and corporate governance procedures (the "Supplier Analysis").

2.1 Q1: Is it incompatible with Primary Legislation for Half Hourly meters to be installed where supply is on a Non Half Hourly basis?

The following advice is based on a review of the following primary legislation only: The Electricity Act 1989 as amended by the Utilities Act 2000.

Section 1(1) of Schedule 7 of the Electricity Act 1989 (as amended by the Utilities Act 2000) provides that where a customer is to be charged for its supply via a meter then the meter should be of a pattern or construction which, having regard to the terms on which the supply is to be charged for, is "particularly suitable for such use."

Clearly the phrase "...is particularly suitable for such use..." is open to interpretation. However, and on the basis that the meter is also compatible with secondary* and European** legislation and there is no attempt as a result to alter the "...terms on which the supply is to be charged for...", the Electricity Act 1989 as amended by the Utilities Act 2000 does not appear to rule out the proposed metering solution.

2.2 Q2: Can Suppliers change a meter without consent from the customer?

The answer to this question is will lie in the terms and conditions of supply that govern the Supplier / customer relationship and the conclusion by each Supplier of their Supplier Analysis. It may be noted that Section 4 of the Schedule 7 of the Electricity Act 1989 (as amended by the Utilities Act 2000) provides that a meter may be replaced where its replacement "... (a) is necessary to secure compliance with this Schedule or any regulations made under it; or (b) **is otherwise reasonable in all the circumstances...**"

2.3 Q3: What considerations arise from Primary Legislation when handling customer's electricity consumption data?

Section L5 of the BSC sets out the BSC rules regarding ownership, access to and use of metering data between BSC Parties, Customers and other interested parties. Parties should note that it is the responsibility of each individual Party to ensure that, in complying with such BSC obligations, it does so in accordance with the framework established by relevant Primary Legislation. Parties should also note that the Primary Legislation referred to below is not intended to be an exhaustive list of relevant Primary Legislation.

For both individual and corporate customers the provisions of section 105 of the Utilities Act 2000 should be considered however, if the P223 were to be approved, Suppliers may be able to rely on the exemptions contained in that section.

In respect of individual customers the Supplier's Analysis should involve detailed consideration of whether the use of information it holds in respect of living individuals and the proposed manner in which that information is to be used by the Supplier in order to comply with the requirements of the modification is likely to be Processing of Personal Data (as defined by the Data Protection Act 1998 (the "DPA")). It is each Supplier's individual responsibility to ensure that it Processes Personal Data in accordance with the DPA.

Corporate customer data should be dealt with in accordance with the terms and conditions of supply that govern the supplier / customer relationship.

Notes

* A list of meters certified under the Electricity Act is available at Schedule 4 of the 1998 Statutory Instrument No. 1566.

** Measuring Instrument Directive 2006