

Memorandum of Understanding between the Information Commissioner and the Smart Energy Code Company Limited

Introduction

1. This Memorandum of Understanding ("**MoU**") establishes a framework for cooperation and information sharing between the Information Commissioner ("**the Commissioner**") and the Smart Energy Code Company Limited ("**SECCo**"), collectively referred to as "**the parties**" throughout this document. In particular, it sets out the broad principles of collaboration and the legal framework governing the sharing of relevant information and intelligence between the parties. The shared aims of this MoU are to enable closer working between the parties, including the exchange of appropriate information, so as to assist them in discharging their respective functions.
2. This MoU is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or SECCo.
3. For clarity, the parties acknowledge that when carrying out their functions and exercising (or purporting to exercise) their powers they will each remain entirely responsible for ensuring their own compliance with any applicable legal, regulatory or other requirements.
4. The parties have determined that they do not exchange sufficient quantities of personal data to warrant entering into a separate data sharing agreement, but this will be kept under review.

Interpretation

5. The following terms, which are used in paragraphs 12 -18, shall have the same meaning as in the SEC Code:
 - Assurance Status;
 - Data Communications Company;
 - Data Protection Legislation;
 - Event of Default;
 - Independent Privacy Auditor;

- Other User;
- Privacy Assessments;
- Privacy Controls Framework;
- Registered Network Operator;
- Registered Supplier;
- SEC Modifications
- SEC Party;
- Smart Metering Systems;
- User; and
- User Role.

Overall purpose

6. The purpose of this MoU is to set out the terms of the ongoing collaboration between the parties.

The role and function of the Commissioner

7. The Commissioner is a corporation sole appointed by His Majesty the King under the Data Protection Act 2018 to act as the UK's independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals.
8. The Commissioner is empowered to take a range of regulatory action for breaches of the following legislation:
 - Data Protection Act 2018 ("**DPA**");
 - UK General Data Protection Regulation ("**UK GDPR**");
 - Privacy and Electronic Communications (EC Directive) Regulations 2003 ("**PECR**");
 - Freedom of Information Act 2000 ("**FOIA**");
 - Environmental Information Regulations 2004 ("**EIR**");
 - Environmental Protection Public Sector Information Regulations 2009 ("**INSPIRE Regulations**");
 - Investigatory Powers Act 2016;
 - Re-use of Public Sector Information Regulations 2015;

- Enterprise Act 2002;
 - Security of Network and Information Systems Directive (“**NIS Directive**”); and
 - Electronic Identification, Authentication and Trust Services Regulation (“**eIDAS**”).
9. Article 57 of the UK GDPR and section 115(2)(a) of the DPA place a broad range of statutory duties on the Commissioner, including monitoring and enforcement of the UK GDPR, promotion of good practice and adherence to the data protection obligations by those who process personal data. These duties sit alongside those relating to the other enforcement regimes outlined in Paragraph 5 above.
10. The Commissioner’s regulatory and enforcement powers include:
- conducting assessments of compliance with the DPA, UK GDPR, PECR, eIDAS, the NIS Directive, FOIA and EIR;
 - issuing information notices requiring individuals, controllers or processors to provide information in relation to an investigation;
 - issuing enforcement notices, warnings, reprimands, practice recommendations and other orders requiring specific actions by an individual or organisation to resolve breaches (including potential breaches) of data protection legislation and other information rights obligations;
 - administering fines by way of penalty notices in the circumstances set out in section 155 of the DPA;
 - administering fixed penalties for failing to meet specific obligations (such as failing to pay the relevant fee to the Commissioner);
 - issuing decision notices detailing the outcome of an investigation under FOIA or EIR;
 - certifying contempt of court should an authority fail to comply with an information notice, decision notice or enforcement notice under FOIA or EIR; and
 - prosecuting criminal offences before the Courts.
11. Regulation 31 of PECR, as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011,

also provides the Commissioner with the power to serve enforcement notices and issue monetary penalty notices as above to organisations who breach PECR. This includes, but is not limited to, breaches in the form of unsolicited marketing which falls within the ambit of PECR, including automated telephone calls made without consent, live telephone calls which have not been screened against the Telephone Preference Service, and unsolicited electronic messages (Regulations 19, 21 and 22 of PECR respectively).

Functions and powers of SECCo

12. SECCo is the corporate vehicle established to support the Smart Energy Code Panel ("**SEC Panel**") business. All contracts with the Smart Energy Code Panel are held with SECCo.
13. SECCo contracts Gemserv Limited, who provide the Smart Energy Code Administration and Secretariat service ("**SECAS**") to support the management of the Smart Energy Code ("**SEC**")¹. The SEC governs the roles of energy suppliers, network operators and other organisations involved in smart metering in the UK. Accession to the SEC is required for organisations to access smart metering data for their connected smart meters on the Data Communications Company's systems, and organisations or individuals that accede to the SEC are called 'SEC Parties'. In particular, the provisions of Section I (Data Privacy) of the SEC apply to 'Users' (including 'Other Users') which are SEC Parties that are entitled to access smart metering data on the Data Communications Company's systems in accordance with a defined User Role.
14. The SEC Panel has been established in order to undertake the duties set out within the SEC. Under SEC Section C, the SEC Panel has a number of duties, including overseeing and coordinating the process for assessing and implementing SEC Modifications, managing and coordinating the suspension of a User's rights or expulsion of the User where in breach of the SEC, and establishing joint working arrangements with the Commissioner.
15. Should Users wish to send a specific set of services requests including accessing consumption data and are not an energy consumer's Registered Supplier or Network Operator, the SEC requires Users to undergo Privacy Assessments, both in advance

¹ [The Smart Energy Code » \(smartenergycodecompany.co.uk\)](https://www.smartenergycodecompany.co.uk)

and periodically on the instruction of the SEC Panel. The assessment process is outlined in Section I2 of the SEC and verifies that the User meets the privacy requirements of the SEC and has systems and processes in place to comply with their obligations.

16. Under Section I of the SEC, the SEC Panel has other responsibilities including, but not limited to:

- setting the Assurance Status of SEC Parties in relation to compliance with the SEC (prior to them becoming Users);
- agreeing actions with Users to remedy and/or mitigate an actual or potential non-compliance of the SEC;
- developing and maintaining a Privacy Controls Framework to set out the arrangements for Privacy Assessments; and
- specifying the principles and criteria for carrying out such assessments.

17. In practice, the administration of privacy obligations under the SEC is provided by SECAS (Smart Energy Code Administration Service), who advise and act on behalf of the SEC Panel. SECAS also includes the SECAS Privacy Experts, who undertake activities under SEC Sections C and I including, but not limited to:

- assessing proposed SEC Modifications;
- reviewing Users' Privacy Assessment responses and suggesting recommendations for consideration by the SEC Panel, in relation to matters such as setting the Assurance Status or Compliance Status of a User;
- reviewing Users' remedial actions and directors' letters in the case of non-compliance with the SEC; and
- reviewing change notifications submitted by Users, where the changes would alter the Users' previously approved privacy processes.

18. Where the SEC Panel is satisfied that there is an Event of Default, within the meaning of Section M of the SEC, it may take enforcement action. In accordance with SEC Section M, this may include where:

- there is a material breach of a User's SEC Section I obligations, such as following a Privacy Assessment;

- a material breach of a User's SEC Section I obligations has been directly reported to the SEC Panel; or
 - the User has failed, in a material respect, to comply with an enforcement notice served by the Commissioner of which the SEC Panel has been notified.
19. In addition, the SEC Panel may, in certain circumstances, also take its own enforcement action where it has become aware of data protection issues with respect to User(s) when receiving change notifications under the SEC.
20. Where any of the circumstances in Paragraphs 14 or 15 apply, under Section M, the SEC Panel may request SECAS to take action on their behalf with respect to a User, including:
- investigating the circumstances of the Event of Default;
 - seeking additional information from the Independent Privacy Auditor or a User;
 - requiring a User to give effect to a reasonable remedial action plan designed to remedy and/or mitigate the effects of the SEC breach or Event of Default;
 - suspending a User's rights under the SEC, such as to vote in Panel elections or raise proposals for a SEC Modification;
 - setting the Assurance Status to deferred to stop the User from communicating remotely with Smart Metering Systems via the Data Communications Company;
 - in the event of an actual non-compliance and, following a request from the SEC Panel in line with Paragraph 21, to provide the Commissioner with a summary of the findings and actions taken to date in relation to the non-compliance.

Purpose of information sharing

21. The purpose of the MoU is to enable the parties to share relevant information which enhances their ability to exercise their respective functions.
22. This MoU should not be interpreted as imposing a requirement on either party to disclose information in circumstances where doing so would breach their statutory responsibilities. In particular, each party must ensure that any disclosure of personal data pursuant to

these arrangements fully complies with both the UK GDPR and the DPA. The MoU sets out the potential legal basis for information sharing, but it is for each party to determine for themselves that any proposed disclosure is compliant with the law.

Principles of cooperation and sharing

23. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the Commissioner will alert SECCo to information relevant to SECCo performing their functions set out in Paragraphs 9 to 18 and provide relevant supporting information.
24. Subject to any legal restrictions on the disclosure of information and at its discretion, SECCo will alert the Commissioner to potential breaches of the legislation regulated by the Commissioner and provide relevant supporting information.
25. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the parties will:
 - communicate regularly to discuss matters of mutual interest; and
 - consult one another on any issues which might have significant implications for the other organisation.
26. The parties will comply with the general laws they are subject to, including, but not limited to, data protection law; the maintenance of any prescribed documentation and policies; and comply with any governance requirements in particular relating to security and retention, and process personal data in accordance with the statutory rights of individuals.

Legal basis for sharing information

Information shared by SECCo with the Commissioner

27. The Commissioner's statutory function relates to the legislation set out at Paragraph 5, and this MoU governs information shared by SECCo to assist the Commissioner to meet those responsibilities. To the extent that any such shared information comprises personal data, as defined under the UK GDPR and DPA, SECCo is a data controller in respect of such data and must ensure that it has a legal

basis to share it and that doing so would be compliant with the data protection principles.

28. Section 131 of the DPA may provide a legal basis for SECCo to share information with the Commissioner. Under this provision, SECCo is not prohibited or restricted from disclosing information to the Commissioner by any other enactment or rule of law provided it is *"information necessary for the discharge of the Commissioner's functions"*.

Information shared by the Commissioner with SECCo

29. The Commissioner, during the course of their activities, will receive information from a range of sources, including personal data. They will process all personal data in accordance with the principles of the UK GDPR, the DPA and all other applicable legislation. The Commissioner may identify that information they hold, which may include personal data, ought to be shared with SECCo as it would assist them in performing their functions and responsibilities.
30. Section 132(1) of the DPA restricts the disclosure of information that (i) has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, discharging their functions, (ii) relates to an identifiable individual or business, and (iii) is not otherwise available to the public from other sources. Such information may include, but is not limited to, personal data and may only be disclosed if the disclosure is made with lawful authority. Section 132(2) of the DPA provides that a disclosure of information falling within the scope of section 132(1) will be made with lawful authority in a number of circumstances, in particular where the disclosure is:
 - necessary for the purpose of the Commissioner discharging their functions (section 132(2)(c));
 - made for the purposes of criminal or civil proceedings, however arising (section 132(2)(e)); or
 - necessary in the public interest, having regard to the rights, freedoms and legitimate interests of any person (section 132(2)(f)).
31. The Commissioner will therefore be permitted to share information with SECCo in circumstances where they have determined that it is reasonably necessary to do so in furtherance of one of those

grounds outlined at Paragraph 28. In doing so, the Commissioner will identify the function of SECCo which that information may assist, and assess whether that function could reasonably be achieved without access to the particular information in question. In particular, where the information proposed for sharing with SECCo amounts to personal data the Commissioner will consider whether it is necessary to provide it in an identifiable form in order for SECCo to perform its functions, or whether disclosing it in an anonymised form would suffice.

32. If information to be disclosed by the Commissioner was received by them in the course of discharging their functions as a designated enforcer under the Enterprise Act 2002, any disclosure shall be made in accordance with the restrictions set out in Part 9 of that Act.
33. Where information is to be disclosed by either party for law enforcement purposes under section 35(4) or (5) of the DPA then they will only do so in accordance with an appropriate policy document as outlined by section 42 of the DPA.
34. Where a request for information is received by either party under data protection laws or FOIA, the recipient of the request will seek the views of the other party as described in the FOIA section 45 Code of Practice, where the information being sought under the request includes information obtained from, or shared by, the other party. However, the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the party in receipt of the request.

Method of exchange

35. Appropriate security measures shall be agreed to protect information shared between the parties in accordance with the sensitivity of the information and any classification that is applied by the sender. Security measures shall include, as applicable, methods for ensuring the encryption and secure transmission of communications and supporting files between the parties.

Confidentiality and data breach reporting

36. Where information that is subject to a duty of confidentiality is shared between the parties it will be marked with the appropriate security classification.



- 37. Where one party has received information from the other, it will consult with the other party before passing the information to a third party or using the information in an enforcement proceeding or court case.
- 38. Where information that is subject to a duty of confidentiality obtained from, or shared by, the originating party is wrongfully disclosed by the party holding the information, this party will bring this to the attention of the originating party without delay. This is in addition to obligations to report a personal data breach under the UK GDPR and/or DPA where personal data is contained in the information disclosed.

Duration and review of the MoU

- 39. The parties will monitor the operation of this MoU and will review it every two years.
- 40. Any minor changes to this memorandum identified between reviews may be agreed in writing between the parties.
- 41. Any issues arising in relation to this memorandum will be notified to the point of contact for each organisation.

Key contacts

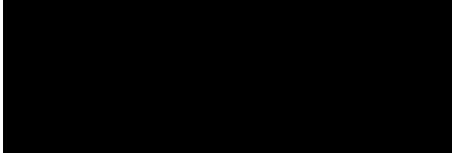

- 42. The parties have both identified a key person who is responsible for managing this MoU:

Information Commissioner’s Office	Smart Energy Code Company (SECCO)
Andrew Burton, Group Manager, Intelligence Department 	Kaveh Cope-Lahooti, Principal Consultant, SECAS Privacy Experts 

- 43. Those individuals will maintain an open dialogue between each other in order to ensure that the MoU remains effective and fit for

purpose. They will also seek to identify any difficulties in the working relationship, and proactively seek to minimise the same.

Signatories

Amanda Williams, Director of Public Affairs, Information Commissioner's Office	Angela Love, SEC Panel Chair, SECCo Ltd
	
Date: October 9, 2023 14:26 BST	Date: July 14, 2023 16:57 BST

Note: This document has been signed and signatures redacted for publication.