

Energy Company Obligation and Great British Insulation Scheme Memorandum of Understanding (MoU)

Between

Gas and Electricity Markets Authority (GEMA) ¹

and

[INSERT LOCAL AUTHORITY NAME] (Relying Party)

Notes:

- (i) The purpose of this MoU is to set out the terms that govern any member² of the Local Government Association (LGA) taking part in the LA Flex element of the ECO4 and/or GBIS scheme administered by Ofgem.
- (ii) As part of the on boarding process each Local Authority that at their absolute discretion decide to take part, must complete and submit the MoU Acceptance Form to Ofgem (see schedule 2). The MoU Acceptance Form will be provided by LGA along with this MoU. Following Ofgem signing and returning a completed MoU Acceptance Form to the Relying Party this MoU is formed and applies in full between Ofgem and such Relying Party.

Version Control

Version	Date	Notes
V1.0	8 January 2024	Final form MoU issued

1. INTERPRETATION

The following definitions and rules of interpretation apply in this MoU.

1.1 Definitions:

Anonymised Information means Personal Data or Special Category Personal Data that has been anonymised and no longer relates to or identifies an individual.

Data means information held in any type of format.

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and all other legislation and regulatory requirements in force from time to time which apply to a Partner Organisation relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and

¹ OFGEM is the administrative office of GEMA. For ease of reference the terms Ofgem and GEMA are used interchangeably throughout this MoU.

² Local Authority members of the LGA who have decided to take part in LA Flex and/or GBIS scheme will be required to sign and return the MoU Acceptance Form to Ofgem.

codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a Partner Organisation.

Data Subject means an individual who is the subject of personal data.

MoU means this Memorandum of Understanding and its accompanying schedule(s).

MoU Acceptance Form means the acceptance form appended as schedule 2 to this MoU.

Local Authority Declaration means a declaration from the Local Authority confirming that the Local Authority has identified occupants of a residential dwelling that meet the eligibility criteria of one of the referral routes, and that the Local Authority has collected evidence to demonstrate this.

LGA means the Local Government Association.

Notification Template means until such time that access to a secure data system has been developed by OFGEM, which will then be used to transfer data, a Comma Separated Values file containing the data.

Party or Parties means Ofgem and the Relying Parties.

Personal Data Breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

Protected Material means the information to be shared by the Partner Organisations as set out at schedule 1 to this MoU.

Public Authority shall have the meaning as set out on section 7 of the DPA 2018.

Relying Party or **Relying Parties** means the LGA member Local Authority agreeing to the terms of this MoU.

Schemes means the Energy Company Obligation 4 and/or the Great British Insulation Scheme Local Authority Flexible Eligibility mechanism.

Shared Personal Data means the Personal Data and Special Category of Personal Data to be shared between the Parties under this MoU.

Statement of Intent means a statement published by the Local Authority on its website listing the criteria that the Local Authority intends to use to identify dwelling occupants that meet the eligibility criteria under the Local Authority Flexible Eligibility scheme.

UK GDPR has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

Controller, Processor, Data Subject, Information Commissioner, Personal Data, and Processing and Technical and Organisational Measures shall have the meanings given to them in the Data Protection Legislation.

Clause, schedule, and paragraph headings shall not affect the interpretation of this MoU.

The schedule(s) form part of this MoU and shall have effect as if set out in full in the body of this MoU. Any reference to this MoU includes the schedule(s).

2. PURPOSE

- 2.1.** The purpose of sharing the Protected Material is to enable OFGEM to be notified by a Local Authority that it has deemed households as being eligible for the Energy Company Obligation 4³ or the Great British Insulation Scheme⁴ through the Local Authority Flexible Eligibility mechanism (the “Purpose”). It is essential to enter into this MoU to set out the governing arrangements for sharing the Protected Material.
- 2.2.** The Protected Material will be shared to the Relying Party by either a managing agent or installer, delivering the Energy Company Obligation 4 and/or the Great British Insulation Scheme Local Authority Flexible Eligibility mechanism (the “Schemes”) to allow an assessment of householder eligibility to take place. If the Relying Party deems the household as eligible for the Schemes, a Local Authority Declaration is issued to the either the managing agent or installer. The Protected Material is required to notify OFGEM that a Local Authority Declaration has been issued. OFGEM subsequently compares the Protected Material with supplier project notifications that are using the Local Authority Declaration eligibility route to prevent fraud.
- 2.3.** The purpose of this MoU, agreed by OFGEM and the Relying Party, is to facilitate the legitimate sharing of information. This MoU details the specific purpose(s) and the lawful and justified reasons for sharing information between the Parties.

This document will evidence any legislative regulatory powers that underpin the sharing arrangement.

3. THE PARTNER ORGANISATIONS

3.1. The Partner Organisations for this MoU are:

- (a) The Office of Gas and Electricity Markets (OFGEM) - 10 South Colonnade, Canary Wharf, London, E14 4PU, and
- (b) The Local Government Association member as specified in the MoU acceptance Form (Relying Party).

4. MoU ACCEPTANCE FORM SUBMISSION

4.1. By completing and submitting an MoU Acceptance Form to Ofgem:

- (a) the Relying Party confirms that it has reviewed the terms of this MoU and, agrees to enter into and comply with the terms of this MoU.
- (b) The MoU is conditional upon and shall become effective in full only upon the date Ofgem countersign and return the MoU Acceptance Form to the Relying Party.

³ [The Electricity and Gas \(Energy Company Obligation\) Order 2022.](#)

⁴ [The Electricity and Gas \(Energy Company Obligation\) Order 2023.](#)

5. LEGAL REQUIREMENTS

5.1. Partner Organisations must comply with all relevant legal requirements and the common law duty of confidentiality relating to the processing of data and or information (particularly Personal Data and Special Category Personal Data). The principal legislation is listed below:

- a) The Data Protection Legislation;
- b) Computer Misuse Act 1990;
- c) Human Rights Act 1998 (Article 8);
- d) Section 105(1) of the Utilities Act 2000;
- e) Freedom of Information Act 2000;
- f) Environmental Information Regulations 2004; and

other legislation that may be relevant when sharing specific data and or information.

5.2. This MoU provides a general framework and is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Partner Organisations. The Partner Organisations enter the MoU intending to honour its provisions.

6. RESPONSIBILITIES

6.1. General responsibilities

6.1.1. Each Partner Organisation is responsible for ensuring that their Technical and Organisational Measures meet the requirements of this MoU. Each Partner Organisation is responsible for ensuring that the requirements of this MoU are appropriately and adequately communicated to their staff, volunteers and to other agents acting on their behalf, and for ensuring compliance with this MoU.

6.1.2. Each Partner Organisation remains responsible for ensuring their own compliance with applicable legislation and common law. If they consider that any part of this MoU is incompatible with that requirement, then compliance with the law takes precedence. In such circumstances, they must notify all Parties as soon as possible in writing.

6.1.3. Each Partner Organisation shall perform its obligations under this MoU at its own cost.

6.2. Personal Data and Special Category Personal Data

6.2.1. Personal Data and Special Category Personal Data must only be shared between Partner organisations where:

- (a) there is a lawful basis to do so,
- (b) the Organisation receiving the Personal Data and Special Category Personal Data has a genuine and legitimate 'need to know',
- (c) the disclosure is considered proportionate, with consideration of the potential impact upon the privacy of individuals,
- (d) both Parties have in place, and comply with, their respective appropriate policy documents in regard to processing Special Category Data.

- 6.2.2.** Wherever possible, consideration should be given as to whether it is necessary to share or use Personal Data and Special Category Personal Data. Where non-personal, Anonymised Data or Pseudonymised Data and or information can practically be used instead, then this should be the case.
- 6.2.3.** Staff and volunteers must only be given access to Personal Data and Special Category Personal Data shared under this MoU where that access is necessary in order for them to perform their duties.
- 6.2.4.** Each Partner Organisation must ensure that any of its employees, volunteers or agents accessing Personal Data and Special Category Personal Data are fully aware of their responsibilities under the Data Protection Legislation and the common law duty of confidentiality.
- 6.2.5.** Each Partner Organisation must take reasonable steps to ensure that any of its staff accessing Personal Data and Special Category Personal Data (that has been shared under this MoU) follow the procedures and standards that have been agreed and incorporated within it.
- 6.2.6.** Personal Data and Special Category Personal Data must not be transferred to a country or territory outside the EEA without an adequate level of protection for the rights and freedoms of the data subject. Data obtained under this MoU must not be transferred to a country or territory outside of the EEA without the permission of the Data Provider.

6.3. Disclosure of Personal Data

- 6.3.1.** Personal Data may only be disclosed (or otherwise processed) where a condition under Article 6 of the UK GDPR or the equivalent section of the Data Protection Act 2018 applies.

The UK GDPR provides that processing of Personal Data is lawful where this:

- (a) is necessary for compliance with a legal obligation, (Article 6(1)(c)), and
- (b) "...is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller" (Article 6(1)(e)).

- 6.3.2.** The Partner Organisations consider that Article 6(1)(e) provides the legal basis for processing of standard personal data.

The Partner Organisations consider that the lawful basis for the processing of special categories of personal data is as follows:

- (a) the Relying Party will rely on Article 9(2)(g); and
- (b) whereas OFGEM's processing is underpinned by section 10, and paragraph 6, part 2 to schedule 1 DPA 2018.

- 6.3.3.** The Partner Organisations consider that disclosures between the Parties are in the public interest for the purposes of section 8 of the DPA.

6.3.4. The Partner Organisations interpretation of the MoU is that both Parties are independent controllers with regards to personal data being processed.

6.4. Identifying Data

The Controller will not attempt to further identify individuals using any other data or information whether held by them or available in the public domain.

6.5. Anonymised Data

6.5.1. For the purposes of this section, references to anonymisation also apply to pseudonymisation (where personal identifiers have been removed, but a Controller is still able to identify the data subject, for example by use of a unique identifier number).

6.5.2. In order to protect privacy, reduce the risks relating to legal compliance and to minimise the risk of security breaches, data and or information being used by and shared between the partner organisations should be anonymised wherever possible.

6.5.3. The anonymisation of Personal Data and Special Category Personal Data for sharing should be carried out with regard to the Information Commissioner's Anonymisation Code of Practice. It is the responsibility of a Controller to ensure that any anonymisation of Personal data and Special category personal data is adequate in accordance with this Code.

6.5.4. A Controller must not attempt to identify individuals from anonymised information, or to combine or link anonymised information with any other data or information in such a way as to make it reasonably possible to identify individuals, without the written consent of the other Controller.

6.6. Non-personal Data

Non-personal data or information may be sensitive and/or confidential. Where such information is deemed to be sensitive or confidential, OFGEM should be contacted before any further sharing takes place.

6.7. Data Quality

The Relying Party shall ensure the data and or information it provides is of sufficient quality, namely:

- (a) adequate,
- (b) relevant,
- (c) not excessive in relation to the purposes for which it is required, and
- (d) accurate.

6.8. Security Arrangements

- 6.8.1. Partner organisations must ensure the security of any data and or information provided, whether personal or non-personal, and process the information accordingly.
- 6.8.2. A Partner Organisation to this MoU may increase the level of protection afforded to data shared under this MoU but may not decrease it without the express written consent of the other Partner Organisation.
- 6.8.3. The Partner Organisations agree to maintain the appropriate security measures throughout the lifecycle of the data during storage, use, transmission, and destruction.

6.9. Data Subject Rights

- 6.9.1. On receipt of a request from a Data Subject for Shared Personal Data, the Partner Organisation in receipt shall contact the other Partner Organisation to this MoU to notify them of receipt of such a request. The Partner Organisation who receives the request shall have overall responsibility for responding to the request unless more than one Partner Organisation receives an identical or similar request from the same Data Subject. In those circumstances, the Partner Organisations shall promptly discuss and implement the most effective way of discharging their responsibilities under the Data Protection Legislation to the Data Subject who has made the request(s).
- 6.9.2. The Partner Organisations each agree to provide such assistance as is reasonably required to enable the other Partner Organisation to comply with Subject Rights Requests within the time limits imposed by the Data Protection Legislation.

6.10. Information Requests

- 6.10.1. If one or both of the Partner Organisations is a Public Authority subject to the Freedom of Information Act 2000 (FOI) or the Environmental Information Regulations 2004 (EIR), the Partner Organisations acknowledge that the information that is the subject of this MoU, and the MoU itself, may be subject to disclosure. Both Partner Organisations will consult on a suitable response to any FOI or EIR request made.
- 6.10.2. Where a Controller is responsible for fulfilling any FOI or EIR requests then the decision as to whether the information should or should not be disclosed rests solely with them.
- 6.10.3. FOI and EIR legislation are applicant blind, and the Controller shall not disclose the identity of the individual or organisation making the request unless it is necessary to discharge its responsibilities under this part of the MoU and/or justifiable under the UK GDPR and the Data Protection Act 2018.
- 6.10.4. FOI legislation requires that a robust complaints procedure is available to any dissatisfied requestors.

6.11. Retention Periods

- 6.11.1 The data shared under this MoU shall be stored in accordance with the Controllers records retention and disposal schedule. In the absence of a records retention and disposal schedule, or a statutory retention period, the information shall not be retained for longer than is necessary to fulfil the specified purpose or purposes; and shall be reviewed annually in writing.

6.11.2. Where it comes to the attention of either Partner Organisation that information disclosed under this MoU is no longer required for the Purpose mentioned above it shall be permanently deleted. In any event, our organisations shall retain information disclosed under this MoU for no longer than five years.

7. PERSONAL DATA BREACHES AND REPORTING PROCEDURES

7.1. The Partner Organisations shall each comply with its obligation to report a Personal Data Breach to the Information Commissioner and (where applicable) Data Subjects under Article 33 of the UK GDPR and shall each inform the other Partner Organisation of any Personal Data Breach irrespective of whether there is a requirement to notify the Information Commissioner or Data Subject(s).

7.2. The Partner Organisations agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.

8. CHANGES TO THE APPLICABLE LAW

8.1. If during the term of this MoU the Data Protection Legislation changes in a way that the MoU is no longer adequate for the purpose of governing lawful data sharing exercises, the Partner Organisations agree that they will negotiate in good faith to review the MoU in the light of the new legislation.

9. ADMINISTRATION

9.1. Either Partner Organisation may terminate the MoU by notifying the other organisation in writing. Any restrictions on the processing of information shared under this MoU survive the termination of this MoU unless the contrary is agreed, in writing by both Partner Organisations.

9.2. The Parties shall review this MoU annually.

10. DISPUTE RESOLUTION

10.1. The Parties agree to try to resolve any disagreement arising from this MoU informally and promptly. In the first instance such attempts should be made by the officers who have day-to-day responsibility for the operation of this MoU.

10.2. The disagreement shall be escalated to senior officers, up to, and including the Managing Director of Delivery and Schemes for OFGEM and senior personnel (at Director level) of the Relying Party and LGA, if it cannot be resolved informally who shall be jointly responsible for ensuring a mutually satisfactory resolution.

SCHEDULE 1:

PROTECTED MATERIAL

The Relying Party provides personal information to notify OFGEM of a Local Authority Declaration under the Energy Company Obligation 4 and/or the Great British Insulation Scheme Local Authority Flexible Eligibility mechanism.

The data to be shared is personal information of applicants for the Energy Company Obligation 4 and/or the Great British Insulation Scheme Local Authority Flexible Eligibility mechanism, consisting of the following, set out in a notification template provided by OFGEM:

- Local Authority Declaration Unique Reference Number (URN);
- Referral made outside of Local Authority remit (if appropriate);
- Referral Route:
 - Route 1: Low Income Households; or
 - Route 2: Proxy Targeting- including supplier debt data; or
 - Route 3: NHS Referral; or
 - Route 4: Bespoke Targeting;
- Additional Route 2 proxies (if appropriate);
- Route 4 Application number (if appropriate);
- Applicant address;
- Local Authority code area;
- Confirmation of the Local Authority's consultation with the supplier prior to measure installation;
- Date of householder eligibility;
- Statement of Intent publication date,
- Statement of Intent web link.

The Notification Template must be sent to OFGEM by the Relying Party by secure email to ECO4Flex@ofgem.gov.uk until such time as access to a secure data system has been developed by OFGEM which will then be used to transfer data.

The evidence for meeting the eligibility criteria will be kept by the Relying Party no longer than three years after the Final Determination of Energy Company Obligation 4 and the Great British Insulation Scheme Local Authority Flexible Eligibility mechanism in order that it is available for audit if required and then deleted in line with current data protection legislation.

SCHEDULE 2:
MoU ACCEPTANCE FORM

Ofgem/ Relying Party MoU Acceptance Form

This MoU Acceptance Form has been provided to the Relying Party by Ofgem and LGA.

Terms written with a capital letter shall have the meaning attributed to them in the Memorandum of Understanding published by Ofgem and distributed to its members by the LGA, such MoU relating to the Energy Company Obligation 4 and/or the Great British Insulation Scheme through the Local Authority Flexible Eligibility mechanism.

The Relying Party

Relying Party MoU Representative

Local Authority name:
[]

Name: []

Local Authority
address: []

Position: []

Email: []

1. The Relying Party confirms it has received a copy of the MoU, is familiar with it, and unconditionally accepts the MoU.
2. By submitting the MoU Acceptance Form, the Relying Party confirms that it has reviewed and agrees to comply with the MoU from the effective date.
3. By submitting this MoU Acceptance Form, the MoU Representative for the Relying Party confirms they are duly authorised to enter into the MoU on behalf of the Relying Party.
4. The MoU shall only come into effect on the date that Ofgem returns a countersigned copy of this MoU Acceptance Form to the Relying Party.
5. Any disputes arising out of this MoU Acceptance Form shall be governed in accordance with the terms of the MoU.

Signed by the MoU Representative
for and on behalf of the **Relying
Party**

Signed on behalf of Ofgem

.....

.....

Name:

Name:

Date:

Date:

Note: After completing and signing the MoU Acceptance Form, please email the form to Delivery&Schemes_DataSharing@ofgem.gov.uk