

Wholesale Retail Code Change Proposal – Ref CW073

Modification proposal	Wholesale Retail Code Change Proposal – CPW073 – Updates to GDPR Personal Data Warnings in CSD0301
Decision	The Authority has decided to approve the Change Proposal CPW073
Publication date	20 January 2020
Implementation date	14 February 2020

Background

All UK companies must be compliant with the new standard of data protection set by the General Data Protection Regulation EU 2016/679¹ (GDPR), which came into force on 25 May 2018 and the supplementary UK legislation, the Data Protection Act 2018 (DPA 2018). The GDPR sets out that a Controller (as defined in the GDPR) carries a number of responsibilities in relation to the processing of Personal Data (as defined in the GDPR), such as: complying with the principles set out at Article 5 (principles relating to processing of personal data), undertaking privacy impact assessments in the relevant circumstances, and maintaining a record of processing activities. Another important function of a Controller is to manage the Personal Data with regard to the individual (or data subject) rights that may be exercised in relation to the Personal Data held.

Classifying Personal Data items within the Central Market Operating system (CMOS) allows Trading Parties to identify such items should an individual wish to exercise any of their data subject rights, such as the right of access, rectification or erasure. It also helps highlight which data fields could be pseudonymised² in order to comply with principles such as data minimisation and security requirements.

The Panel established the GDPR Issues Committee (the Committee) to assess the compatibility of the Wholesale Retail Code (WRC) and Market Arrangements Code

¹ GDPR Regulations: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679>

² Pseudonymization is a data management and de-identification procedure by which personally identifiable information fields within a data record are replaced by one or more artificial identifiers, or pseudonyms.

(MAC) against the DPA 2018 and GDPR, in order to determine what changes would be needed to enable industry compliance.

As part of its work, the Committee considered the scope of the definition of Personal Data and sought legal advice to identify those items in CSD 0301 (Data Catalogue) which may be identifiers, direct or indirect³, of Personal Data. At the time, the Committee recognised that there was little legal guidance on the scope of the definition of Personal Data. It considered that as the law and guidance developed, it may become clearer that further items in the data set should be considered as falling within the Personal Data definition set out in the GDPR, and it should be kept under review.

The issue

A number of items are flagged in the CSD 0301 to indicate that they may contain or lead to the identification of Personal Data. Where items amount to Personal Data, they must be managed in accordance with the GDPR. Items are considered Personal Data where they refer to individuals or (in relation to supply points) where they refer to business customers whose ownership is so small that information about the business held in the CMOS could be equivalent to information about its individual owners(s), e.g. sole traders, partnerships and small companies.

Following advice from DLA Piper, the Committee recommended an updated list of Personal Data warnings in CSD 0301. This Change Proposal aligns with the Committee's recommended list of items which may contain or lead to the identification of Personal Data, and facilitates the industry's compliance with the GDPR and the DPA 2018.

The change proposal⁴

The Committee's assessment included taking a principle-based approach to compliance across the data set and, as such, has determined a number of Data Items have the ability directly, or in combination with other information, to relate to and identify an individual.

³ The Panel's Final Recommendation Report explains that a 'direct' identifier means one which could identify an individual from one data set, whilst an 'indirect' identifier represents data which needs to be combined with additional information to effectively identify a person.

⁴ The proposal and accompanying documentation is available on the MOSL website at <https://www.mosl.co.uk/market-codes/change#scroll-track-a-change>

As set out in the Panel's Final Recommendation Report, the Change Proposal recommends the following solution:

1. Include a Personal Data flag for the following additional Data Items in CSD 0301:
 - D2085 – Community Concession Charge
 - D3016 – Datalogger (Non-Wholesaler)
 - D3015 – Datalogger (Wholesaler)
 - D6009 – Domestic Allowance
 - D2015 – Occupancy Status
 - D2011 – Rateable Value
 - D4011 – Retailer ID
 - D7601 – Section 154A Payment Value
 - D4012 – Sewerage Retailer ID
 - D4001 – Trading Party ID
 - D4013 – Trading Party Name.

2. Not include Personal Data flags for the following data items in CSD 0301, due to Wholesalers being large corporate entities:
 - D4025 – Wholesaler ID
 - D4018 – Other Wholesaler ID.

3. Legal drafting corrections to CSD 0301 in the following areas:
 - D4020 – Total Outstanding Amount on the Account: was recommended to be marked with a Personal Data flag by the Committee in 2017 and was in the package of changes approved by the Authority but was inadvertently left out of the WRC when it was implemented. It has been included in this change as a correction.
 - D2005 – Customer Classification - Sensitive Customer: contains an erroneous duplication of the Personal Data flag in its 'Description' section. This change proposed to remove this extra text.

Industry consultation and assessment

An industry consultation was undertaken and received 8 responses (7 from Wholesalers and 1 Retailer).

Views of the proposed solution

All respondents agreed with the Change Proposal. A Wholesaler explained that any change that will strengthen the governance of Personal Data will only have a positive impact on end customers. A further Wholesaler stated that the data held in their internal systems is subject to control through authorised access levels, depending on

the user's role, and associated need to access such data, therefore no amendments to their internal processes or systems to accommodate change were foreseen.

Two Wholesalers who also agreed with the Change Proposal stated that they already had processes in place to ensure that they are dealing with items which may contain Personal Data in an appropriate way. A further Wholesaler noted that no impacts were expected beyond the assurance of Trading Parties with GDPR.

Impacts to Trading Parties systems, customers and unintended consequences

A Wholesaler indicated 'yes' when asked about the impacts on customers but provided no further details. The other respondents stated that there were no, or no negative, impacts on Trading Parties systems, customers, as well as no unintended consequences expected.

A Wholesaler raised a potential concern that introducing CPW073 might make information less accessible in the Market Data Set (MDS) but believed the change to be in line with the Objectives of the WRC. MOSL stated in the Panel's Final Recommendation Report its view that it did not believe the change would impact the MDS as it does not add any new Data Items into CMOS which could affect customers.

Views on costs of implementing CPW073

The respondents did not report any costs of the implementation of CPW073. In addition, three Wholesaler respondents mentioned that they already have processes, procedures, and/or training in place to ensure that they are dealing with items which may contain Personal Data in an appropriate way.

Panel recommendation

The Panel considered this Change Proposal at its meeting on 26 November 2019. It recommended, by unanimous decision, that the Authority approve this Change Proposal. This recommendation has been made on the basis of improving the principle transparency. The recommended date of implementation is 14 February 2020.

Our decision

We have considered the issues raised by the Change Proposal and the supporting documentation provided in the Panel's Final Report. We have concluded that the implementation of the of CPW073 will better facilitate the principles and objectives of

the Wholesale Retail Code detailed in Schedule 1 Part 1 Objectives, Principles and Definitions, and is consistent with our statutory duties.

Reasons for our decision

Having reviewed the evidence provided by the Panel in its Final Recommendation Report, we understand the issues it seeks to address and the rationale for recommending this Change Proposal. We are approving this Change Proposal on the basis it will provide clarity and transparency to Trading Parties in terms of the Data Items that may directly, or in combination with other information, relate to and identify an individual, as well as addressing previous drafting errors. Ultimately, this Change Proposal should have a positive effect on business retail customers because by strengthening the governance relating to compliance with GDPR in the WRC and MAC, Trading Parties cannot but be aware of their obligations under the GDPR.

We have set out below our views on which of the code principles are better facilitated by the Change Proposal.

Transparency

We agree with the rationale provided by the Committee and the Panel that the change assists the Market Operator and Trading Parties in identifying Personal Data and therefore facilitates compliance with the GDPR and the DPA 2018.

Decision notice

In accordance with paragraph 6.3.7 of the Market Arrangements Code, Ofwat approves this Change Proposal.

Georgina Mills
Director, Business Retail Market