

Smart Metering Implementation Programme

Stage 1 of the Smart Energy Code – a Government response and a consultation on draft legal text

8 November 2012

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Table of Contents

1. Executive Summary	1
2. Introduction	6
2.1 General information about this consultation.....	6
3. Developing the Smart Energy Code	8
3.1 A staged approach to developing the SEC	8
3.1.1 Elements of the SEC drafted in this first stage.....	9
3.1.2 Elements of the SEC to follow in subsequent stages	10
4. Responses to the Smart Energy Code April 2012 Consultation, and further questions for consideration	12
4.1 Consultation summary.....	12
4.1.1 Proposed SEC content covered in the April 2012 Consultation	12
4.1.2 Consultation responses	14
4.2 Summary of responses, Government conclusions, summarised legal text and additional consultation questions	14
4.2.1 Participation in the SEC.....	14
4.2.2 Involvement of the Metering Services Community	15
4.2.3 Accession to the SEC.....	17
4.2.4 Establishing readiness to receive the DCC's communications services	18
4.2.5 Enrolling and withdrawing smart metering systems	20
4.2.6 The DCC's provision of core and elective communication services	22
4.2.7 DCC Charges	26
4.2.8 The SEC Panel.....	31
4.2.9 The SECCo	35
4.2.10 Code Administrator and Secretariat.....	37
4.2.11 Modification process.....	38
4.2.12 Reporting.....	45
4.2.13 Compliance and Assurance.....	47
4.2.14 Liabilities between the DCC and its users and SEC Parties.....	48
4.2.15 Dispute resolution.....	53
4.2.16 Suspension of rights and expulsion in the event of default.....	55
4.2.17 Ceasing to be a Party to the SEC	57
4.2.18 Intellectual Property Rights.....	57
4.2.19 Confidentiality	59

4.2.20 Unforeseen Events	60
4.2.21 Arrangements to support the handover of the DCC licence.....	62
5. Additional sections of Stage 1 of the SEC for consultation.....	64
5.1 Ensuring coordination between the SEC and other industry codes	64
5.2 Requirements on SEC Parties to provide the DCC with relevant registration information for validation purposes	65
5.3 Data Access and Privacy	66
5.4 Transitional Arrangements within the SEC.....	67
6. Establishment of the SEC.....	70
6.1 Licence conditions to accede to and comply with the SEC and to enrol relevant meters with the DCC	70
6.1.1 Reasons for becoming a Party to the SEC	70
6.1.2 Obliging suppliers to enrol domestic smart meters with the DCC	70
6.1.3 Obliging organisations to accede to and comply with the SEC	71
6.2 Timetable for establishing the SEC	73
6.2.1 Stage 1 of the SEC	73
6.2.2 Stages 2 and 3 of the SEC.....	73
6.3 SEC commencement.....	73
6.4 Establishment of SEC governance arrangements.....	74
6.4.1 The Initial SEC Panel.....	74
6.4.2 The Initial SEC Panel Chair.....	75
6.4.3 The SEC Code Administrator and Secretariat (CAS).....	76
6.4.4 Establishing the SECCo.....	76
Annex A: SEC stage 1 legal drafting.....	77
Annex B: List of consultation questions in this document.....	77
Annex C: Draft licence conditions to accede to and comply with the SEC.....	79
Draft Electricity Supply Licence condition to accede to and comply with the SEC.....	79
Draft Electricity Distribution Licence condition to accede to and comply with the SEC.....	80
Draft Gas Supply Licence condition to accede to and comply with the SEC	81
Draft Gas Transportation Licence condition to accede to and comply with the SEC	82
Annex D: Draft DCC Charging Statement.....	84
Annex E: Illustrative example of schedule of core communication services	87

1. Executive Summary

Smart meters are the next generation of gas and electricity meters and they can offer a range of intelligent functions. Consumers will have real time information on their energy consumption to help them control and manage their energy use, save money and reduce emissions. Smart meters will also provide consumers with more accurate information and bring an end to estimated billing.

The roll-out of smart meters across Great Britain will require changes to the regulatory framework governing energy industry participants. This includes the creation of a new industry code, the 'Smart Energy Code' (SEC). The SEC will be a new multiparty agreement which will define the rights and obligations between the Data and Communications Company (DCC) and the users of its services and specify other provisions to govern the end-to-end management of smart metering. The SEC needs to be read alongside the DCC's licence which sets out the high-level obligations for this new licensed entity. Energy suppliers and network operators will be required through new conditions in their licences to become Parties to the SEC.

This document fulfils two primary purposes. First, it sets out the Government's conclusions following responses to the consultation in April 2012 on the proposed rights and obligations to be contained in the SEC. Second, it sets out and seeks views on the draft legal text that will constitute the first stage of the SEC. There are also additional specific questions to which readers are invited to respond relating to the initial establishment of the SEC and its governance in the transitional period prior to the DCC's services going live.

Approach to development of the SEC

The SEC will be delivered in three stages, timed to align with key phases in the Programme's delivery plan. These are:

- Stage 1 of the SEC will be designated at the time the DCC licence is awarded. It contains key provisions required from day one of the DCC's operation (specifically in relation to charging and governance);
- Additional operational provisions that are not included in Stage 1 (for example in relation to the smart metering communications hub) and that are required to support market proving will be added to the SEC in Stage 2 ; and
- Any further provisions required in advance of DCC 'go-live', the point at which the DCC begins to provide services, will be added in Stage 3 of the SEC).

Government conclusions and key elements of Stage 1 of the SEC

Participation in the SEC

The Government has concluded that the SEC will define six appropriate Party categories for the purposes of participation in the governance of the SEC and appropriate Party categories for the purposes of eligibility to request different types of the DCC's communications services, comprising gas suppliers, electricity suppliers, gas network operators, electricity network operators, the DCC itself and 'other users' of the DCC's services. Prospective Parties acceding to the SEC will be required to submit basic business information through a simple accession process. Once the DCC has commenced operation, unlicensed parties that have not begun to use the DCC's services within six months of acceding to the SEC may be expelled from the Code at the discretion of the SEC Panel and subject to appeal to the Gas and Electricity Markets Authority¹ ('the Authority').

The Government recognises the benefits of meter operator being able to directly access DCC's systems. As such, the Government has concluded that while meter operators will not be SEC Parties in their own right, they will be able to access certain data from meters, for which they are the registered metering agent, directly via the DCC as the nominated agents of suppliers. Specific controls regarding what data they access will be a matter for energy suppliers to determine through their contracts with their meter operators. The Government is considering separate actions as set out in the Foundation Smart Markets consultation that are anticipated to alleviate some of the concerns that have been set out by meter asset providers.

Using the DCC

The Government has concluded that the SEC will include obligations on DCC Users to complete a set of entry processes as a pre-condition before being able to take up the DCC's services. Stage 1 of the SEC will include the processes to be followed to satisfy credit cover requirements. Further requirements covering security and how users interface with the DCC's systems will be added in later stages as the SEC develops. In so doing, the Government will be mindful of the need for proportionate and flexible processes that reflect the risks that a user poses to the DCC's systems and the financial and security risks they pose to other DCC Users.

Suppliers will be obliged to grant the right to the DCC to access a smart metering system when it is enrolled, and the DCC will have an obligation to enrol meters, that satisfy the requirements for enrolment set out in the SEC, where requested. The Government will proceed with the proposed arrangements for withdrawing smart metering systems from the DCC's services, as set out in the April 2012 consultation.

The Government has also concluded that the DCC will offer three categories of core communication services under the SEC: those available to suppliers, those available to networks and those available to all Parties. The SEC modification processes will be used to

¹ The Authority has objectives and powers under the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998 and the Enterprise Act 2002. It is the governing body for the Office of Gas and Electricity Markets (Ofgem).

manage changes to the core communication services. Elective services will be available to DCC Users through bilateral contracts with the DCC. The details of these will be confidential for six months, after which certain service information will be available to other users. The name of a service requestor and the price of that service will however always remain confidential. The detailed procedure for requesting elective services will be set out in the SEC.

DCC charging arrangements

The DCC will recover both fixed operating costs and any variable costs associated with the services it provides to its users. Fixed costs associated with core services, will be met by suppliers and network operators, shared broadly in line with the share of costs to which their services give rise. The detail of these arrangements will be finalised in the run up to the designation of the SEC, once more information is available about the cost structures of the DCC and its service providers.

In the period before the DCC's systems are ready, the DCC will levy a charge on users, based on market share of the number of domestic premises where a smart meter is required to be installed, to cover its fixed costs. In the period between DCC systems being ready and the roll-out of smart meters being complete (i.e. at the end of 2019), a fixed cost charge will additionally be levied on any smart metering systems at non-domestic premises that are enrolled with DCC. Once the roll-out of smart meters is completed, the DCC will levy a charge for each meter enrolled to recover fixed costs. It will also levy explicit variable usage charges which will be set out in its charging statement. Elective service costs, whether fixed or variable will be met by the party requesting them, in line with the charging objectives in the DCC licence.

The Government has concluded that bad debt will be socialised amongst DCC Users to protect the DCC from financial risk. In addition, the SEC will enshrine the principle of 'pay now, dispute later' in relation to payment of charges. However, to provide protection for DCC Users, an expedited disputes process will be introduced to ensure timely resolution of payment issues and an invoice will not be payable where it contains a manifest error (for example where a small supplier receives a bill intended for a large supplier).

Managing and Governing the SEC

The document sets out the new approach to governance in the light of strong opinions across stakeholder groups to some aspects of the proposals. The SEC will be overseen by the SEC Panel. This will be led by an independent Chair, whose nomination will be subject to approval by Ofgem. Panel members will consist of a consumer member, a DCC member, up to six persons elected by SEC Parties others than the DCC, and, if required, an appointee chosen by the Panel Chair. Panel decisions will be carried by a simple majority vote, with the Chair only voting where there is deadlock.

The SEC Panel will need to contract for a range of governance services under the SEC. The Government has concluded that the establishment of a special purpose company, SECCo, will best ensure that the contracting arrangements of the Panel are aligned with and attuned to SEC requirements. SECCo will have a Board made up of Panel Members, and will provide for alignment between the aims of the Panel and the organisation they use to contract

services. The SEC will have a Code Administrator, to manage and coordinate relevant SEC modifications and Panel procedures, and also a Secretariat, acting as clerk to the Panel and to facilitate meetings.

Modifications to the SEC will follow one of three paths depending on the nature of the change:

- Path 1 modifications will be raised by Ofgem following a Significant Code Review or to implement EU requirements;
- Path 2 modifications will be raised by SEC Parties and be subject to approval by Ofgem; and
- Path 3 modifications will be judged not to be material and as such managed through industry self-governance.

The SEC Panel, which is independent rather than representative of SEC Parties, will retain responsibility for the operation of the modification process under all three paths. The role of the Panel will be to ensure that a robust evaluation of the implications of the modification has been undertaken, to enable proper consideration by SEC Parties. While the Panel will oversee the progression of modifications, will not give a recommendation to Ofgem as to whether the change should be made. Instead, a final recommendation on a modification will be delegated to a Change Board, which will have a wider, representative membership of all SEC Parties, enabling a greater level of engagement from SEC Parties on modification recommendations. Views are sought from stakeholders on the composition of the Change Board. Decisions on modifying the SEC will be appealable in circumstances where Ofgem disagrees with a recommendation made by the Change Board.

Additional SEC Stage 1 content

Stage 1 of the SEC will include specific assurance provisions for completing entry processes to use DCC Services, and assurance techniques relating to providing access to data and ensuring privacy. A generic performance assurance framework will not be included at this stage, reflecting the content of the first stage of the SEC, but will be considered further for subsequent stages.

The document also sets out the Government's conclusions in relation to liabilities, disputes and default arrangements. In line with the general approach for industry codes, liabilities will be excluded aside from certain specified issues. For the SEC, liabilities will be excluded except for a breach of confidentiality and intellectual property right provisions, for physical damage to property, liability to pay the required charges or for circumstances where liabilities cannot be excluded by law.

On disputes, the SEC will contain provisions to ensure that disputes between Parties have a defined mechanism for resolution that does not rely on the courts. For Stage 1 of the SEC these will be either through the Panel, Ofgem or an arbitration body depending on the nature of the dispute. Finally, on default, the first stage of the SEC will set out the process by which the Panel may suspend the rights of SEC Parties in the event of a default, or expel Parties from the Code. It will also contain provisions for voluntary exit from the Code. Finally, it will set

out provisions covering intellectual property rights and the rights and obligations of SEC Parties covering unforeseen events.

Additional areas for consultation

The document sets out additional issues for consultation. These are:

- Provisions in the SEC to ensure coordination with other industry codes – these would task the SEC Panel with establishing joint working arrangements with committees and panels established under other industry codes to facilitate coherent change processes across codes (section 5.1);
- Provision of registration information to the DCC – this would require electricity distribution operators and gas transporters to make certain registration system data items available to the DCC to enable it to identify the identity of the registered supplier and relevant network operator and validate requests for services to meter points (section 5.2);
- Transitional arrangements within the SEC – the Government anticipates that it may not be appropriate for certain provisions within the SEC to be in effect at the point the SEC is designated. It seeks views on the arrangements for amending the provisions contained in the SEC during the transitional period in advance of DCC services go-live (section 5.4);
- Licence conditions to accede to and comply with the SEC – the document sets out draft licence conditions for suppliers and network operators to accede to and comply with the SEC and seeks views on them (section 6.1); and
- Initial establishment of the SEC including the arrangements for initial accession at SEC commencement, the establishment of the Panel, Code Administrator and Secretariat and the SECCo (section 6.2).

2. Introduction

2.1 General information about this consultation

How to respond

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. Responses to this consultation should be sent to smartmetering@decc.gsi.gov.uk. The consultation closes on 3 January 2013.

Responses should be clearly marked Smart Metering Implementation Programme: Stage 1 of the Smart Energy Code – a Government response and a consultation on the draft legal text. Responses and any enquiries related to the consultation should be addressed to:

Smart Metering Implementation Programme – Regulation Team
Department of Energy & Climate Change,
3 Whitehall Place,
London
SW1A 2AW
Tel: 0300 068 5163
Email: smartmetering@decc.gsi.gov.uk
Consultation reference: URN **12D/406**

Territorial extent

This consultation applies to the gas and electricity markets in Great Britain. Responsibility for energy markets in Northern Ireland lies with the Northern Ireland Executive's Department of Enterprise, Trade and Investment.

Additional copies

You may make copies of this document without seeking permission. An electronic version can be found www.decc.gov.uk/en/content/cms/consultations/stage1_sec/stage1_sec.aspx. Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

The Department will summarise all responses and place this summary on our website at www.decc.gov.uk/en/content/cms/consultations/stage1_sec/stage1_sec.aspx. This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the Government's Code of Practice on consultation, which can be found at www.bis.gov.uk/files/file47158.pdf. If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator
3 Whitehall Place
London SW1A 2AW
Email: consultation.coordinator@decc.gsi.gov.uk

What happens after the consultation

Responses should be submitted by 7 January 2013. The Government will consider responses to the consultation and make any appropriate amendments to the draft Smart Energy Code.

During the consultation period the Government will be engaging with potential data and communications providers as part of the formal procurement process for DCC services. Dialogue will be held with potential service providers to solicit feedback on the Smart Metering Implementation Programme's requirements for DCC services. In addition, the Government encourages potential service providers to respond formally to this consultation. Feedback received from potential service providers will be aggregated with other responses to this consultation in order to inform the Government's decisions in this area.

3. Developing the Smart Energy Code

3.1 A staged approach to developing the SEC

1. On 5 April 2012 the Government published a consultation (“the April Consultation”) on the Smart Energy Code, which described, and sought views on, the key features of the SEC. This document serves as a formal Government response to that consultation. Chapter 4 sets out further detail on the content of the April Consultation, the questions asked therein and responses received.
2. The SEC will be delivered in three stages, timed to align with key phases in the Smart Metering Implementation Programme’s delivery plan:
 - Stage 1 of the SEC will be designated at the time the DCC licence is awarded. This stage is the focus of this document. It will contain key provisions required from day one of the DCC’s operation (specifically in relation to charging and governance) and operational provisions where detailed requirements have been defined;
 - In Stage 2, additional operational provisions that are not included in Stage 1 (for example in relation to the smart metering communications hub and security requirements) and that are required to support development, testing and proving of the DCC’s services will be added to the SEC;
 - In Stage 3 of the SEC, any further provisions required in advance of DCC ‘go-live’ (the point at which the DCC begins to provide services) will be added.
3. The DCC licence, which will be awarded in accordance with the DCC licence application regulations², contains provision for the introduction of the SEC. Specifically, licence condition 22 defines the SEC as the document that is ‘designated’ by the Secretary of State as the Smart Energy Code. This designation will apply for Stage 1 of the SEC and will take the form of a notice by the Secretary of State. This will come following completion of this consultation on the legal text by the Secretary of State and any other consultations that are considered appropriate. The notice will specify the date that the SEC should take effect.
4. Thereafter, amendments to the SEC for Stage 2, and for any subsequent revision undertaken by the Programme, will be made using powers in the Energy Act 2008 (Section 88 (4)). This process will require that the draft amendments to the SEC are laid before Parliament before taking effect.
5. The Programme will need to undertake a series of actions prior to the point at which Stage 1 of the SEC will be designated. These are discussed in further detail in chapter 6 of this paper.

² [The Electricity and Gas \(Competitive Tender for Smart Meter Communication Licences\) Regulations 2012](#)

6. The elements necessary for the SEC to perform its function at the point at which the DCC licence is awarded, and also those elements where the Government's policy is sufficiently developed to enable legal drafting, are set out in the table below. These will form Stage 1 of the SEC.
7. Subsequent stages of the SEC will be drafted to deliver further smart metering policy requirements as those requirements are concluded upon by the Government. The anticipated content of those further stages is also set out in the table below.
8. The Programme is also considering the approach to transition: specifically the process to move from the current set of market arrangements to the introduction of the DCC; the testing of the DCC and prospective DCC User systems and processes; and the commencement of the DCC's smart meter communications service. The transitional approach will need to be supplemented by a legal framework that gives effect to it. From the perspective of the legal framework, there are potentially several transitional steps to be accommodated including, for example, the point in time at which the DCC licence is granted and the SEC designated (go-active) as well as the time from which the DCC begins to provide services under the SEC (go-live). Unless stated otherwise, the SEC drafting contained within this consultation relates to the enduring arrangements that will apply from SEC go-live and in relation to metering systems that comply the second version of the Smart Metering Equipment Technical Specifications (hereafter referred to as 'SMETS2').
9. The types of matters that it may be necessary to provide for in the transitional period include: switching off and on, or modifying, various licence and code obligations; making appropriate provision for testing and trialling; the approach to the enrolment of smart metering systems with the DCC and the adoption of communications contracts; and the resolution of any transitional disputes. Section L of the SEC contains drafting designed to address the switching off and on of provisions in Stage 1 that will not come into effect until at or before DCC go-live. Additionally it contains proposed variations to the SEC modification process in this transitional period. This drafting is further explained in chapter 5. The Government will consult further as necessary on the details of transition (including the changes to the legal framework that are required) in due course.

3.1.1 Elements of the SEC drafted in this first stage

10. The table below sets out the contents of the Stage 1 SEC. The Government would welcome views on the draft legal text (annexed to this document), and the extent to which is appropriately reflects the Government's conclusions as set out in this document.

Section of the Smart Energy Code	
Section A:	Definitions & Interpretation
Section B:	Accession
Section C:	Governance
Section D:	Modifications

Section of the Smart Energy Code	
Section E:	Provision of registration data
Section H:	DCC Services relating to user entry processes, meter operator agents, user gateway, enrolment of smart metering systems, core communication services (excluding the schedule of core services), provision of elective services and withdrawal of smart metering systems
Section I:	Data Protection and Access to Data
Section J:	Charges
Section K:	Charging Methodology
Section L:	Transition
Section M:	General Provisions
Schedules:	Specimen Accession Agreement, Pro Forma Bilateral Agreement, Framework Agreement, SECCo, Accession Information, Form of Letter of Credit

Consultation Question

1. **Do you agree that the Government conclusions are appropriately reflected in the SEC legal drafting? Please provide a rationale for your views, and any further comments on the draft legal text.**

3.1.2 Elements of the SEC to follow in subsequent stages

Section of the Smart Energy Code	
Section D:	Modifications [exceptions to general modifications]
Section F:	Smart Metering System Requirements
Section G:	Security of Smart Metering Systems
Section H:	DCC Services: Communications Hub Service ³ , Replacement of Smart Metering Systems, Error Reporting/Fault Management, Incident Management/Business Continuity/Disaster Recovery, Other Services, Performance Standards, Verification of the Energy Consumer
Section I:	Further Data Privacy provisions appropriate for Stages 2 and 3 of the SEC
Section L:	Further transitional arrangements (for example in relation to market proving, enrolment of compliant smart metering systems installed during the Foundation

³ Subject to Government conclusions following the Consultation on the second version of the Smart Metering Equipment Technical Specifications.

Section of the Smart Energy Code	
	period, adoption of Foundation Communication Contracts, enrolment of meters from DCC go-live, go-live DCC User entry processes
Section M:	Any further liability provisions appropriate for Stages 2 and 3 of the SEC
Schedules:	Security Requirements, SMETS, Core Communication Services, Communications Hub Technical Specification,
Subsidiary Documents	SEC Business Processes, DCC User Gateway, Code of Connection, DCC User Gateway Catalogue

4. Responses to the Smart Energy Code April 2012 Consultation, and further questions for consideration

11. This chapter covers the questions asked in the April Consultation and provides a summary of responses received to those questions. It sets out the conclusions that the Government has reached in light of those responses. An explanation of the draft legal text for Stage 1 of the SEC that implements the conclusions reached is also provided. In certain areas further questions for consultation have also been asked. A full list of questions asked in this document is set out at Annex B.

4.1 Consultation summary

4.1.1 Proposed SEC content covered in the April 2012 Consultation

12. The April Consultation covered a range of different subjects for inclusion in the SEC, set out across various chapters. These are summarised in the table below along with references to where each is covered in the draft SEC annexed to this document.

Chapter	Points considered	SEC Section
Participation in the SEC	The different types of Parties that might accede to the SEC and therefore the various 'Party categories' that will arise.	C and H
Involvement of Metering Services Community	The metering services community's requirements for electronic access to smart metering systems enrolled with the DCC's communication services. Views on the appropriate mechanisms for access that should be set out in the SEC.	H
Accession to the SEC	The rules and procedures that will apply when Parties seek to accede to the SEC. The information that acceding Parties will have to provide and other requirements that will have to be satisfied.	B
Establishing readiness to receive DCC services	Establishing the capability to send requests to or receive communications from the DCC via an electronic communications link. The use of this link to submit information to the DCC associated with smart metering system enrolment or withdrawal. Other entry processes.	H
Enrolling and withdrawing	Rights of suppliers to request the enrolment of smart metering systems with the DCC or to remove them from DCC's communications service.	H
Core and elective services	A description of the DCC's communication services. The process for requesting elective communication services and the terms and conditions associated with their provision.	H

Chapter	Points considered	SEC Section
DCC Charges	Details for the structure of DCC Charges.	J
The SEC Panel	The proposed functions, powers and objectives of the SEC Panel, its constitution, duties and independence of members.	C
Code administrator and Secretariat	The provision of support by Code Administrator and Secretariat services to facilitate the governance and administration of the SEC.	C
Modification process	The framework for modifying the SEC.	D
Reporting	The obligations on the SEC Panel and, possibly, SEC Parties with regard to the production, provision and publication of certain information and reports.	Various
Compliance and assurance	The potential requirement for compliance and assurance arrangements to be included in the SEC to provide confidence that key obligations are complied with under the SEC	n/a (SEC 2)
Liabilities between SEC Parties	The extent to which any liabilities should arise between various Parties under the SEC and what limitations or exclusions of liability should apply in various circumstances.	M
Disputes	The dispute resolution provisions that should be included in the SEC and the appropriate mechanisms for resolving any disputes.	M
Default	The appropriate procedures and powers to be included in the SEC to discourage or rectify a default, to mitigate risk faced by SEC Parties as a result of one Party's default and, in extreme cases, to expel a defaulting Party from the code.	M
Ceasing to be a Party to the SEC	The rules and procedures that will apply when a Party exits the SEC, either by voluntary withdrawal or upon expulsion by the SEC Panel.	M
Intellectual Property rights	The provisions that should be included in the SEC to govern the ownership and exploitation of relevant intellectual property.	M
Confidentiality	The provisions that will be included in the SEC to govern the classification and protection of confidential information.	M
Unforeseen Events	The inclusion within the SEC of the definition of unforeseen events which are beyond the control of the Parties to the SEC and which prevent Parties from performing their obligations under the SEC.	M
Transfer of DCC licence	The provisions in the SEC to support the elements of the DCC licence regarding the seamless transfer of its business to a successor DCC in the event of revocation or expiry of the Licence.	M

4.1.2 Consultation responses

13. The Consultation was published on 5 April 2012 and closed on 1 June 2012. There were 40 responses across a range of organisations, including:
- Large and small energy suppliers (serving both domestic and non-domestic customers)
 - Electricity distribution and transmission networks and gas transportation networks
 - Meter operators, meter asset managers and meter asset providers
 - Consumer and business representatives
 - Data and communications companies
 - Other industry organisations
 - Ofgem
14. Two respondents asked for their responses to be treated confidentially. All other responses to the SEC consultation can be found on the Programme website⁴.

4.2 Summary of responses, Government conclusions, summarised legal text and additional consultation questions

15. This section summarises the responses to the April Consultation, and the Government's conclusions. Where appropriate, it also describes the relevant legal text in the SEC which implements those conclusions.

4.2.1 Participation in the SEC

16. The April Consultation set out the purpose and scope of the SEC and considered the different categories of Parties that might accede to it. Views were sought on proposals for the following classification of Party categories: the DCC, Gas Supplier, Electricity Supplier, Gas Transporter, Electricity Distributor, and Other Users of DCC services.
17. The majority of respondents agreed with the proposed Party categories. Some, from a range of stakeholder groups including meter operators and meter asset managers (collectively referred to here as MOPs), meter asset providers (MAPs) and small suppliers, suggested including MOPs and MAPs as distinct Party categories. One respondent suggested the National Electricity Transmission System Operator should also be a Party category, as it requires access to aggregated demand and generation data for demand forecasting purposes and access to aggregated network data and consumption data for planning purposes.
18. Party categories appear in two contexts in the SEC, first for the purposes of governance, and secondly for the purposes of defining the eligibility to take communications services, and this is reflected in sections C and H of the SEC. The Government will not at this

⁴www.decc.gov.uk/en/content/cms/consultations/stage1_sec/stage1_sec.aspx

stage include additional Party categories in the SEC, but acknowledges that these may be required in the future, for example if the DCC offers value added services or when responsibility for undertaking meter registration services transfers to the DCC.

19. The Government is not persuaded that the National Electricity Transmission System Operator should constitute a new Party category. While access to aggregated consumption data is likely to bring benefits for the management of its network, this information may more efficiently be obtained at an aggregated level through distribution network operators (DNOs) than by accessing each meter's data individually and the Government encourages the National Electricity Transmission System Operator to work with distribution network operators to understand better how any potential data needs could be met. The involvement of the metering services community and its participation in the SEC is considered in more detail in the following section.

4.2.2 Involvement of the Metering Services Community

20. As set out in the April Consultation, in this context the metering services community is a collective term for the following organisations which provide meter related services to electricity and gas suppliers:
 - The generic term '**meter operator**' (MOP) is used throughout the remainder of this chapter to describe the function of providing metering services excluding the provision of meters. It therefore includes both the gas meter asset manager and the electricity meter operator, but excludes any services relating to the provision of meter assets which gas meter asset managers may perform;
 - The generic term '**meter asset provider**' (MAP) is used throughout the remainder of this chapter to describe the function of the provision of meters. It therefore includes meter asset providers and any provision of meter assets by gas meter asset managers; and
 - The term '**meter party**' is used to designate either a MOP or a MAP as defined above.
21. Views were sought on the requirements of the metering services community for electronic access to the smart metering systems enrolled with the DCC's communication services. Views were also sought on the tracking of meter assets in the future requirements for registration systems.
22. Respondents to this section of the April Consultation broadly agreed that in general the requirements for the metering services community had been adequately captured. The issues were considered separately for MOPs and MAPs.
23. Respondents broadly agreed with the Government's proposals in respect of MOPs, which would allow a MOP to undertake certain communications with the DCC on a supplier's behalf as the 'nominated agent'. As it would not be a SEC Party, the MOP would have no direct contractual relationship with the DCC. Instead, any rights or obligations associated with 'nominated agent' communications under the SEC would remain with the supplier. This would give both the supplier and the MOP direct access to the DCC's communication service. The majority of respondents considered that MOPs

should have limited governance rights under the SEC, restricted to the provision of technical expert input to changes and modifications that “materially affect” them (in similar terms to those granted under existing codes).

24. The Government has therefore concluded that the SEC will provide a supplier’s MOP with electronic access to the DCC. This would be achieved by stating that the registration of a meter operator in the existing electricity registration systems and a meter asset manager in the existing gas registration systems is deemed to constitute a nomination by the supplier for that MOP to be provided with electronic access under the SEC to the smart metering systems for which it is the registered supplier. It is proposed that the MOP should only access a subset of the information available relating to the read inventory and diagnostic read information enabling it to provide services to the supplier, rather than having the same access rights as the supplier. For instance, the MOP would not be able to access consumption data or send “write” commands or firmware updates to the meter. Suppliers would remain responsible for the activities of the MOP under the SEC, including charges for the services they access or any further restrictions on access which would be governed by bilateral commercial arrangements.
25. Respondents expressed mixed views in respect of meter asset providers. There was support for the proposal that MAPs should obtain the information they required through the relevant supplier. However, a number of respondents argued that MAPs should be given rights under the SEC to access meters via the DCC’s service because the information provided would help them monitor the performance of meters and track them through supplier churn events. Respondents also supported including asset tracking in the requirements for the future registration systems proposed to be provided by the DCC. A number noted the need for an analysis of the costs and benefits of the requirements.
26. The Government considers that existing regulatory frameworks and the commercial arrangements between suppliers and MAPs should be the primary routes for delivering information between these parties, and therefore does not plan to create new mechanisms within the SEC for this purpose. However, it recognises that a change of supplier event can make it difficult for a MAP to track a meter, and that this may create issues with the provision of meters. There is activity outside the SEC to help mitigate some of the associated risk, and the Government is consulting on proposals around smart change of supplier as part of the transitional arrangements for smart metering in its consultation on the Foundation Smart Market⁵ published on 2 November 2012. The proposals are designed to incentivise appropriate commercial arrangements between suppliers and MAPs to enable the latter to track assets and enter into contracts with new suppliers. Furthermore, the future inclusion of registration services in the DCC offers the opportunity to consider further potential MAP requirements related to asset tracking.

Translation into legal drafting

27. To implement the above position it is assumed that an input is received from existing industry databases that confirms the MOP designation by a supplier for a particular

⁵ http://www.decc.gov.uk/en/content/cms/consultations/found_smt_mkt/found_smt_mkt.aspx

meter installation. This is then deemed as the MOP being nominated for SEC purposes. Consequential amendments to existing industry codes are in hand to ensure the data flow to the DCC. The SEC will be drafted such that, to be able to communicate with the DCC, MOPs will be required to meet some of the entry processes set out in the SEC, namely:

- meet any requirements relating to testing User Gateway communication links with the DCC;
- meet any user entry requirements relating to security; and
- demonstrate the ability to operate various business processes.

28. Once they have completed these entry processes they will become an “Eligible Supplier Agent” (ESA). It will be necessary for the DCC to be able to reconcile the MOP “unique identifier” as used in the registration system against an actual entity so the draft SEC includes a requirement for the person wishing to become an ESA to provide to the Code Administrator with its unique identifier. The Code Administrator will manage this process and provide lists of ESAs and notify Parties in the event of the change in status of an ESA. An ESA will become a supplier’s nominated agent through its designation by the supplier in existing industry processes. The meter operator should then be able to access the subset of the registered supplier services related to diagnostics.

4.2.3 Accession to the SEC

29. The April Consultation sought views on the rights of Parties upon accession to the SEC, the accession process and its information requirements, and the proposed time limit within which acceding Parties should take up DCC services.
30. Respondents were broadly supportive of the proposal that Parties who have acceded should be able to take part fully in SEC governance. This is standard practice in other industry codes and was supported by the majority of respondents who expressed a view. However, some respondents argued that only active users of the DCC’s services should be able to raise modifications to the SEC, and others sought clarity on how modifications raised by Parties leaving the SEC would be treated. The Government considers it essential that SEC Parties are able to take part fully in governance when they accede to the SEC as they are bound to the contractual rights and obligations contained within it. By taking part in governance, Parties would also be able to influence decisions about changes to the SEC which may be barriers to their taking up DCC services.
31. On the subject of the accession process, respondents were broadly supportive of proposals that the information that prospective SEC Parties are required to submit in order to accede should not be onerous and should not form a barrier to entry. Some respondents suggested that evidence of Parties’ financial reliability and trustworthiness with customer information should be collected in addition to basic business information. The Government considers that obligations imposed elsewhere are more suitable for mitigating these concerns. The SEC will place obligations on DCC Users to provide credit cover (section J3) to minimise the risk of financial defaults. Existing legislation, including the Data Protection Act 1998, protects the use of data owned by the consumer.. SEC Parties will not be able to access customer information via the DCC by

virtue of acceding to the SEC; successful completion of the DCC entry processes will be a prerequisite for this, as further set out in section 4.2.4.

32. Respondents supported the proposal that the SEC Panel should have the power to expel an unlicensed Party who has acceded to the SEC but not requested or taken up DCC services within six months of accession. However, some respondents expressed concerns that the length of time might not be suitable in all cases, particularly in the early stages of the SEC when Parties would still be developing their business processes. The Government considers it is important that the timescale associated with this provision is not inflexible and that Parties will not face automatic expulsion after this period has elapsed. Any Party facing expulsion will be able to present evidence to support its continued participation in the SEC, and the SEC Panel will need to consider this evidence when considering any decision to expel. Any expulsion decision by the Panel could be appealed by the SEC Party to Ofgem. The Government does not consider that this provision imposing a six-month time limit should be activated at SEC commencement (when DCC services will not yet have gone live). It is recognised that, depending upon the plans for initial user entry, adequate time must be allowed for SEC Parties that exist prior to the DCC's services going live to have completed DCC User entry processes.

Translation into legal drafting

33. The SEC will require Parties to submit basic business information when acceding (shown in the 'Accession Agreement' schedule of the SEC). The SEC accession process is shown in section B1 of the SEC, which includes straightforward text covering admission and application. An application fee will need to be paid by new parties wishing to accede to the SEC, at a level to be set by the SEC Panel to cover the administration costs of the accession process. Energy suppliers, electricity distributors and gas transporters will also be required to provide their unique identifier from the MRA or UNC registration systems as part of the accession process, in order to determine their DCC charges. This identifier will also be used to match the SEC Party to the registered Party details when determining its eligibility to take core services.
34. The rules contained in section B will apply for Parties acceding after the SEC has been designated. Accession to the SEC upon designation is discussed in Chapter 6.

4.2.4 Establishing readiness to receive the DCC's communications services

35. The April Consultation proposed that the DCC should establish an interface (the 'DCC User Gateway') to enable users to send requests to and receive responses from smart metering systems via the DCC. It also proposed that prospective DCC Users should be subject to a set of entry processes requiring them to demonstrate their capability to receive the DCC's communication services in compliance with the relevant provisions of the SEC.

DCC User Gateway

36. The April Consultation sought views on the proposal that the Government should not mandate a specific solution for the DCC User Gateway and that Data Service Provider

(DSP) bidders should be invited to propose the solution that they consider the most effective. This could include the option of extending an existing industry network coupled with an Open Standards interface.

37. Eighteen of the 22 respondents to this question agreed with the consultation proposal. Only two respondents suggested that the Government should mandate a specific DCC User Gateway solution. Two other respondents were agnostic to this question. The Government has therefore concluded that the proposed approach be confirmed.
38. The technical specification for the User Gateway should be subject to an enduring governance regime to ensure that it remains fit for purpose. There are potentially two governance options:
 - The DCC would have the right to modify the specification unilaterally; and
 - Any proposed changes will be subject to the SEC modification procedures.
39. The Government's preferred position is for the second of these two options, that the governance of the User Gateway technical specifications⁶ should sit under the SEC and that changes to them should be part of the SEC modification process. Given the potential impact to User systems of any changes to the User Gateway, it is considered inappropriate and unreasonable for the DCC to be able to modify the specifications unilaterally.
40. The first specification for the DCC User Gateway will form part of the Government's DSP procurement exercise to ensure that the most robust and efficient User Gateway is developed. It is the Government's intention that effective engagement will be undertaken with stakeholders to ensure that the User Gateway is appropriate and proportionate.

DCC entry processes

41. Twenty-one respondents answered the question on the need for DCC entry processes. There was overwhelming agreement to establish entry processes, with many respondents stating that the proposals were acceptable and sensible. However, the following principal points were made:
 - The entry processes must be proportionate to the role of the User and the services it is using. Some respondents thought it particularly important to ensure that the processes do not create a barrier to entry for smaller DCC Users;
 - Compliance with the security requirements should be tested. Failure to meet the security standards poses significant risks to the DCC's and other Users' systems;
 - All prospective DCC Users should have the appropriate financial security cover in place. Respondents felt that the lack of appropriate financial cover posed a significant risk should a User fail to pay its bills; and

⁶ The legal text refers to a 'Code of Connection' which will set out the technical specifications of the User Gateway

- More work needed to be done on the detail of the processes, and there should be clear lines of responsibilities between the DCC and the Code Secretariat or Administrator.
42. The Government will make successful completion of the entry processes a precondition in the SEC for all DCC Users taking the DCC's services. The Government notes the requests for more detail on the processes. Section 4.2.7 of this document and section J of the SEC set out the requirements and processes to be followed to satisfy credit cover requirements. Other requirements of the entry processes (including any tests and disputes over whether tests have been passed) will be further developed as follows:
- The DCC's User Gateway testing will be added to section H of the SEC during the go-active to go-live period as the User Gateway is developed;
 - The security requirements will be set out in section G of the SEC, which will be consulted on for Stage 2 of the SEC; and
 - The business process capabilities will be consulted on for Stage 2 of the SEC.
43. The Government is of the view that the evidence of completion of entry processes should be collected by the Code Administrator, whose role would be to ensure that all the appropriate documentation is complete and to notify the DCC once a User has completed the entry processes.
44. The Government considers that, in line with guidance from the Information Commissioner's Office, it would be beneficial for users to undertake privacy impact assessments (PIAs) to assist them in demonstrating how they will manage the data they will be obtaining from the DCC. Accordingly this will be recommended to DCC Users as part of the User entry processes undertaken by the Code Administrator (section H1 of the SEC).

Translation into legal drafting

45. The proposed SEC obligations reflecting the Government's conclusions are set out in the drafting for Stage 1 of the SEC. Section H1 covers the User entry processes, covering eligibility and application. The legal text seeks to ensure that only SEC Parties that have successfully completed the entry processes will be able to receive service from the DCC. The proposed role of the Code Administrator in the collection of evidence of completion of entry processes is reflected in the User Entry section (H1.3 and H1.4) of the SEC.

4.2.5 Enrolling and withdrawing smart metering systems

46. The April Consultation sought views on the Government's proposed processes, and the obligations and rights of the energy suppliers and the DCC, in relation to the enrolment of smart metering systems with the DCC's services and their withdrawal from those services.
47. There was general agreement from the majority of respondents that the proposed processes for enrolment and withdrawal are aligned with processes being developed

elsewhere in the Programme and that the proposed obligations seem pragmatic and reasonable.

48. All the respondents agreed that suppliers should grant the DCC the right to access their smart metering systems. The general view was that if this right is not given then the DCC could not deliver its services. Two respondents indicated that the SEC should include appropriate provisions to ensure the DCC does not abuse this right by using it to gain access to the consumer's premises or by undertaking activities outside its scope to deliver its services. The Government acknowledges this concern, but notes that the DCC will not have the right to access a consumer's premises. Additionally, the DCC will be obliged by its licence to undertake specific activities. It will not be able to undertake any additional activities above a de minimis amount without the permission of the Authority, including the provision of value added services. The supplier obligation to grant the right of access to DCC for enrolled smart metering systems will be contained in stage 2 of the SEC.
49. A large majority of respondents felt that the DCC notifying all SEC Parties when a smart meter has been enrolled may not accord with general consumer protection practices and could expose the consumer to unwanted marketing. It was felt that enabling this activity could lead to a negative experience of smart metering and put its delivery at risk.
50. One of the objectives of the smart metering rollout is to enable greater competition in the energy services market. The quality of the service third parties can provide to customers may benefit from them being able to identify whether a metering system is enrolled with the DCC's services at the time of initial contact has been made with the customer, rather than subsequently when a request for data through the DCC is rejected. The Government has considered the issue. It is of the view that the provision of meter point reference number information on its own would give little additional information to licensed Parties than they can already access to enable them to carry out unwanted marketing. The Government understands that unlicensed SEC Parties (i.e. those who are not energy suppliers or distribution network operators) are unable to access address information from alternative industry data sources. On balance, the Government's view is that the risks of making the data available do not outweigh the benefits.
51. Two suppliers felt that only domestic smart metering should be enrolled with the DCC and that non-domestic metering should not be considered. Their view was that the current investments being made in automated meter reading (AMR) should be protected to enable non-domestic consumers to continue to install AMR. The Government is committed to the roll-out of smart metering systems to domestic and specific non-domestic premises by 2019. It has stated, and remains committed to the position, that non-domestic suppliers may choose whether or not to use the DCC's services.
52. Two small suppliers noted that the implications of the enrolment process on export electricity suppliers need to be fully considered. The Government has noted that export suppliers and import suppliers may use the same smart metering systems, or they may use separate systems. Where there are separate import and export systems in one property, both the import supplier and the export supplier may enrol smart metering systems with the DCC and have the right to withdraw them from the DCC. This

arrangement will allow both parties to use the DCC's services in a manner suited to their respective services.

53. However, the Government considers that, where a single smart meter services both an import supplier and an export supplier, it should be the import supplier that has the right to withdraw it from the DCC's services. To maintain the security integrity of the end-to-end smart metering system there should not be an arrangement that allows two communication routes into a single smart metering system in the consumer's premises. Therefore, all DCC communication links will be severed when a metering system is withdrawn from the DCC's services and both the import and export suppliers will be removed from the DCC's services. It is proposed that the import supplier should be the lead organisation, with the right to withdraw the smart meter, because the majority of communications to the smart meter will be driven by the import supplier.
54. The DCC licence requires the DCC to provide enrolment and communications services for all compliant smart metering systems, other than where the premises fall within those exempted in any Statement of Service Exemptions⁷ approved by the Secretary of State (and subsequently amended as directed by the Authority). For consistency with these arrangements, the DCC's enrolment obligation under the SEC will need to be limited to enrolling smart meters at premises other than those which are the subject of a Service Exemption. The proposed arrangements and the rationale behind them are discussed further in the Government Response to the DCC Licence Consultation published in parallel with this document.

Translation into legal drafting

55. The obligations relating to the enrolment and withdrawal of smart metering systems are set out in section H5 and H8 of the draft SEC. The text has been drafted to reflect the business processes related to enrolment and withdrawal of smart metering systems that have been developed by the Government in conjunction with industry stakeholders.
56. Section H5 of the legal text sets out that only devices that are included on the Approved Products List are eligible to be enrolled with the DCC. This assumes that there will be a certification regime applying to smart metering equipment that complies with the second version of the Smart Metering Equipment Technical Specifications (SMETS 2) smart metering equipment and that an Approved Products List will be maintained that contains details of devices that are appropriately certified. This is a holding position in the SEC drafting pending the Government conclusions in relation to the certification of smart metering equipment, which were consulted on in the Assurance of the Smart Metering Equipment section of the consultation on the second version of the Smart Metering Equipment Technical Specifications.

4.2.6 The DCC's provision of core and elective communication services

57. The April Consultation set out three categories of core communication services that the DCC could provide to users: Type A – services available to the registered supplier for a particular metering system; Type B – services available to the network operator; and

⁷ Appendix 1 to DCC Licence Condition 17: Statement of Exemption

Type C – services that are universally available to all SEC Parties. The Government sought views on this categorisation and the process for requesting core services. It proposed that the DCC’s schedule of core communication services should be subject to the standard SEC modification process.

58. Elective communication services are those that are neither core nor value-added services⁸. SEC Parties would be able to request these services from the DCC, who would be obliged to offer terms for their provision within a specific timeframe as set out in its licence. It was proposed that the SEC would set out the procedure for requesting elective services and specify the timeframes within which the User must accept the offer if it wishes to accept the service.
59. It was further proposed that certain terms and conditions applying to core service provision should also apply to elective service provision. The Government sought views on whether or not the details of an elective service being provided should be confidential between the DCC and the SEC Party receiving it and proposed that elective services should be available on either a bilateral or a multilateral basis. The Government also suggested that the SEC should contain provisions requiring the DCC to notify SEC Parties of the timing of the implementation of changes to its systems and invited views on whether the DCC’s requirement to offer terms for elective service provision should only apply after it has commenced operation of its core communication services. Finally, the Government sought views on the appropriate arrangements for provision of core and elective services where two import suppliers may be using a single meter.

Core communications services

60. Nineteen respondents answered the question about the service type categorisation, expressing general agreement with the three proposed categories. The metering community, along with one supplier, indicated that a fourth category should be added specifically setting out the core communication services that MOPs and MAPs would be eligible to receive. The Government has concluded that the three categories of eligibility for core communications services are appropriate. The issue of access to core services for the metering services community is considered in section 4.2.2.
61. One supplier and a consumer group noted that suppliers might be able to access more detailed consumer consumption data for marketing purposes through Type C services than they would have access to through Type A services, and that the registered supplier would need to obtain opt-in consent from the consumer to receive such a service. This concern is mitigated by the fact that where a Party receives Type C services, they must have the consumer’s consent.
62. All respondents to the question on whether core communication services should be subject to the SEC modification process supported the Government’s proposal, noting that this would promote transparency of the change and allow SEC Parties to influence the change proposal. However, two respondents were of the view that the standard modification process may not be wholly appropriate because a change to a core service may require technical changes, and therefore a more technically focused panel may be

⁸ Value-added services are described in Condition 17 of the DCC licence.

better placed to deal with these changes. The SEC Panel will be able to constitute working groups and commission expert advice should they require it. The Government has concluded that the SEC modification procedure should be followed for changes to the core communication services. Further detail on this procedure is in section 4.2.11.

63. Energy industry respondents indicated that there was the potential for two import suppliers to use a single metering system. One respondent indicated that provisions for this arrangement were set out in the Balancing and Settlement Code, particularly for the Half-Hourly sector. Further investigation needs to be undertaken on this area to understand the existing regulatory arrangements that apply to these properties and how rolling out smart metering to these properties could be managed. The Programme will undertake further analysis in this area and consult on this issue for stage 2 of the SEC.
64. The programme is continuing to engage with industry to develop the SEC schedule of core communication services. This is an iterative process that will take account of information gathered from the service provider procurement process and input from DCC Users. The completed schedule will be set out in stage 2 of the SEC. An illustrative example of a schedule of core communication services is provided in Annex E.

Elective communications services

65. All respondents agreed with the general principle that the procedures for the provision of terms for elective communication services should be set out in the SEC. One respondent noted that having the rules publically available would instil confidence that the DCC was acting in accordance with its non-discriminatory obligations. It was noted that placing these obligations in the SEC would allow the DCC process to be audited. Some respondents noted that this should not compromise the provision of core services.
66. There were mixed views on how long an offer of terms should remain open, with time limits ranging from one month to six months. One respondent suggested that the time limit on an open offer should be agreed between the User and the DCC. The Government has concluded that where a DCC User seeks an elective service it should notify the DCC of the date it requires the service to start. The DCC will consider this in its offer of terms, which should include the length of time the offer remains open. The Government has additionally concluded that certain terms and conditions applying to core service provision should also apply to elective service provision, and these are set out in section H7.13 of the SEC.
67. On the subject of the confidentiality of elective services, there were slightly more respondents who preferred that the details of elective services should be available to other SEC Parties than those who preferred them to be confidential. Some respondents indicated that transparency of elective services would enable other users to make informed decisions about whether they want to take up that service and would ensure that elective services are not being delivered in an anti-competitive manner. There were mixed views from large suppliers regarding sharing elective service information, with some agreeing that commercially sensitive terms should be confidential and another preferring that they should be disclosed. Some suggested a balanced solution where terms were disclosed to Ofgem, or parts of terms shared. One respondent suggested that any form of confidentiality would be short-lived because competitors will know the

type of service being received once the product starts being delivered to consumers. One consumer group was undecided, and two other respondents were generally in favour of confidentiality.

68. The Government considers that all details of the service should remain confidential for at least six months until after the service has been first delivered. It is the Government's view that there is sufficient intelligence within the market to identify that a product being offered to consumers would be predicated on an elective service being offered by the DCC. After six months, the DCC should publish certain details of the service that was offered so that other Parties are aware of the elective services being provided. However, the Government has concluded that certain commercially sensitive information associated with elective service provision – limited to the name of the SEC Party taking the service and the price – should always remain confidential unless disclosure is authorised by the Party receiving the service.
69. The Government considers that it would be inappropriate for specific classes of Users to have access to types of service requests via an elective bilateral contract that they could not access as a core service. For example, it would not be appropriate for a Party that is not the registered supplier for a smart meter to be able to update the tariff on that meter through an agreement to send such a message type under an elective services contract. It is the Government's view that such access would undermine the inherent rights that are attributed to specific users by establishing eligibility for different groups of core services. Therefore, the Government intends to impose restrictions on the types of elective services that will be available to a SEC Party. Section H7.3 of the draft SEC contains provisions to this effect.
70. The majority of respondents stated that elective services should be made available via either bilateral contracts or multilateral contracts. Those supporting the use of multilateral arrangements felt that this arrangement provided additional flexibility, provided for innovation and promoted efficiencies. The Government notes the views of the respondents and considers that in practice multilateral contracts for elective provision are likely to prove unworkable. They would require obligations to be imposed that were contingent upon all Users under the multilateral contract continuing to take the service and that dealt with the eventualities in the circumstances where this proved not to be the case.. Given the practical difficulties associated with multilateral contracts, and given that sufficient flexibility is delivered by providing for individual service provision under an elective services contract, the Government considers that all elective services should be delivered via bilateral contracts. The terms set out in these contracts may be the same for each User, and indeed negotiated as part of the same process, but this arrangement will not make terms and conditions associated with such service provision contingent upon the other actions of Users..
71. On the subject of when the DCC should begin to consider requests for elective services, the Government considers that it would be more efficient for the DCC do this at the point where its services go live. It is noted that, during the period between DCC licence award and services go-live, the DCC and its service providers will be designing, building and testing their systems. Should they be required to consider requests for elective services at that time, this might detract from their ability to finalise and deliver their solution in a timely manner The Programme is currently undertaking an exercise to identify

necessary communications services that the DCC will offer from go-live and this could be a combination of core and elective services.

72. All respondents agreed that DCC Users should be notified of the DCC's system changes, to ensure that their systems remain fit for purpose and that they can meet their obligations under the SEC. One respondent suggested that changes should be categorised by scale and impact; another indicated that a sufficient lead-in time should be required so that users can make any requisite changes. The Government has concluded that the DCC must notify users of any changes to its system and give them sufficient notice of those changes.

Translation into legal drafting

73. The SEC drafting set out in section H6 reflects the Government's conclusion on the provision of core communication services and the drafting in H7 reflects the conclusions on elective service provision.

4.2.7 DCC Charges

74. The overall approach to the DCC charging regime balances a range of conflicting policy requirements and commercial imperatives. The DCC charging regime provides a framework for the funding of the DCC to ensure that the revenue allowable under its price control can be recovered from users of its services thus securing payments to service providers as well as recovering both the DCC's own costs and the SEC governance costs.
75. The DCC charging regime will include a mixture of fixed charges and explicit variable payments based on measured activity across all DCC Users. There is the need for the charging regime to evolve over time consistent with the design and implementation of the DCC and the scope for further change via the SEC modification process.
76. The April Consultation set out that the DCC licence would contain objectives (restated for completeness in section C of the SEC) that the charging regime should meet. For ease of reference, the Relevant Policy Objectives of the Charging Methodology from the draft DCC licence are presented in Box 1. The April Consultation also set out how the SEC would contain the detailed approach to the calculation of charges that reflects these principles. It should be noted that the charging methodology will be subject to the SEC modification process, though it will be judged against the Relevant Charging Objectives rather than the General SEC Objectives. A range of commercial matters are also included, such as payment terms, robust financial security rules, restrictions on payment withholding by DCC Users, and stipulation that in the event that the DCC is unable to recover debt from a SEC Party, the ultimate creditors will be other SEC Parties.

Relevant Policy Objectives of the Charging Methodology

- 18.14 The Relevant Policy Objectives of the Charging Methodology consist of the First Relevant Policy Objective and the Second Relevant Policy Objective.
- 18.15 The First Relevant Policy Objective:
- (a) applies in relation to Smart Metering Systems installed (or to be installed) at Domestic Premises; and
 - (b) requires the Charging Methodology to ensure that Service Charges imposed under or pursuant to the SEC in respect of the operation or provision of Mandatory Business Services (excluding Elective Communication Services) for the purposes of such Smart Metering Systems do not distinguish (whether directly or indirectly) between Energy Consumers at Domestic Premises in different parts of Great Britain.
- 18.16 The Second Relevant Policy Objective is that, subject to compliance with the First Relevant Policy Objective, the Charging Methodology in respect of all of the Mandatory Business Services provided under or pursuant to the SEC must result in Service Charges that:
- (a) facilitate effective competition in the Supply of Energy (or its use) under the Principal Energy Legislation;
 - (b) do not restrict, distort, or prevent competition in Commercial Activities that are connected with the Supply of Energy under that legislation;
 - (c) do not deter the full and timely installation by Energy Suppliers of Smart Metering Systems at Energy Consumers' premises in accordance with their obligations under the Energy Supply Licence; and
 - (d) are non-discriminatory and reflective of the costs incurred by the Licensee, as far as is reasonably practicable in all the circumstances of the case, having regard to the costs of implementing the Charging Methodology.
- 18.17 The Charging Methodology will achieve the Second Relevant Policy Objective if it is compliant with the provisions of paragraph 18.16 in the round, weighing them as appropriate in each particular case.

Source: DCC Licence Consultation

Box 1: Relevant Policy Objectives of the Charging Methodology

77. Each year a charging statement (in a form approved by the Authority) will be published in advance by the DCC, setting out the fixed and explicit variable charges that relate to services (other than elective service). The DCC will invoice based on the charging statement. Charges for elective services will be on a bilateral basis between the DCC and a SEC Party. The DCC will be able to revise the charging statement within the year to secure additional financing if required, subject to the Authority's approval. It is envisaged that the form of the first charging statement will be approved by the Secretary of State at the time of DCC licence award as part of the implementation activities and therefore the format for the charging statement is included at Annex D in this document for comment.

78. In response to the April Consultation, 28 respondents expressed views regarding the reasonableness of the overall approach to the DCC Charging Regime, consisting of a mixture of fixed charges and explicit variable payments based on measured activity across all DCC Users. Although almost all respondents were supportive of the approach overall, one expressed concern that the regime was unnecessarily complex.
79. There were many detailed observations regarding the implementation of the charging regime. A few respondents proposed that the charging relating to non-domestic premises should be uniform, consistent with the regime for domestic premises, however other respondents supported the restriction on uniform pricing to domestic premises only. The Government Response to the Draft DCC Licence Consultation has set out that the requirement for uniform charging will be restricted to domestic premises given the scope for a cross-subsidy between domestic and non-domestic consumers and this is reflected in the Policy Objectives of the Charging Methodology as previously presented in Box 1.
80. The April Consultation set out that the DCC's fixed charges would be set to recover costs (where not recovered via explicit variable charges) based on the number of smart metering systems enrolled across users as a class (only suppliers and network operators), weighted by the relevant proportions of electronic message types for each group of DCC Users to provide a broadly cost reflective allocation of fixed costs. A number of respondents expressed concern that third parties such as Energy Service Companies (ESCOs) would not be charged a fixed charge per meter, though this approach was supported by a few respondents. The Government considers that this charging group allocation framework for fixed costs remains appropriate, as it provides a regime that ensures cost recovery and also allows for flexibility to evolve within the SEC modification process. That flexibility would enable any future concerns about ESCO usage to be addressed.
81. The April Consultation also set out how the charging regime would evolve to reflect the costs incurred by the DCC. From the Licence Commencement Date until DCC go-live, the DCC will only recover its own costs and SEC governance costs, with the DCC service providers expected to internalise and capitalise their investments. Some respondents suggested that there should be no charges from the DCC before go-live and that the DCC should finance its own costs during this period.
82. The April Consultation also proposed that during mass roll-out the payments to service providers will be profiled according to the expected profile of meter roll-out such that the costs rise in line with enrolment of meters to ensure that there is no disincentive for early roll-out. During this period, fixed cost charges to Users would be based on prior enrolment and planned enrolment of smart metering systems with the DCC. However, the Government highlighted it would review and confirm the arrangements once further details related to the mass roll-out period were known.
83. Following the consultation and further discussions with those parties bidding for the DCC's service provider contracts, the Government expects that:
- In the periods before go-live and during the roll-out of smart meters, the DCC will levy a charge per meter based on market share of the number of domestic premises where a smart meter is required to be installed. The charges will be

levied regardless of whether meters are enrolled. This allocation by market share will provide greater certainty that the charging regime does not create a disincentive to roll out smart meters early. It also reflects the difficulties associated for suppliers making accurate projections of their roll-out profile now for the period to 2019;

- once service providers have their systems ready to operate, the DCC will pay service providers the same amount each year in order to repay the investments made by service providers as well as their costs of financing these investments; and
- Once the roll-out of smart meters is completed in 2019, the DCC will levy a charge per meter enrolled (which varies by type of User) to recovers those costs considered fixed.

84. Final conclusions will be made alongside consideration of responses to the current consultation on the Foundation Smart Market.
85. The consultation set out the expectation that the explicit variable charges would be based on the aggregate data sent and data received for each User to reflect the key cost driver the DCC faces. The nature of this explicit variable charge was based on an assumption that the key driver for the DCC's costs is data volume. Having gathered further information from bidders we now propose to identify classes of message type that will be used as the basis for attributing variable charges to Service Users. This will better reflect the underlying economics where, for example, unpredictable, fast response messages could be more costly than large messages that could be predictably scheduled. The explicit charges will be included within the legal drafting for Stage 2 of the SEC to reflect the services and also the charging arrangements embodied within the contracts between the DCC and its service providers.
86. The Government has concluded that the DCC will levy explicit variable usage charges (to pass through the service providers' variable charges). The DCC will also levy fixed charges to recover all other costs for each charging group across suppliers and networks on a per meter market share basis based on a broadly cost-reflective allocation. This is considered to be the approach that provides the least distortion to the recovery of fixed costs and will ensure cost recovery for the DCC. The Government is currently working with industry to determine which services will be included in the DCC core communication service provision from go-live, and expects to start to explore the relative allocations between groups with stakeholders during Q4 2012.
87. The charging for elective services will also be consistent with the Relevant Charging Objectives but the actual charges will differ according to the specific elective service agreed bilaterally with the DCC User. The DCC Licence provides for the reimbursement of earlier customers (the 'first comer') for particular services that are subsequently used by later customers (the 'second comers'). This prevents free-riding on previous development costs. For example, if an elective service request required major software development, the first comer would pay for that work. If a second comer requested a similar service and it would be inefficient for the DCC to repeat the work, the DCC will be able to charge the second comer for a proportion of the costs incurred and reimburse the first comer. Such an approach already exists in the energy industry, with respect to network connections for example. The detail of this principle is incorporated in the SEC

Stage 1 legal drafting. On a practical basis, there is a need to determine thresholds over which the DCC will consider ‘first comer / second comers’ re-imbursing to avoid placing an unnecessary burden on the DCC to re-allocate small costs over an unlimited time period, but at the same time offering a degree of protection of the first comer. The current SEC Stage 1 legal drafting, places a five year limit on the period over which the DCC looks back in order to determine the extent of any reimbursement (the ‘five year rule’) and the DCC will only apply the ‘Five Year Rule’ where the initial financial investment exceeded £20,000 and the Government is seeking stakeholder views on the appropriateness of these thresholds.

88. The April Consultation proposed that the commercial terms within the SEC would mandate a “pay now dispute later” approach for the DCC’s invoicing. Twenty-four respondents expressed views on this topic. Most industry respondents (i.e. future SEC Parties) did not support “pay now dispute later” on the basis that it gives too much power to the DCC and would mean that the DCC has little incentive to address payment disputes promptly with SEC Parties. However, some respondents supported the “pay now dispute later” principle as consistent with other market codes related to the provision of central services and an approach that would reduce the cash flow risk for the DCC. The Government continues to believe that, to protect the DCC from financial risks it is not able to manage, this principle should remain part of the charging arrangement. However, in response to concerns through the consultation, the Government is including a clear and expedient disputes procedure with a fast track process for disputed charges alongside performance incentives on the DCC for dispute resolution and also providing for an exception to the principle in the circumstance of a manifest error regarding an invoice.
89. The April Consultation set out that the DCC would invoice its Service Users promptly in arrears each month based on actual data (to minimise the need for data estimation and invoice reconciliation) and that the DCC would then pay service providers once it has received the necessary funds. The Government will use the competitions for the DCC, DSP and CSPs to determine detailed timing arrangements to ensure that service Users are charged promptly by the DCC based on their actual consumption of services and that Users then pay promptly to permit the DCC subsequently to pay the DSP and CSPs before the end of the month following the period invoiced.
90. The April Consultation proposed that bad debt would be socialised explicitly within the current charging period across all DCC Service Users. Twenty-three respondents expressed views in relation to the allocation of bad debt and there was a range of views expressed. Many respondents suggested that the SEC should include robust rules related to credit management and that there should be financial incentives on the DCC regarding credit control activities to protect the ultimate creditors as well as provide transparency of debt control activity. As above, to avoid exposing the DCC to financial risks it cannot manage, the Government continues to believe that bad debt risk relating to core and elective services should be borne by DCC Users. The Government agrees that rules are required in relation to credit control and the DCC should be incentivised to control bad debt risk. In this context, it should be noted that any financial incentive on the DCC related to bad debt is captured by the price control licence arrangements in the DCC licence rather than in the SEC.

Consultation Question	
2.	Do you have any comments on format of the DCC's Charging Statement for Service Charges?
3.	Do you agree with the thresholds applied to the 'first comer / second comer' principle (Five Year Rule for costs over £20,000)? If you disagree please set out the reasons for your preferred approach.

Translation into legal drafting

91. The SEC drafting set out in sections J and K reflects the Government's conclusions on the DCC charging methodology and the commercial terms associated with the payment of DCC charges. This has been prepared based on the range of useful suggestions provided by respondents and standard commercial practices adopted in other industry codes.
92. In summary, section J provides that:
- The DCC will invoice following the end of the month in which charges become due;
 - Each Party will pay the invoice following receipt, except in the circumstances of manifest error;
 - The DCC will calculate the credit cover requirement at least once a week by multiplying the User's Value at Risk by the User's Credit Cover Factor;
 - The cost of obtaining a Credit Assessment Score is to be borne by the User and is to be obtained as often as reasonably needed, at least once every 12 months;
 - Indicative Charging Statements must be produced by the DCC within five working days of April, July and October in each year, in respect of the subsequent regulatory year (starting in January);
 - Indicative budgets are to be produced by the DCC within five working days of April, July, October and January in respect of the second and third subsequent regulatory years.

4.2.8 The SEC Panel

93. The April Consultation set out and sought views on the proposed functions, powers and composition of the SEC Panel, as well as certain aspects of its operation, administration and proceedings.

Panel functions and powers

94. In the April Consultation the Government proposed a set of objectives, functions and powers for the Panel. These are repeated here in Box 2 and Box 3 below.

Objectives of the SEC Panel as proposed in the April Consultation

- That the SEC is given effect fully and promptly and in accordance with its terms
- That the SEC is given effect in a manner that facilitates the achievement of the Relevant SEC Objectives (as set out in the DCC licence)
- That the SEC is given effect in a fair manner and without undue discrimination between any Parties or classes of Party, and
- That the Panel conducts its business in a transparent and open fashion.

Box 2: Objectives of the SEC Panel as proposed in the April Consultation

Functions and powers of the SEC Panel as proposed in the April Consultation

- A. Appointing and overseeing the performance of the Code Administrator and Secretariat functions
- B. Implementing (or supervising the implementation of) the SEC accession process
- C. Implementing (or supervising the implementation of) the SEC modification process
- D. Taking steps to ensure that the SEC is given effect in accordance with its terms
- E. Deciding any matter which, under any provision of the SEC, is referred to the SEC Panel for decision
- F. Taking steps to ensure compliance by SEC Parties with the provisions of the SEC, including deciding on the expulsion or suspension of the rights of any SEC Party
- G. Establishing arrangements for the resolution of disputes under the SEC
- H. Establishing sub-committees and working groups, and delegating powers, functions and responsibilities to any such sub-committees and working groups
- I. Developing, consulting upon and publishing a three-year Panel business plan
- J. Publishing an annual report covering progress against business plan and providing or arranging for the provision of other reports and other information to SEC Parties and the Authority
- K. Securing the compliance of any SEC Party with any requirement to provide information about the operation of any of the arrangements set out in the SEC on the request of the Authority, and/or publishing such information
- L. Periodically reviewing the SEC and operations under it in order to evaluate whether these continue to meet the Relevant SEC Objectives, and undertaking a review of such parts of the SEC as the Authority may specify
- M. Establishing joint working arrangements with other relevant industry panels and committees
- N. Arranging for third parties to undertake certain actions and appointing and removing professional advisors (or directing other relevant bodies to do so) as required to facilitate the full and proper discharge of the Panel's functions.

Box 3: Functions and powers of the SEC Panel as proposed in the April Consultation

95. Twenty-three respondents commented on the objectives, functions and powers of the SEC Panel. Most agreed with them in general terms but a number of specific comments and suggestions were made.
96. Several respondents observed that the SEC Panel is being tasked with two core functions, firstly to act as an executive committee overseeing the operation of the code and secondly to act as a modification panel making decisions on changes to the code. They proposed that function C, 'implementing (or supervising the implementation of) the modification process', be delegated to a separate more representative body under the SEC (a 'Change Board' or 'Development Board').
97. A number of respondents stated an expectation that some of the powers and functions of the Panel would be delegated to the Code Administrator or to committees of the Panel.
98. The Government considers that the responsibilities of the Panel set out in the April Consultation are broadly right, and recognises that a number of these may be delegated to the Code Administrator or to sub-committees of the Panel such as a Change Board. The Government has also identified a number of new responsibilities for the Panel. New duties are proposed to ensure the Panel sets up joint working arrangements with the Information Commissioner where it is deemed appropriate, and to take into account the creation of a SECCo (see section 4.2.9). The objectives, duties and powers of the Panel set out for Stage 1 of the SEC may need to be expanded as new content is added for Stages 2 and 3. One issue in particular is the role the Panel could play as a body which is able to co-ordinate views and interests of all DCC Users.

Panel members and their appointment

99. The April Consultation proposed that SEC Panel members should act independently and impartially and not in a representative capacity. A 14-member Panel was proposed, together with rules for appointing these members. Under these proposals 12 members were allocated full voting rights on Panel decisions. Voting members comprised four people appointed by large suppliers, two appointed by other DCC Users, one each appointed by small suppliers, gas transporters and electricity distributors, two appointed from consumer backgrounds, and one appointed by the Chair. The Government also proposed that the independent Chair would have a casting vote, and that a person nominated by the DCC would sit on the Panel but would not have a vote.
100. A wide range of views was expressed regarding the Panel composition and its independence. Just under half of respondents supported an independent Panel, though this position was strongly opposed by a significant majority of the DCC's future users who expressed a preference for Panel members to represent the interests of the parties that appoint them.
101. While less than half of respondents agreed with the Panel composition, there was no consensus around a viable alternative. A number of respondents argued that large suppliers should not be able to nominate so many members to the Panel, or for greater representation for their own Party category. Several set out different Panel compositions entirely, a number of which provided an equal number of Panel members per Party category. Several respondents proposed that energy market participants that are not

SEC Parties should be represented on the Panel. Some respondents asked for clarity regarding how the Chair's nomination to the Panel would be appointed.

102. Just under half of respondents agreed with the division of voting rights. Several respondents proposed that the DCC should have voting rights in some circumstances. The majority of respondents agreed that the Panel should have an independent Chair and supported the rules set out for the appointment of the Panel.
103. Following the consultation, the Government has conducted follow-up discussions with stakeholders. These have revealed a preference for a tiered governance model with more responsibilities explicitly delegated from the Panel. The Government remains of the view that SEC Panel members should be obliged to act independently and impartially, reflecting the Panel's important role overseeing the accession, modification, and certain disputes processes on behalf of all SEC participants. However, the Government considers it appropriate for certain aspects of the modification process to be delegated to a representative change board (see section 4.2.11, on modifications). It is appropriate to re-examine the Panel composition in light of this.
104. Two alternative approaches to the Panel composition set out in the April Consultation present themselves:
- **Option A:** Provide for a Panel which includes an equal number of members per Party category, thus helping to ensure that Panel members have a grasp of issues that are important to the diversity of SEC participants; and
 - **Option B:** Provide for a Panel which provides for a set number of members to be nominated from and elected by all SEC Parties, thus incentivising the election of Panel members who have the support of multiple Party categories and a broad understanding of issues that are important to SEC participants.
105. The Government recognises that both models have advantages. Option A ensures that Panel members have an understanding of all categories of market participant. Option B places more emphasis on the qualities of the individuals being nominated.
106. In addition to those Panel members nominated by SEC Parties, the Government considers it appropriate for the Panel to have an independent Chair whose nomination is approved by Ofgem, a 'Consumer Member'⁹, a 'DCC member' and a Panel Chair appointee. The latter would be appointed if the Chair, having consulted with the other Panel members, considers that additional expertise is needed to help the Panel understand the issues and experiences of a particular class of SEC participants.

Consultation Question

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| 4. | Do you think the members of the Panel nominated by industry should be drawn from and elected in equal numbers by Party category OR be elected by all Parties (as set out in the legal drafting). Please give reasons for your answer. |
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⁹ Consumer Focus or its successors

Proceedings of the Panel

107. The April Consultation set out some high-level principles relating to the proceedings of the Panel, and these received broad support. The consultation explicitly asked if Panel members should be remunerated. Over half of respondents thought Panel members should be reimbursed for reasonable costs and expenses only. A small number of respondents suggested that Panel members could receive some form of pay in some circumstances. A small number of respondents also proposed no expenses or pay should be covered.
108. The Government agrees with the majority of consultation responses that Panel members should receive reasonable travel expenses but that they should not be paid. Panel Chair remuneration should be considered separately, with pay and benefits to be determined by the Panel as part of the Chair appointment procedure.

Translation into legal drafting

109. The SEC drafting set out in section C reflects the Government's conclusions on SEC Governance. C2 sets out the Objectives, Duties and Powers of the Panel. C3 sets out that a 10-person Panel shall act independently and be composed of:
- A Panel Chair reasonably independent of Parties and approved by Ofgem
 - Up to six persons elected by Parties other than the DCC (Elected members)
 - One person nominated by the National Consumer Council (Consumer member)
 - One person appointed by the DCC (DCC member)
 - One person appointed by the Panel Chair
110. C4 sets out the process for electing Elected members. Each voting group within a Party category is entitled to cast one vote indicating a first, second and third preference. A rule of the election process is that no more than three people can be elected by each of the Party categories. C5 sets out the quorum for each Panel meeting. It also sets out that all decisions of the Panel will be carried by a simple majority vote. Each Panel member including the DCC will be entitled to vote. The Panel Chair will not be entitled to vote unless there is deadlock, in which case the Panel Chair shall have the casting vote. C6 sets out the rules for establishing sub-committees and Working Groups, while C8 deals with Panel Costs and Budgets.

4.2.9 The SECCo

111. The SEC Panel will need to contract for a range of governance services under the SEC. As well as contracting administrator and secretarial services it may need to contract legal, technical or financial advice. It needs a flexible and straightforward way of doing this that does not compromise the independence of its decisions.

112. In the April SEC consultation the Government set out a minded-to position that the Secretariat and Code Administrator services should be contracted by the DCC on behalf of the SEC Panel. It also invited views on how this DCC contracting model compared to setting up a SEC company (SECCo) to contract services on behalf of the Panel.
113. Respondents were split in their views regarding whether the Code Administrator and Secretariat should be contracted through the DCC or through a SECCo. A slightly greater number of respondents were supportive of contracting through the DCC. However, a number of respondents did not hold a strong preference, and several recognised that both contracting models are viable.
114. In the consultation responses, advocates of the DCC contracting model argued it is simpler, is less costly to set up and run, and avoids adding an unnecessary layer of governance arrangements. Under this contracting model independence of the Code Administrator and Secretariat could be secured through contractual obligations and safeguarded by provisions in the SEC.
115. Advocates of the establishment of a SECCo argued that it is a proven model used by other codes and that it more clearly allows for independent, transparent and flexible contracting of services. Under this model there would be a clearer alignment between the focus and priorities of the Panel and the SECCo than there would be with the DCC, which has its own General Objectives. A number of respondents noted that a range of third party services may need to be contracted under the provisions of the SEC, and some of these may involve scrutiny of the DCC (auditing, for example). One respondent noted that under a DCC contracting model concerns about conflicts of interest could be addressed by contracting third party services through the SEC Administrator. This would provide a level of separation from the DCC that would be equivalent to a SECCo contracting third party services.
116. One respondent raised a number of practical issues related to the DCC contracting model, noting that Panel support services will be shaped over time, potentially through several procurement exercises. This would require the DCC to execute multiple contracts on behalf of the Panel, thus expanding its contract portfolio and its contract management activities on issues wider than the DCC's focus. It was also noted that there is a risk that SEC costs and DCC costs could be blurred under this model, though this could be mitigated by clear accountability for the SEC budget and costs residing with the SEC Panel. The respondent also asked how the DCC would be able to address concerns about contract terms agreed by the SEC Panel, and whether it should be able to reject contracts.
117. Having considered this matter, the Government has concluded that the creation of a SECCo will best ensure that the contracting arrangements are aligned with and attuned to SEC requirements. A SECCo would have a Board dedicated to supporting the SEC objectives. From a corporate governance perspective the SECCo model provides for alignment between the aims of the Panel and the organisation they use to contract services. The SECCo would be tightly constrained such that it serves the needs of the Panel and SEC Parties only; its operations would be paid for by SEC Parties, thus providing incentives to ensure it operates with minimum cost burdens. Furthermore,

SEC Parties can scrutinise the performance of the SECCo contracting function as shareholders and through an AGM.

118. On balance these good governance advantages outweigh concerns related to the cost and complexity of a SECCo. The SECCo will be a small organisation with no need for employees. The costs of governance services would still be recovered through the DCC's charging arrangements (so avoiding the need for a separate SECCo charging regime with the SEC). This should ensure that any additional corporate costs should be small.

Translation into legal drafting

119. The SECCo provisions and Articles of Association are set in a schedule to the SEC. In summary, Schedule 4 sets out that:
- The sole objective of SECCo is to act as a corporate vehicle to assist the Panel with the establishment and effective implementation of this Code in accordance with its terms;
 - Licensed Parties will each hold a single share of SECCo. Unlicensed Parties may also choose to become shareholders of SECCo. The DCC will not be a shareholder;
 - SECCo shall be run on a "break even" basis; any surplus working capital shall be retained by SECCo and applied to subsequent expenditure rather than distributed to shareholders;
 - None of the shareholders shall be obliged to provide any finance to SECCo or to provide any guarantee, indemnity or other security which third parties may require to secure the obligations of SECCo;
 - SECCo shall not incur costs unless authorised by a budget approved pursuant to section C8 of the SEC, except where it is necessary in order to comply with legally binding obligations to which it is subject;
 - The DCC will indemnify the SECCo against any liabilities which the SECCo may incur in relation to any claim following the removal of a SECCo director;
 - The SECCo Board Members will be the SEC Panel members, and the Panel Chair will be the SECCo Chair; and
 - The Government will facilitate the establishment of SECCo. Completion activities required at SEC commencement are discussed in section 6.4.

4.2.10 Code Administrator and Secretariat

120. The April Consultation set out the broad approach to the provision of a Code Administrator and Secretariat (CAS) appointed by the SEC Panel and supporting the governance and administration of the SEC. The CAS will play an important role in the day-to-day governance of the SEC. The Secretariat will service the SEC Panel acting as its clerk, facilitating meetings and related operations and providing the facilities resources and services required for the effective implementation of the SEC. The Code

Administrator will manage and coordinate relevant SEC modifications and Panel procedures.

121. The role of the CAS has been further considered during the consultation period. Section C7 of the draft SEC sets out the general role of the CAS and the Code describes specifically the activities the CAS shall undertake. These include:

- supporting the accession process, in section B (Accession);
- supporting the suspension, expulsion and withdrawal process, in section M8;
- supporting the SEC dispute resolution process;
- supporting the SEC modification process;
- supporting the DCC entry process, in section H (DCC services) of the SEC; and
- preparation of annual report and any other reporting functions.

122. It is also expected that the CAS will also play a role in advising the SEC Panel about matters relating to the discharge of the Panel's functions and responsibilities in accordance with the Code as well as providing Parties with information in connection with the implementation of the Code. The CAS shall also comply with the Code Administration Code of Practice. Chapter 6 discusses issues relating to the initial setup of the SEC, including the process for establishing the CAS.

4.2.11 Modification process

123. The April Consultation set out a high level framework for modifying the SEC covering who should be entitled to raise modifications, the standard modification paths for different types of modification, the role of the Panel in the modification process and the rights of appeal in relation to modification decisions.

Parties entitled to raise SEC modification proposals

124. The Government set out in the April Consultation that all SEC Parties should be entitled to submit proposals to modify the SEC. The Government also proposed that modification proposals could be raised by any appropriate body representing the interests of consumers, any other person designated for such purposes by Ofgem, by Ofgem itself, and by the SEC Panel. Respondents to the consultation agreed that all SEC Parties should be entitled to submit proposals to modify the SEC. Some respondents asked for clarity on the circumstances under which the other organisations proposed would be able to raise changes. The Government has noted the requests for clarity and has set out in the legal drafting the circumstances under which some of the organisations listed above are able to raise modifications.

Standard modification paths

125. The Government set out three standard modification paths in the April Consultation and invited views on these. The three paths are:

- **Path 1:** whereby Ofgem directs the DCC to raise a modification proposal arising out of a Significant Code Review. Ofgem may also raise a change itself or direct

the DCC to raise a change to comply with or implement EU requirements and/or any relevant legally binding decisions from the European Commission or the Agency for the Co-operation of Energy regulators;

- **Path 2:** whereby a modification is judged to meet certain materiality criteria and so requires Ofgem Approval; and
- **Path 3:** whereby a modification is judged not to be material so the final decision can be made through industry self-governance under the SEC.

126. All respondents were supportive to this approach to defining modification paths under the SEC, it was noted in particular that this is in line with the outcomes of Ofgem's Code Governance Review.

127. The Government has noted Ofgem's recently published Phase 2 Code Governance Review Proposals. Ofgem's preference is that each modification proposal is considered against self governance criteria by the Panel on a case-by-case basis. The Panel's decision will be conclusive unless Ofgem determines otherwise at its own initiation or on the application of a Party or the consumer representative. The Government considers that this is a pragmatic approach that allows for a degree of flexibility in the classification of proposals by the Panel whilst ensuring there is robust oversight from Ofgem.

Urgent Modifications

128. In the April Consultation the Government recognised that in some cases modification proposals may need to be progressed urgently and requested views on the process for this. The majority of respondents suggested that modification proposers should recommend whether modifications are treated as urgent. The Government agrees with this approach and has included within the required content for a modification proposal in the SEC drafting a statement from the proposer as to whether or not they consider it to be urgent.

129. Respondents considered the role of the Panel and Ofgem in confirming or rejecting the proposer's assessment of urgency. Some respondents suggested the Panel should make a recommendation to Ofgem to make the final decision, while others suggested that the Panel make a decision with Ofgem retaining the power to determine otherwise on appeal. The Government has chosen to take the former approach where, after the Party raising a modification indicates whether they consider it should be considered urgent, the Panel makes a recommendation to Ofgem which then makes the final decision regarding whether a modification proposal should be treated as urgent or not. This approach is consistent with that taken by the majority of existing electricity and gas codes. Section D4 of the SEC drafting gives a non-exhaustive list of the types of modification that will appropriately be given urgent status. This includes where they relate to an issue which, if not addressed urgently, may cause a significant commercial impact on one or more Parties, a significant adverse impact on the security of energy supply or cause one or more Parties to be in breach of relevant obligations.

Fast-track self-governance modifications

130. The Government has noted that Ofgem's Phase 2 Code Governance Review proposes a 'fast track' self governance route for modifications that can reasonably be considered

to be a matter of fact and therefore do not need a full modification process or consultation. The Government considers that it is appropriate for the Panel to determine whether a modification proposal is a fast track proposal and can accordingly be changed without the need to consult Parties. This decision requires unanimous agreement from Panel members and may be subject to determination by Ofgem, either at its own initiation or on the application of a code participant.

Special provisions for particular elements of the SEC

131. The April Consultation made clear that the SEC may need tailored modification processes or decision making arrangements with respect to some contents of the SEC (for example in relation to security requirements), and invited views on this issue. Most respondents acknowledged that this may need to be the case where specific expertise is required to inform the decision and highlighted that existing codes often utilise separate change processes for code subsidiary documents.
132. The Government has not identified any contents of the legal drafting of Stage 1 of the SEC which require tailored governance arrangements different to the three paths set out above. However, it will consider this further for each subsequent stage of SEC that needs to be introduced, including the appropriate process for managing changes to subsidiary documents.
133. The Government noted in the April Consultation that there may be periods where the modification process will need to be suspended or partially suspended during periods of testing or during major SEC implementation events (for example in the period building up to DCC go-live). The Government has set out transitional arrangements for the modification process in section 5.4.

Roles and responsibilities

134. As part of the modification proposals set out in the April Consultation, the Government indicated it was minded to propose that responsibility for making final decisions or recommendations on SEC modification proposals should always rest with the SEC Panel and that this power should not be capable of delegation.
135. There were 22 responses to this question, while the majority of respondents agreed that the Panel should be responsible for making final decisions, this question has clear links to other consultation questions on Panel composition and independence (see section 4.2.8 above), where there was limited agreement amongst consultation respondents regarding what the Panel should look like but support for a tiered governance model where some responsibilities are delegated by the Panel.
136. The Government has reviewed different ways of establishing a tiered governance model for the modification process and has concluded that it is feasible to balance the responsibilities of an independent panel and a representative change board.
137. A principle of code governance is that the modification process should be administered in an impartial, objective and balanced manner and that it should provide rigorous high quality analysis of any case for modification. The Government considers that an independent body is best able to ensure this and has therefore concluded that the SEC

Panel should maintain responsibility for the operation of modification process. The modification process should also promote inclusive, accessible and effective consultation. Having reviewed the arrangements in this light, the Government recognises that allowing the Panel to delegate authority for modification recommendations provides for, and may even encourage, more involvement of SEC participants.

138. The Government has concluded this split of responsibilities should work as follows. The Panel will oversee the progression of modifications through the refinement process, impact assessment and report phases. The Panel will also decide whether a modification can be issued for consultation but will not give a recommendation regarding implementation of the modification. It is this last step, making a final recommendation to Ofgem on change (or decisions on self-governance), which is delegated to the Change Board, though the Change Board may also comment on modification proposals during the refinement and impact assessment process. This approach provides the Panel with an important assurance role whilst ensuring that its remit is distinct from that of the Change Board.
139. The creation of a change board with responsibility for modification decisions potentially provides for a wider and more representative membership than would be possible for the Panel. The Government recognises there are several ways this could be approached.
140. A number of existing codes delegate the responsibility for modification decisions to Parties. Under the Master Registration Agreement (MRA) the Development Board (MDB) has a defined membership which represents set Party categories. Under the Supply Point Administration Agreement (SPAA) any code participant with a material interest can attend Change Board discussions, there is no fixed membership, but voting is by Party category. The Distribution Connection and Use of System Agreement (DCUSA) provides for a voting mechanism to make decisions on change; votes are also by Party category.
141. The Government has considered each of these options for the SEC Change Board and concluded that on balance the model utilised by the MDB, which has a defined membership, is appropriate for the SEC. The Government believes this model best provides a forum for the debating of issues and for the consensus building required in a code with so many different market participants. This approach hinges on providing Change Board members with some powers to discuss and adjust their positions. The legal drafting of the SEC attempts to provide this while also providing for members to be guided by the majority view within their Party category.
142. The Government is proposing a Change Board comprised of five Party categories:
 - Large suppliers (with 6 standing members);
 - Small suppliers (with 3 standing members);
 - Networks (with 3 standing members);
 - Other DCC Users (with 3 standing members); and
 - Consumer representative (with 1 standing member)

143. The Change Board will be chaired by a person provided by the Code Administrator. A representative of the DCC will be able to attend and speak at the Change Board but will not have a vote, in line with the Government's original proposals for modification decisions.
144. Change Board recommendations to Ofgem will be to accept or reject a modification proposal. Having considered the different ways a recommendation can be reached, the Government has concluded that it is most appropriate for this to be based on the majority view of Party categories that are affected by the proposed change rather than a consensus across all Party categories. If the Party category vote is deadlocked, with equal numbers of Party Categories for and against the proposal, the Change Board recommendation to Ofgem will be to reject the proposal.
145. The Government recognises that in some circumstances a Party category may not be impacted by a modification proposal and should therefore not have an interest in voting. During the Report Phase of the modification process the Panel may determine which Party categories are likely to be affected by a modification proposal. Change Board members representing Party categories who are not likely to be affected will abstain from voting unless they can make a strong case otherwise.
146. Within a Party category each Change Board member will have one vote. The majority vote of members within each Party category is required for that category's recommendation to be that a modification proposal be approved. This arrangement allows for representation of a range of small and large market participants and consumer members whilst giving no single grouping of participants greater voting power than another. However, the Government recognises that in some cases it may be more difficult to agree a position within these Party categories. It is therefore important for Change Board arrangements to have flexibility to evolve. In line with this the Government has concluded that it should set out the composition of the Change Board at a high level only. More detailed arrangements for the appointment of Change Board members may be agreed by the Parties in each category providing this has majority support within the category.
147. The Government recognises that the arrangements for the Change Board making a decision may mean that it is necessary to have an internal appeal mechanism in the code. For self governance modifications (Path 3), decisions by the Change Board could be appealed to the Panel in the first instance and then to Ofgem. For Path 2 modifications it may also be appropriate for recommendations by the Change Board to be subject to appeal by Parties before they are submitted to Ofgem. In this latter case the identity of the appealing body is less obvious. The MRA allows for MDB decisions to be appealed and decided on by an all-party forum. This may be appropriate for the SEC. Alternatively the SEC Panel could be tasked with forming a modification appeals committee on a case-by-case basis and nominating members of that committee.

Steps in the modification Process

148. The April Consultation outlined key stages of the modification process at a high level. These have been developed further in line with the standard process for modifications

outlined in Ofgem’s Code Governance Review, for inclusion in the legal drafting for Stage 1 of the SEC.

Competition Commission Appeal Rights

149. The Energy Act 2004 (section 173) established a right for market participants to appeal Ofgem decisions on the modifications of particular codes to the Competition Commission. This right was introduced to strengthen the transparency of the modification process, and increase the accountability of Ofgem decisions.
150. The Secretary of State may designate the codes in respect of which decisions are appealable, and also prescribe particular modification decisions which are excepted from the right of appeal. Currently appeal rights are limited to circumstances where Ofgem disagrees with the industry recommendation (submitted by a Panel, Party vote or change board depending on the code). In the April Consultation the Government set out its anticipation that the SEC would be designated as a code in respect of which appeal rights would exist and that those rights under the SEC would be constrained in the same way. Following the consultation some stakeholders have suggested widening the appeal rights related to the SEC, so that any Ofgem decision relating to a SEC modification can be appealed to the Competition Commission.
151. The Government has engaged closely with industry representatives on the issue of appeal rights through its stakeholder working groups and has considered carefully the arguments presented. It is not persuaded that appeal rights should be widened so that any decision can be appealed. There is no evidence to suggest the current arrangements for Codes are not appropriate for the SEC. The Government considers that the constraint currently put on the right to appeal is an important element in balancing the need for an appropriate ability to challenge decisions with the administrative costs and timing implications of doing so. Without it, the Government considers there is a risk that innovation could be stifled through a succession of appealed decisions and this could negatively impact the development of the market arrangements.
152. Additionally, the Government is concerned that widening appeal rights removes the incentive for code participants to work together to form recommendations on modifications. This shifts the responsibility for a core aspect of code governance away from code participants, whilst simultaneously giving those participants a right to challenge how a decision is formed by Ofgem without that guiding recommendation. It risks turning what should be an industry-level discussion between multiple parties into a more procedural consultation process. It also risks shifting the way decisions are ultimately taken away from the regulator of the energy industry to a regulator with a much broader remit. Given these concerns the Government has concluded that the right to appeal Ofgem decisions should be constrained in line with existing precedent.

Consultation Questions

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| 5. | Do you support the proposed composition of the Change Board and its decision making arrangements? |
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6.	Do you think that the SEC should provide for Parties and the consumer representative to appeal Change Board recommendations before they are submitted to Ofgem? If so, what is the appropriate mechanism for determining such appeals?
7.	Do you have any further comments, or views on the cost implications to SEC Parties, regarding the proposals for governance, the modification process and the approach to appeal rights set out here and reflected in the legal drafting of Stage 1 of the SEC?

Translation into legal text

153. The SEC drafting set out in section D reflects the Government's conclusions on SEC Governance.

- D1 sets out who may make a modification proposal, the form and content of the proposal, and a requirement for Secretariat to establish and maintain a Modification Register;
- D2 sets out the distinction between modification Paths 1, 2 and 3 as well as the criteria for a proposal to be considered an Urgent Proposal;
- D3 deals with the initial consideration of modification proposals by the Panel. The Panel shall determine whether each Modification Proposal should go through a Refinement Process or whether it can progress straight to the Report Process;
- D4 provides for Ofgem to determine modification paths at its own initiation or on the application of a Party or the SEC Panel's Consumer Member. It also provides for certain disputes regarding Panel decisions to be referred to Ofgem;
- D5 provides for proposers to withdraw modification proposals but also for any Party to adopt withdrawn proposals within 10 working days;
- D6 sets out the Refinement process through which the Working Groups established by the Panel consider, develop and evaluate the Modification Proposal, commission analysis from the DCC and consult with Parties as necessary;
- D7 sets out the Report phase, in which the Panel determines whether to allow the modification report to proceed to the Modification Report Consultation. It also sets out that the Panel shall not make any statement regarding whether it believes the modification proposal should be successful;
- D7 sets out the Report Phase, in which the Code Administrator prepares a Modification Report for each Modification Proposal and submits it to the Panel. It also sets out the issues the Panel will consider and determine at this stage and the process for the Modification Report Consultation;
- D8 sets out the functions and membership of the Change Board, together with the duties of Change Board members and the details of the Change Board vote;

- D9 deals with how the final decision on a Modification Proposal is made depending on whether it is a Path 1, 2 or 3 modifications or a fast track modification. It also sets out the Send-Back Process; and
- D10 sets out the process for implementing modification proposals that have been approved.

4.2.12 Reporting

154. In the April Consultation the Government sought views on proposals that the SEC could include certain obligations on the SEC Panel and possibly SEC Parties with regard to the production, provision and publication of certain information and reports. Examples were provided of the types of reports that might be required, although it was noted that further consideration of this would be needed as the SEC was further developed. It was also noted that the DCC licence specifies that the SEC must include provision for information about the operation of the SEC arrangements to be provided to the Authority upon request and to be published by the Panel.
155. The April Consultation noted that these requirements would form part of a broader reporting framework in the DCC licence, which will include certain reporting and transparency provisions such as those obliging the DCC to provide regular reports on service performance (including to the SEC Panel), to consult SEC Parties on certain documents and publish these on its website, and to publish regulatory accounts.
156. Twenty respondents provided views on the proposals for reporting set out in the April Consultation, 18 of whom agreed that there should be reporting requirements of some kind in the SEC. Of these, some noted the need for more information on the detail of the reports to be able to provide more specific views. Others provided suggestions about appropriate report types and content.
157. One large supplier disagreed with the proposals, arguing that at this stage there should be no reporting obligations because it was not clear what information was required and which Parties would be required to report. Nine respondents noted the potential cost and burden of producing reports and a risk of unnecessary duplication. Two respondents noted the fact that Ofgem already had powers to request information and that including reporting requirements in the SEC would be a duplication. They suggested instead that obligations should be placed in the SEC only for non-licensed Parties. One supplier argued that reporting requirements were already high and small suppliers would therefore find it difficult to absorb further data and information requests.
158. Two respondents suggested that the DCC should provide a centralised reporting function which could save on total costs compared to the provision of many reports generated individually by single Parties.
159. The Government recognises the importance of ensuring that reporting requirements associated with the SEC are reasonable and proportionate, and adhere to the principles of better regulation policy. This includes having regard to the difficulty faced by smaller suppliers and other smaller organisations operating in the smart energy market. The Government will therefore continue to consider the need for specific reports to be

produced by SEC Parties as further stages are developed and will only propose reporting provisions that are consistent with these principles.

160. The legal drafting for Stage 1 of the SEC proposes the following reporting obligations:

SEC reference/section	What the report covers/what information is required
Governance	
C2.3 – Duties	<p>The Panel must report:</p> <ul style="list-style-type: none"> on performance on financial performance against its budget; on an annual basis on the implementation of the Code and the activities of the Panel including on whether the SEC continues to meet its Objectives; <p>The Panel must also respond to any request from the Authority for information on the SEC arrangements. To prepare this, SEC Parties will have to provide the necessary information to the Panel.</p>
C7.2 Code Administrator	The Code Administrator will be required to report to the Panel on any inconsistencies between the Code and the requirements of the Code Administration Code of Practice.
Modification Process	
D1.5 Form of the proposal	The Code Administrator shall publish a prescribed form of Modification Proposal on the website.
D1.11 Modification Register	The Secretariat shall ensure that the Modification Register is published on the website, and that a copy is sent to each Party at least once every month.
D6.9 – Analysis by the DCC	At the request of a Modification Working Group the DCC shall prepare an analysis of the impact of a modification proposal on its ability to comply with its obligations and the likely cost of changes to systems and provide further explanation if required
D6.13 Working Group consultation	Each Modification Working Group shall publish on the website a consultation summary containing the final consultation draft of the modification, all responses received and a statement of whether the group considers the modification proposal would better facilitate the achievement of the SEC objectives
D7.1 Report phase and D7.3 Content of the Modification Report	The Code Administrator shall, in respect of each modification proposal prepare a written report on the proposal. This will set out the text of the proposed modification and specify the implementation date and whether system changes are required
Charges	

SEC reference/section	What the report covers/what information is required
J4.3 – Indicative Charging Statements	Within the first five working days of April, July and October in each year, the DCC shall create and publish on the DCC website an indicative Charging Statement for the first Regulatory Year due to start thereafter, setting out indicative Charges for that year based on the information available to it at the start of the month of publication
J4.4 Indicative Budgets	Within the first five working days of April, July, October and January in each year, the DCC shall create and publish on the DCC website a budget for the second and third Regulatory Years due to start thereafter, setting out indicative figures for each such year based on the information available to it at the start of the month of publication.
General	
M6.3 - Publication	The Secretariat shall maintain a record of each Party's details and shall publish that record on the website

4.2.13 Compliance and Assurance

161. This section considers the compliance and assurance techniques that may need to be included in the SEC in order to provide confidence that SEC Parties are complying with their obligations. The April Consultation proposed that these techniques could usefully form part of an overall framework, constituted in the Code and governed by the Panel or other standing committee. Such a regime would allow day-to-day compliance issues to be managed effectively without having to rely on the Authority's licence enforcement powers.
162. There was general support for a robust compliance and assurance regime as a means of ensuring that all SEC Parties interact with the end-to-end system in an appropriate manner. Several respondents noted that the regime must be proportionate to the perceived risks. Respondents agreed that such a regime could mitigate the risks of non-compliance that smart metering arrangements would introduce. A small number of respondents felt the costs of a compliance and assurance regime could be burdensome to smaller suppliers especially and suggested that this may present a barrier to competition between large and small parties.
163. It is possible that Parties will not always be fully compliant with all their obligations under the Code. For the SEC to be effective, and for Parties not to be negatively impacted by the actions of others, it needs to contain a number of elements to manage non-compliance, including assurance, liability provisions, disputes resolution and arrangements for default. Respondents identified several issues in the SEC that would benefit from assurance techniques to reduce compliance risks, including:
- the interoperability and security of equipment;
 - the compliance of equipment with SMETS;

- market entry;
- data issues such as access, privacy and security;
- compliance with obligations; and
- remote firmware management.

164. The Government recognises the potential benefits of a generic framework for performance assurance. Such an approach would give the Panel the ability to choose the appropriate response from a defined list of techniques within a single coherent framework, with the flexibility to address emerging areas of risk where appropriate. However, Stage 1 of the SEC will contain only a limited subset of the eventual SEC requirements, with more content to be added in Stage 2. Without a fuller understanding of the requirements to be added and so the specific compliance and assurance techniques that would be most appropriate to use for each element, the Government does not consider it appropriate to define a generic framework at this stage. This is consistent with the Government's, and several respondents', desire to ensure that any assurance framework is both proportionate and responsive to the diverse non-compliance risks in the SEC and the needs of SEC Parties. Therefore, the Government will not introduce a generic assurance framework in Stage 1 of the SEC, but is minded to introduce such a framework as part of Stage 2.
165. Nevertheless, Stage 1 of the SEC will include certain individual assurance provisions identified on a case-by-case basis. These include the proposals set out in the April Consultation for specific entry processes that DCC Users would be required to complete (section 4.2.4) and privacy and data access assurance techniques, including audit provisions in relation to consumer consent, record keeping and data processing (section I of the SEC).
166. Other specific assurance techniques were proposed in the consultation on the second version of the Smart Metering Equipment Technical Specifications. These related to the certification of the security and communications requirements of smart metering systems and the assurance of the security of the end-to-end system. These will be considered further as part of Stage 2 of the SEC, to sit alongside those elements included in Stage 1 of the SEC.

4.2.14 Liabilities between the DCC and its users and SEC Parties

167. This section considers the extent to which liabilities should arise between the DCC (including DCC service providers) and individual SEC Parties, and between individual SEC Parties. It also considers whether any limitations or exclusions of liability should be applied and how the limitation of liability arrangements interact with those in the service provider contracts.
168. The April Consultation proposed capped liabilities in relation to the DCC and individual SEC Parties for loss of or damage to data, security breaches or physical damage to property. It also proposed that all other liabilities should be excluded, except those which by law cannot be excluded or limited. Views were also invited on whether specific liabilities should apply between DCC users.

169. Most respondents were generally supportive of the proposals for liability arrangements between the DCC and its Service Users, especially where they incentivised good performance. Some pointed out that Service Users should be fully compensated for any failure of the DCC to meet its minimum performance requirements. There was strong support from respondents for a cap on liability for specific types of breach between the DCC and SEC Parties, but very few offered comments on the level at which caps should be set, other than stressing they should be proportionate. It was noted that Parties would seek insurance against liabilities and so the higher the cap the higher their premiums would be. Excessive caps could present a barrier to entry to the market. Respondents suggested that greater clarity could be provided in some areas, such as damage to smart metering equipment caused by consumers.
170. There was broad support, particularly from energy suppliers, for the inclusion of obligations and liabilities between DCC Users within the SEC. This was seen as preferable to a scenario in which all SEC Parties sought damages from each other in an uncontrolled manner which could risk excessive costs being incurred. The Government recognises these concerns and considers that such liability limitation provisions would provide an appropriate means of addressing non-compliance with SEC obligations. For example, including liabilities for physical damage should incentivise compliance and provide a degree of compensation in the event that damage occurs. However, capping the liability would ensure that SEC Parties are not exposed to unmanageable risks.
171. In line with precedent set by other industry codes and many contracts, the Government has decided to exclude liabilities from the SEC, with some notable exceptions. Firstly, there are liabilities that cannot be excluded by law, including where death has been caused or where Parties have behaved fraudulently.
172. Secondly, the most obvious liability between DCC Users and the DCC relates to the payment of charges. To protect the financial status of the DCC, charges have to be paid for the services it provides to Users. This liability should therefore be unlimited – although usage is a natural limiting factor – otherwise the DCC would be unreasonably exposed to financial risk.
173. Thirdly, the Government considers that SEC Parties should be liable for physical damage to property and loss of or damage to systems (including corruption of data) they cause. Events which will lead to physical damage are likely to be rare but it is reasonable, and consistent with other industry codes, to expect offending Parties to cover the costs of replacement and other such impacts. However, the Government considers that this liability should exclude losses that did not result directly from the breach and were not reasonably foreseeable. Furthermore, the Government proposes to introduce a cap because unlimited liabilities would potentially expose Parties, in particular the DCC and smaller suppliers, to unreasonable risk and insurance costs.
174. It is not possible at this stage to specify the cap that should apply to liability for physical damage under the SEC. Due to the desire to align wherever possible SEC provisions with service provider contract provisions, this level of detail is more appropriately considered at a later stage of the contract negotiations with the DCC, DSP and CSP bidders (for example, when the scale of the contract becomes clear). A process of

engagement with industry stakeholders will be undertaken before the final figures are agreed and inserted into the drafting for Stage 1 of the SEC.

175. The Government also considers that SEC Parties should be liable for breach of confidentiality and intellectual property right obligations. The SEC drafting contains uncapped liabilities in relation to these areas. This approach is not typical in industry codes but it is conventional in technology contracts and so is highly likely to form part of the DCC's service provider contracts. It is therefore considered appropriate to include this and not to limit liability for breaches in relation to such matters in the SEC, as otherwise the DCC would be potentially exposed should any User infringes the IPR of the DCC's service provider. If the infringement were as a result of the actions of a DCC User, the service provider would seek damages against the DCC, because they have no relationship with the DCC User. Including these arrangements would allow the DCC to recover any costs it incurs from the User at fault. Whilst it is provided as an uncapped liability, the Government considers that SEC Parties are unlikely to fall foul of such provisions inadvertently.
176. As per the example above, in addition to the liability provisions that it faces under the SEC, it is expected that the DCC will also face liability provisions in its contracts with its service providers (the DSP and CSP(s)). As such, the DCC will be in the middle of any disputes between its service providers and its Users. As the party contracting with SEC Parties and the service providers, it may be exposed to liabilities arising from the breach of one contract that it cannot recover from the other unless they are suitably aligned with each other. This relationship is characterised in Figure 1.

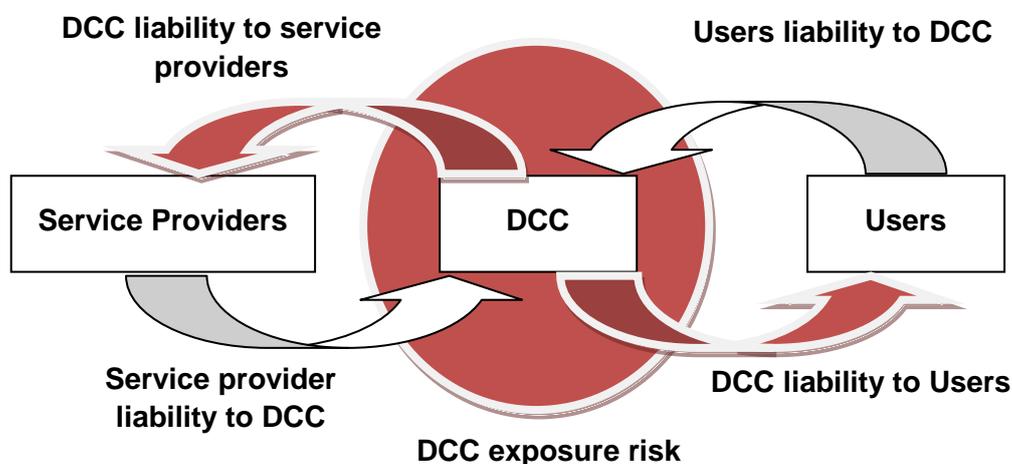


Figure 1: overview of the liability provisions within the SEC and in service provider contracts (noting some liabilities are excluded or limited)

177. By virtue of being the DCC's sub-contractors, service providers are afforded the same limitations of liability protection under the SEC as the DCC is itself. This means that SEC Parties waive certain rights to claim against service providers for certain liabilities. Instead, where the actions of a service provider causes the DCC to breach the SEC and damage the equipment of a SEC Party, the Party would have a limited liability claim against the DCC under the SEC. It is intended that provisions will be inserted in the service provider contracts to ensure that SEC Parties have equivalent protections; i.e.

where the actions of a SEC Party caused harm to a service provider, the service provider would have a limited liability claim against the DCC, but would waive the right to claims against SEC Parties.

178. The Government intends that, to the extent practicable, provisions in the SEC and the service provider contracts will be aligned. However, in certain circumstances, such alignment might not be possible, nor desirable. For example, It is intended that service providers will be awarded fixed term contracts and so are unlikely to accept unlimited liabilities where they could be exposed to significant risk. With different limitations on liability under the SEC and service provider contracts, it is possible therefore that liabilities, for example in relation to physical damage, are capped in one way in the service provider contracts but in a different way under the SEC. To the extent that such an approach gives rise to differences in the overall net amount owed for the same liability event, any difference in those amounts would, without alternative provisions, be faced by the DCC. The Government considers that the DCC should not be exposed to such differences through no fault of its own.
179. There are two possible ways to address this issue. One would be to state in the SEC that, once maximum caps have been reached in the service provider contracts, a SEC Party is no longer entitled to claim an amount for physical damage from DCC. The alternative approach would be to provide for claims to be allowable for the affected SEC Party and paid by the DCC, but for the DCC to be able to recover any amounts not directly caused by its own actions, and that it cannot recover from the service providers, from SEC Parties generally. The mechanism for achieving this would be by identifying such liabilities in the revenue that the DCC is permitted to recover, in accordance with its price control licence condition, with a resultant increase in the DCC's fixed charges that are payable under the SEC.
180. The Government considers that the second approach is preferable, as it considers that it will be easier for SEC Parties to insure against this risk and ensure that the ability to claim for damages under the SEC is not a function of the format of individual service provider contracts. However this does mean that in certain circumstances the DCC may need to socialise across those Users covering the fixed costs of the DCC (i.e. suppliers and networks) a proportion of liabilities arising under the SEC or service provider contracts. The Government would welcome views on the proposed approach.
181. The likelihood of such exposure existing will become clearer as the DCC service provider contracts are developed, though the Government considers the likelihood of it occurring in practice to be low. This is because it is anticipated that there will be assurance measures in place in the SEC and in service provider contracts to prevent such breaches occurring. Equally should service providers persistently breach obligations in their contracts such that the maximum recoverable amount is being approached (or should a service provider cause harm to such a level that the maximum amount is reached for one incident), the Government expects that the DCC would take action to renegotiate those contracts (potentially resetting any liability caps) or, possibly, appoint new service providers.
182. The Government will consider further whether additional liability provisions are required in relation to breaches of security, when SEC obligations relating to security

requirements have been further developed. This matter will be consulted on further as part of developing the subsequent stages of the SEC.

183. The Government will also consider further whether additional liability provisions should address other matters between SEC Parties, for example in relation to damage to smart metering equipment at consumers' premises, and in relation to the provision and installation of communications hubs. Again, this will be considered when SEC obligations relating to the installation of smart metering equipment and the installation and provision of communications hubs are further developed. These will also be included in subsequent stages of the SEC.

184. The Government's conclusions are summarised in the table below:

Liability	Excluded	Included	Unlimited	Capped
Death, fraud, personal injury and any liability which by law cannot be excluded		✓	✓	
Payment of charges in accordance with the code		✓	✓	
IPR		✓	✓	
Confidentiality		✓	✓	
Indirect loss	✓			
Physical damage to property and damage to systems (including data loss)		✓		✓

Consultation Question	
8.	Do you agree that liability provisions for intellectual property rights and confidentiality should be included in the SEC. If so, do you agree that they should be unlimited?
9.	Do you agree with the Government's proposal that in instances where the DCC is exposed to liabilities that exceed what it can claim from the person causing the original breach, the net liabilities for the DCC will be recoverable from SEC Parties by way of an increase in the DCC's fixed charges?

Translation into legal drafting

185. The SEC drafting set out in section M2 reflects the Government's conclusions as described above.

4.2.15 Dispute resolution

186. The April Consultation proposed that Parties should be subject to a general obligation to resolve issues in good faith prior to raising disputes. However it was considered essential to provide a dispute resolution process in the SEC, as with other comparable codes, to help prevent material non-compliance, and avoid the need to refer matters to the courts. The April Consultation considered the broad types of dispute that might arise: commercial disputes, technical disputes and financial disputes. It also set out a range of options for dispute resolution, which would be determined by the SEC Panel, a disputes sub-committee, the Authority, or arbitration.
187. There was general agreement among respondents with the types of dispute which the consultation had identified might arise under the SEC, although a wide range of specific potential disputes were also mentioned. The dispute resolution framework that the Government proposed in the consultation also received strong support from respondents. It was suggested that the SEC Panel could determine which process should be used for particular cases. It was also pointed out that in some instances a combination of processes may be needed, for example where a technical case may have significant commercial implications.
188. The Government has concluded that the SEC should include a general obligation on Parties to resolve issues in good faith and through negotiation prior to escalation to a more formal and binding dispute resolution procedure. For those issues that cannot be settled in this way, a number of specific dispute resolution procedures should be defined within the SEC to take account of the different types of dispute which might arise. The Government concludes that the three types of binding dispute resolution mechanisms that could be applied include: the SEC Panel, the Authority and independent arbitration.
189. In the absence of SEC provisions to the contrary, the typical mechanism for resolving disputes should be independent arbitration. However, where the subject matter of the dispute is likely to be of significant regulatory or competition interest, such disputes should be referred to the Authority. Where the subject matter is likely to be technical, such disputes should be referred to the SEC Panel or its technical sub-committee. The Government will apply these criteria as SEC drafting progresses. In relation to the contents of Stage 1 of the SEC, this has resulted in drafting that provides for:
- disputes relating to accession, to be referred to the Panel, and where there is disagreement with the Panel's decision, the dispute would be referred to the Authority whose determination would be final and binding;
 - disputes relating to credit cover would be referred to the Panel or its sub-committee for determination which shall be final and binding;
 - payment disputes to be referred to the Panel for determination and, depending on the grounds, be capable of reference to the Authority or Arbitration body; and
 - user entry process disputes to be referred to the Panel for determination and where a Party disagrees with any decision of that Panel then the Party may refer the matter to the Authority whose determination shall be final and binding.

190. Other disputes would be referred to arbitration and thus become subject to the rules of to the London Court of International Arbitration (LCIA) and the Arbitration Act 1996.
191. In certain circumstances, a matter that is being disputed under the SEC could require a consequential dispute to be raised by the DCC under a contract with one of its service providers. Equally a service provider contract dispute could mean that the DCC needs to raise a dispute under the SEC. To ensure consistent decisions on disputes under both contracts relating to what is essentially the same event, the SEC drafting provides that:
- If the DCC considers that a dispute under the SEC relates to a dispute that it has under a service provider contract, it may link the relevant service provider to the arbitration, so that the same arbitrator hears and determines each dispute simultaneously; and
 - Where a dispute occurs under the service provider contracts that could give rise to a SEC dispute, the DCC will provide notice of this so that the relevant SEC Party or Parties are provided the opportunity to raise a dispute under the SEC. Where they do not do so, they are deemed to have waived their right to raise such a dispute. If they do raise a dispute, the DCC would be able to join the relevant service provider to the arbitration.
192. Finally, it is also recognised that a SEC Party could face a dispute under a contract that it has with an energy consumer that relates to a dispute that it has raised or will raise with the DCC under the SEC, as both disputes relate to the same event. It is acknowledged that any such consumer contract disputes are in some circumstances likely to be heard in the courts, so in these circumstances there is the opportunity for the SEC dispute to be joined in the courts instead of going to arbitration.

Consultation Question

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| 10. | Do you agree that the Government’s proposal to allow DCC to link service provider and SEC disputes in the arbitration process? |
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Translation into legal drafting

193. The SEC drafting set out in section M7 reflects the Government’s conclusions on dispute resolution in the SEC. In summary this provides that:
- There shall be a duty to try and resolve matters in good faith and negotiation without raising a dispute. Where a dispute is raised, there will be a duty to resolve it in good faith;
 - Any disputes stated under the Code or Licences as subject to determination by the Authority shall be so, with determination being final and binding;
 - Any disputes stated under the Code or Licences as subject to determination by the Panel (or one of its sub- committee) shall be so, with the Panel’s determination being final where stated; and

- All other disputes shall be referred to arbitration. If arbitration, procedural requirements shall be according to the Arbitration Act 1996 and the rules of the London Court of International Arbitration (the LCIA).

4.2.16 Suspension of rights and expulsion in the event of default

194. The April Consultation proposed that the SEC will define events of default, including breach of a material code provision, late payment of amounts due and events related to financial difficulty or insolvency. The Government proposed that the SEC Panel will be responsible for discharging the SEC default provisions. In particular, views were sought on the sanctions that the Panel could administer in the event of default by SEC Parties, including suspension of rights and, in extreme cases, expulsion from the Code.
195. There was broad agreement from the respondents that the framework and the role of the SEC Panel proposed in the consultation were appropriate. Several respondents noted that the proposed approach was consistent with those taken in other industry codes. The importance of a proportionate response to any default event was raised by several respondents, with a particular concern being that consumers should not be unduly affected by a sanction imposed on a SEC Party.
196. The Government therefore proposes to introduce default provisions in the SEC, broadly as described in the consultation. Where an event of default has occurred, the Panel will be required to notify Parties of the event of default and may then take the actions described below.

Possible events of default for the purposes of suspension or expulsion

197. Most respondents agreed that the three events identified in the consultation covered the possible default events under the SEC. One respondent questioned whether a further default event should be identified to capture any situation that could lead to negative impacts for consumers, but accepted that this could be defined as a material breach of code provisions. Several respondents noted the importance of carefully defining the provisions relating to late payments, including the credit arrangements that will be established under the SEC.
198. The Government considers that the default events identified in the consultation fall into two categories. These are: operational (material breaches of code provisions including data privacy and the requirement to request DCC services within six months of accession to the Code), and financial (matters related to financial difficulty including insolvency, inability or reluctance to pay, or failure to provide credit cover). The Government does not believe that a separate default event relating to consumer experience is necessary because any negative impact to consumers should relate to the failure of a Party to fulfil its operational responsibilities under the SEC and so would be likely to amount to a material breach of the Code.

Suspension of rights and expulsion from the Code

199. Most respondents saw the suspension of administrative rights and elective services as an important tool that could serve as a reasonable sanction to the defaulting Party without necessarily significantly affecting consumers and other SEC Parties. However,

many respondents noted that the impact on consumers should be carefully considered before any sanction is applied. It was also suggested that whether the Party had been involved in persistent breaches should be taken into account by the Panel when determining the sanction, and that these Parties should also possibly be referred to the Authority.

200. There was general acceptance that the SEC Panel should be given the powers to suspend a SEC Party's rights to core services. However, it was also noted that the suspension of core services, especially to energy suppliers who may rely on these services to discharge other regulated duties, could have a significant adverse impact on consumers and other SEC Parties. Some respondents suggested that the suspension of suppliers' rights, in particular to core services, should only be sanctioned with the approval of the Authority.
201. There was general support for the SEC Panel being given the power to expel unlicensed Parties from the SEC, but most recognised that this should be used only as a last resort. However, several respondents raised concerns that the expulsion of licensed Parties from the SEC was likely to have a significant impact on the Party's ability to dispense their regulated responsibilities and would also be likely to have negative impacts on consumers and other SEC Parties.
202. Following the April Consultation, the Government proposes that the Panel should be given the power to use its discretion in applying sanctions that are proportionate to the default event, taking into account the possible consequences discussed above. The sanctions available will include the ability to suspend any Party's rights to participate in SEC governance arrangements, and to receive core, elective or enrolment services from the DCC. Parties would be able to appeal such decisions to the Authority.
203. Any suspension of core and possibly elective services (at premises where the licensed Party is the registered supplier or the relevant network operator) or any expulsion of licensed Parties could affect their ability to comply with other regulatory requirements, and are more likely to have a negative impact on consumers and other Users. Therefore the Government agrees that these sanctions should only be applied by the Panel with the prior consent of the Authority. Suspending the core service or expelling unlicensed Parties is unlikely to have such a significant impact on consumers and other parties and so the Government proposes that the Panel will be able to do this without the Authority's prior consent. However the expelled Party would be able to appeal the decision to the Authority.

Translation into legal drafting

204. The SEC drafting set out in section M8 reflects the Government's conclusions in this area. In summary it:
 - Identifies the Events of Default for Parties other than the DCC, including non-payment of charges, breach of credit cover obligations or if the Party suffers insolvency, material misrepresentation in a Party's accession form, material breach of the data privacy obligations and material breach of any of its obligations under the Code (other than those specified above);

- Requires that the DCC, any other Party of the Code Administrator or Secretariat notify the Panel if they become aware of an Event of Default; and
- States that as a consequence of an Event of Default the Panel may notify relevant Parties that the event has occurred; suspend (with the Authority's consent where necessary), or instruct the DCC to suspend, one or more of the defaulting Party's rights, or ultimately expel the defaulting Party from the Code (subject to defined rights of appeal).

4.2.17 Ceasing to be a Party to the SEC

205. The April Consultation sought views on the rules that will apply when a Party exits the SEC by way of voluntary withdrawal. It set out proposals for the SEC to include procedures and preconditions that apply when an organisation ceases to be a Party to the SEC. These include ensuring regulatory approval where this may be required, meeting outstanding material and financial responsibilities, and suitably notifying other Parties.

206. All Twenty respondents on this subject were supportive of the high level proposals as set out. Respondents were also supportive of the proposal for protections to ensure the discontinuing Party does not have any outstanding material responsibilities or debts under the Code.

Translation into legal drafting

207. Section M8 of the SEC contains the following provisions which cover voluntarily ceasing to be a Party to the SEC. In summary it provides that:

- A Party that holds an Energy Licence cannot voluntarily cease to be a Party, and it cannot be expelled unless the Authority consents to such expulsion;
- Where a Party voluntarily wishes to exit the Code it must give notice to the Panel of its intention to do so specifying the date on which it wishes to exit; and
- Termination of a Party's accession to the Code is without prejudice to its accrued rights and obligations prior to termination.

4.2.18 Intellectual Property Rights

208. The April Consultation considered the provisions that should be included in the SEC to govern the ownership and exploitation of relevant intellectual property. It proposed that intellectual property from 'SEC materials' shall vest with the DCC and be made available to SEC Parties and, where appropriate, external service providers.

209. Respondents were generally supportive of the consultation proposals but requests for clarity were made in relation to the DCC's title and the rights of access of all Parties to SEC materials. As an example, one respondent asked whether there would be any limitations to the commercial exploitation of intellectual property rights (IPR) from SEC materials by the DCC.

210. A number of respondents pointed out that if the Government decided to establish a corporate body to deal with anything owned collectively by SEC Parties (the 'SECCo') then the intellectual property from SEC material should vest with the SECCo instead of with the DCC.
211. Section 4.2.9 sets out the Government's intention to create a SECCo. Given the alignment between the priorities of the Panel and the SECCo, the Government agrees that the IPR from SEC materials would more appropriately sit with the SECCo than the DCC, which has its own General Objectives and has drafted the SEC legal text accordingly. This makes it simpler to set out the title and rights to the IPR from SEC materials so that SEC materials are owned by SECCo, and so that SECCo grants a royalty-free, non exclusive licence to SEC materials to other Parties for the purposes of participating in the SEC.
212. The legal text of Stage 1 of the SEC also sets out IPR provisions for data that is obtained by the DCC as a result of communicating with smart metering systems on behalf of a DCC User (consumer data). These provisions set out that the title to consumer data obtained by the DCC is not transferable to the DCC. Whether or not the DCC User is entitled to any or all intellectual property in the consumer data is a matter for the DCC User's contractual arrangements with the consumer and so is not dealt with in the SEC.

Translation into legal drafting

213. Section M5 of the SEC contains the following provisions concerning intellectual property rights. In summary it provides that:
- SEC Materials are defined in connection with the designation, administration, operation, modification and development of the SEC;
 - Any and all intellectual property rights in SEC Materials will be owned by SECCo; and automatically vest in SECCo upon their creation;
 - SECCo grants to each of the other Parties (for so long as they remain a Party) a royalty free, non-exclusive, non-transferable licence to use the SEC materials for the purposes of participating as a Party;
 - Consumer Data is defined as the data that is obtained by the DCC as a result of communicating with smart metering systems on behalf of a DCC User;
 - The DCC shall make no claims in respect to any intellectual property rights from Consumer Data. Each DCC User grants the DCC a licence to use the Consumer Data for the sole purposes of exercising its rights and performing obligations;
 - Party Data is defined as data provided to the Panel by or on behalf of a Party other than the DCC;
 - Any and all intellectual property in Party Data shall be owned by that Party. Each Party grants SECCo, and the Panel a royalty free, non-exclusive, non-transferable licence to use Party Data for the sole purpose of performing their roles;
 - Services IPR applies in respect to Services and the manner of their provision; and

- No DCC User shall make claims in respect of Services IPR. The DCC shall ensure that each DCC User can use the Services IPR in the manner envisaged to receive DCC Services.

4.2.19 Confidentiality

214. The April Consultation set out proposals relating to three areas of confidentiality, and sought views on how confidential information is treated under the SEC. These areas were:

- **Classification of confidential information:** the consultation proposed that any information which would be considered as obviously confidential by its nature, or which relates to a specific SEC Party, and has been designated as confidential by that Party should be treated as such;
- **Exclusions from confidential information classification:** the consultation proposed that the SEC itself, and any data that needed to be published in accordance with its provisions, should not be classified as confidential. It also suggested that information already in the public domain, or which is effectively already in the possession of the recipient should not be treated as confidential; and
- **Non-disclosure obligation and exceptions:** the consultation proposed that confidentiality obligations should be placed on all relevant SEC Parties and that these should continue to apply to any Party that has withdrawn or been expelled from the SEC. It also proposed that permitted disclosure of confidential information should be allowed in certain circumstances.

215. Respondents set out the information they thought should be classified as confidential. Across the responses these included: closed session meetings, commercial agreements for new services, entry process details, assurance breaches, credit positions, and certain aspects of the SEC that relate to the security of the end-to-end processes.

216. The Government recognises that many sections of the SEC will require references to confidentiality in relation to the information set out by respondents. The Government is of the view that it is preferable for confidentiality provisions which are specific to certain areas to sit in the document alongside relevant content (for example, confidentiality requirements relating to bilateral agreements for DCC services are present in section H of the SEC drafting, alongside other content on DCC Services). For that reason, the section of the SEC focusing on confidentiality in the broader sense will not include those specific areas mentioned by respondents, but has been drafted to cover provisions relating to circumstances where the DCC or the SEC Panel has to deal with confidential data.

217. Many respondents commented on the challenge of striking a balance between confidentiality and transparency. Several requested clear rules regarding what information can be made public, who is entitled to request it, and the obligations relating to publication of information. One respondent suggested that an open and unilateral requirement for publication of non-confidential information could create a cost burden without any value being delivered to industry or the end consumer. Another pointed out the difficulty of being prescriptive regarding what information should be published, and

therefore suggested that the SEC Panel is given an over-arching power to publish such information as it considers reasonable to better facilitate the code objectives, with an expectation that it would develop and implement a transparent process for delivering this.

218. The Government has drafted Stage 1 of the SEC to set out the circumstances in which disclosure or use of confidential information by the DCC is permitted. This is in line with the DCC licence. The restriction on the DCC is on disclosure to third parties, not a business separation restriction. Additionally the Government has drafted Stage 1 of the SEC with the aim of enabling the DCC and other Parties to adopt a simple and transparent approach for the handling of confidential information, whereby the DCC and the SEC Panel are required to treat confidentially all information that is marked as confidential.

Translation into legal drafting

219. Section M4 of the SEC contains the following provisions which cover confidentiality in Stage 1 of the SEC. This includes:
- Prohibition on disclosure and use by the DCC;
 - Circumstances in which disclosure or use of information by the DCC is permitted (for example where it is required or permitted under the DCC licence, where the information is already in the public domain or where the Authority has consented in advance to its disclosure or use; and
 - Confidentiality and the Panel, whereby the Panel may decide (or may be obliged) to keep confidential certain data it receives in performing its duties and a Party can clearly mark as confidential any information it provides to the Panel, in which case the Panel will keep such data confidential.

4.2.20 Unforeseen Events

220. The April Consultation sought views on the provisions for defining unforeseen events which are beyond the control of Parties to the SEC and which prevent them from performing their obligations. It also sought views on the proposal that the SEC should define a set of contingency business process arrangements and associated service levels and obligations which will apply in the event of a major service failure.
221. Respondents were in general agreement that when setting out the requirements of its own force majeure section the SEC could draw from the standard set of force majeure events in existing codes. There was less agreement on who should determine whether a force majeure event can be declared, with some respondents expressing the view that any party should be able to do this and others stating that this responsibility should rest with the Panel or the Authority.
222. There was some difference in emphasis regarding the level of detail that should be set out in business continuity plans in the SEC as opposed to the DCC or Service Provider contracts. One respondent thought it essential for the SEC to define a comprehensive set of contingency-tested business processes necessary in the event of a force majeure

event, with main scenarios recognised, planned and tested and their impacts assessed. Another thought the SEC should set out rights and obligations in the event of a force majeure event for all Parties to the SEC. They expected the DCC licence and its contracts to contain provisions relating to force majeure and business continuity.

223. In light of these comments, the Government has drafted Stage 1 of the SEC to include a standard section relating to force majeure for SEC Parties in line with existing codes. Given that the contracts between the DCC and its Service Providers are likely to define more narrowly the unforeseen events that would relieve the Service Providers of obligations to provide services, an additional section of the SEC has been drafted, referred to as 'Services FM'. This applies to the provision of DCC Services only. It is consistent with the anticipated contractual arrangements between the DCC and its Service Providers and reflects the provisions within the Government's model agreement applying to large and complex IT implementation.
224. It is planned that the SEC will additionally include requirements relating to business continuity and incident management. However, this will sit in the section on DCC Services (section H10 of the SEC) and will form part of the drafting process for Stage 2 of the SEC.

Translation into legal drafting

225. Section M3 of the SEC contains the following provisions covering unforeseen events. In summary it provides that:
- The DCC is relieved of liability for not performing its obligations in relation to the provision of Services if a Services FM has occurred;
 - Variable Charges to a User shall be reduced to the extent that the DCC does not provide the services to that User as a result of the Service FM;
 - There will be a procedural requirement to notify a Parties and the Panel of a Services FM, and for the relief being sought, and to provide evidence/proof of any claim;
 - Services FM are defined to include war, civil war, riot, civil commotion, armed conflict, terrorism, nuclear, chemical or biological contamination, earthquakes, fire, storm damage, severe flooding, any blockade or embargo;
 - Force Majeure applies to any other SEC obligations on the DCC not related to the provision of services and all obligations of other SEC Parties. Liability is relieved for any breach of obligations if a Force Majeure event has occurred;
 - There will be procedural requirements to notify Force Majeure events to affected Parties and a requirement to resolve them as soon as possible; and
 - Force Majeure is defined to be any event or circumstance beyond the reasonable control of the Party concerned but only to the extent that it could not have been prevented if acting in accordance with good industry practice. It excludes lack of funds or industrial disturbances by the Party's employees or contractors.

4.2.21 Arrangements to support the handover of the DCC licence

226. The handover provisions in the DCC licence provide for the continuation of a seamless DCC service in the event of a change in the DCC licence holder. In the April Consultation the Government proposed that this should be supported by a novation arrangement in the SEC in order to hand over the DCC's interest in the SEC. It was proposed that it would be drafted so that SEC Parties, would appoint the DCC or SECCo as their agent to enter into the novation agreement on their behalf in the event of a change in DCC licence holder.
227. Respondents were strongly supportive of a novation agreement in the SEC. However, no overall preference was made as to who the preferred SEC novation agent should be, with the majority of respondents not expressing a view on this. Similarly, the majority of respondents did not express a view on whether the existing and outgoing DCC should retain liabilities and obligations to protect the successor DCC, or what the cut-off point for such liabilities and obligations should be.
228. In light of these comments and further consideration of the DCC licence handover arrangements and novation arrangements, the Government proposes a revised approach to the detail of the novation arrangements. It is proposed that all rights and liabilities would be transferred from the outgoing DCC to the successor DCC on the DCC licence expiry date. This would include the transfer of accrued rights and liabilities, such as agreements entered into (for example, the SEC). Similar arrangements should also apply between the DCC and service provider in the service provider contracts. The advantage of this approach is that SEC Parties do not need to have any enduring relationship with the outgoing DCC after transfer in order to protect any accrued rights. Similar arguments apply from the perspective of the outgoing DCC. This is discussed in further detail in the DCC licence response document published alongside this consultation.

Translation into legal drafting

229. The SEC drafting set out in section M9 reflects the Government's conclusions on SEC provisions required in the event of a change in the DCC licence holder. In summary this provides that:
- Where two parties hold a DCC licence, the holder of the earlier DCC licence is referred to as the DCC and the other party is referred to as the Successor Licensee;
 - The DCC and the Successor Licensee shall enter into a novation agreement in a form approved by the Authority; The novation agreement will novate to the Successor Licensee the rights and obligations of the DCC on the Handover Date (as set pursuant to the DCC licences). This includes any rights and obligations that arise after the Handover Date in relation to things done by the DCC under the SEC prior to the Transfer Date and during the Handover Period;
 - The novation agreement will be in respect of the SEC Framework Agreement, all SEC Accession Agreements, all SEC Bilateral Agreements and any other

agreements that the DCC has entered into pursuant to a SEC obligation to do so (but this excludes the DCC service provider contracts); and

- Each SEC Party authorises the DCC to enter into the novation agreement on their behalf and must provide the DCC with any assistance reasonably required to give effect to its obligations in this section of the SEC.

5. Additional sections of Stage 1 of the SEC for consultation

230. The draft SEC presented for consultation alongside this document draws principally on the information gathered from responses to the Government's April Consultation on the SEC. Concurrent to this, the Government has been developing other elements of the Code for inclusion in Stage 1 of the SEC. This section sets out these additional elements for further consideration.

5.1 Ensuring coordination between the SEC and other industry codes

231. The SEC will play a pivotal role in governing the relationship between the DCC and its Users, and the requirements for smart metering systems more generally. However it will not sit alone in the regulatory framework – it will be one of several industry codes which set out the detailed requirements for market participants in other parts of the industry. These include:

- the Master Registration Agreement (MRA), which governs the processes established between electricity suppliers and distribution companies to enable electricity suppliers to transfer customers;
- the Balancing and Settlement Code (BSC), which governs the arrangements for electricity balancing and settlement in Great Britain; and
- the Uniform Network Code (UNC), the core document around which the competitive gas industry revolves, governing the supply and transportation of gas.

232. Where appropriate existing codes include references to other codes, code owners and administrators to ensure that changes to them are managed holistically and are notified to other affected parties in the industry. This ensures that code changes can be considered in the round across the regulatory framework and that a change to one code does not adversely or affect another.

233. The need for the SEC and SEC Parties to have similar regard to the codes which interact with the SEC will be essential. Therefore, drafted into the SEC are provisions which relate to the requirement for changes to the SEC to be co-ordinated with other codes that may be affected by them.

Translation into legal drafting

234. The drafting set out in section C includes the proposed legal text for the SEC relating to cross-code co-ordination. This provides that, without prejudice to any other tasks, duties or obligations imposed on them, the Panel shall establish joint working arrangements with the committees and panels responsible for the other codes and agreements in order to facilitate robust interaction between and the SEC and those codes and agreements.

Consultation Question	
11.	Do you agree that the proposed legal drafting covering change co-ordination with other codes meets the requirements as set out in chapter 5?

5.2 Requirements on SEC Parties to provide the DCC with relevant registration information for validation purposes

235. In order for the DCC to control access to smart metering systems to ensure that, where relevant, it is only the registered supplier of the smart metering system that can send or access specified data, it is necessary for the DCC to know who the registered supplier is at any point in time. This information is held, in the case of electricity metering systems, under the Master Registration Agreement and, in the case of gas metering systems, under the Uniform Network Code.
236. The Programme has established a Smart Metering Regulation Group (SMRG), and specifically a sub-group, Working Group 4 (WG4), which works with industry stakeholders to assess potential consequential changes to other codes that might be required to enable the smart metering arrangements to work effectively. The group contains industry experts from suppliers, networks, Ofgem and administrators of existing codes.
237. This group has considered the DCC's requirement to access registration information to determine who the registered supplier is, and has worked to develop the necessary underlying changes to systems to enable this to happen. As a result, changes to the Master Registration Agreement, the Uniform Network Code and the Independent Gas Transporters' Uniform Network Code (iGT UNC), have been proposed, to permit the release of such data to the DCC.
238. Stage 1 of the SEC includes obligations on the SEC Parties who hold this information to provide it to the DCC. This acts as a counterpart to text in other codes which will work together to ensure that right industry parties are both permitted, and obliged to share information with the DCC. The Government recognises that a number of energy industry organisations will have to make changes to their internal systems to facilitate the provision of registration data to DCC. The Programme will continue to work with industry to determine the cost impact and this will be reflected in the Impact Assessment when final legislative proposals are made

Translation into legal drafting

239. The drafting set out in section E includes the proposed legal text for the SEC relating to the passing of registration information between industry parties and the DCC: Section E1 establishes the principle of the need for data to be passed to the DCC, section E2 sets out the responsibility for the provision of data to the DCC by electricity distributors and gas transporters, and lists the data items that are required to be provided, as well as the requirement for the DCC to provide data to the registration systems and details the

frequency and format of data exchanges. It also includes text relating to the provision of information to the DCC for its calculations of fixed charges (section 4.2.7).

Consultation Question	
12.	Do you agree that the proposed legal drafting for the SEC covering obligations on SEC Parties to pass registration information to the DCC is appropriate? Please provide a rationale for your views.

5.3 Data Access and Privacy

240. The Government consulted on a proposed framework for data access and privacy for smart meters in its Data Access and Privacy consultation of April 2012¹⁰. The Government has considered responses to that consultation, and proposed data access and privacy requirements for inclusion in SEC can be found in section I of the legal drafting. A fuller explanation of the approach taken will be set out in the Government's response to consultation on data access and privacy, due to be published shortly.
241. The Government has concluded that all SEC Parties will be required to ensure that they have obtained the appropriate permission from the consumer, where required, before accessing data remotely via the DCC. The requirement to obtain permission would either be as set out in licence conditions or as set out in the SEC (depending on whether the SEC Party was acting in its capacity as a registered supplier/network operator for a premises, or as a third party). Consumers should be reminded of the extent to which their data was being accessed at appropriate regular intervals, and have the option to change their minds about this at any time. Further consideration is required concerning the approach to verification that the person that the SEC Party has obtained permission from is the consumer living in the premises in question.
242. SEC Parties (including the DCC) would be required to maintain records of their compliance with SEC provisions. It is proposed that the SEC will also include provision for the Panel to appoint an independent auditor to audit compliance by SEC Parties (including the DCC) with code provisions on accessing and processing consumer consumption data.
243. Alongside requirements in the SEC, it is the legal responsibility of all industry participants to ensure that they comply with the Data Protection Act (and any other relevant legislation) to the extent that it applies to them. Under the Data Protection Act, data controllers must ensure that any processing of personal data for which they are responsible complies with the Act. Generally speaking, suppliers, network operators and third parties accessing energy consumption data are likely to be data controllers, with the Data and Communications Company (DCC) potentially acting as a data processor

¹⁰ <http://www.decc.gov.uk/assets/decc/11/consultation/smart-metering-imp-prog/4933-data-access-privacy-con-doc-smart-meter.pdf>

on their behalf, although this will depend on the exact nature of the activity being undertaken and the contractual basis for it.

244. In any case, the Government believes it appropriate that the DCC should handle energy consumption data in line with the principles of the Data Protection Act, and in a way which does not prevent others from fulfilling their own obligations under the Act. Provision for this will be built into the Smart Energy Code (see section I of the legal drafting). The Code will also require the Data and Communications Company to provide reasonable assistance to DCC Users in complying with Subject Access Requests

5.4 Transitional Arrangements within the SEC

245. As set out in chapter 3, the Government is considering the approach to transition: specifically the process to move from the current set of market arrangements to the introduction of the DCC; the testing of the DCC's and prospective DCC Users' systems and processes; and the commencement of the DCC's smart meter communications service.
246. Not all of the provisions of Stage 1 of the SEC should be in effect when it is introduced. For example, obligations on the DCC to enrol smart metering systems and provide communication services to them cannot take effect until market proving has been undertaken, and other criteria that need to be satisfied prior to the DCC's services going live have been met. Accordingly the following provisions of Stage 1 of the SEC will not be in effect at the time that the SEC is designated, but will come into effect during the transitional period between SEC designation and the DCC becoming fully operational:
- Section H, containing obligations relating to the DCC's provision of services, specifically DCC User entry processes, the ongoing use and maintenance of the DCC User Gateway; the enrolment of smart metering systems; the provision of core and elective communication services; and the withdrawal of smart metering systems;
 - Section E, containing obligations requiring the provision to the DCC of data from the gas and electricity meter registration systems on a daily basis; and
 - Section I, containing obligations relating to the use of the DCC's services to access energy consumption data, the proper processing by the DCC of personal information and associated audit provisions.
247. The rules relating to the requirements to provide credit cover will be varied in the transitional period. The enduring rules relate to the calculation of credit cover required by DCC Users (i.e. those SEC Parties that have completed the DCC User entry processes). However no DCC Users will exist in the period prior to the point the DCC's services go live, therefore the credit cover rules in section J are varied to apply to all SEC Parties. Consequently credit cover requirements will be calculated based on any SEC Party's liability for paying DCC charges in the pre go-live period. Given the approach contained in the charging methodology, in practice these credit cover requirements will apply to energy suppliers, electricity distributors and gas transporters.

248. Section M8.1(a) of the SEC defines an Event of Default to include a situation where a SEC Party has not, within a six month period, taken a core communication service or requested an offer for an elective communication service. Section L provides for this to be 'switched off' at SEC designation.
249. Section 4.2.7, covering charging, requires the DCC to have access to energy supplier and network operator market share data in order to calculate charges. From the point that the DCC's services go live this data will be provided to the DCC through obligations set out in section E of the SEC. However prior to that point, it is proposed that the DCC obtains this data via other means (as any system changes that may be delivered to provide registration data to the DCC on a daily basis are unlikely to be delivered by the point that the SEC is designated)¹¹. The DCC only requires such data on a monthly basis for charging purposes, therefore section L contains an additional provision requiring that gas transporters and electricity distributors provide such data from the registration systems to the DCC on a monthly basis.
250. The Government noted in the April Consultation that there may be periods where the modification process will need to be suspended or partially suspended during periods of testing or during major SEC implementation events (for example in the period building up to the DCC's services going live). The Government considers that the enduring modification process should not be active at SEC commencement and should not be activated until the content of the SEC has been more fully implemented. It will review this position in preparation for the introduction of the SEC Stage 2 legal drafting.
251. During this transitional period the Government considers that it is appropriate for the Panel to receive and consider Urgent or Fast track proposals and that these may be progressed in line with the enduring code arrangements. However, because there is a risk that such modifications (which may not need to be approved by the Authority) could disrupt plans for DCC go-live, the Government is considering drafting in a power to veto such modifications until such time as the overall modification process is activated. Section L therefore provides for section D, which sets out the SEC modification process, to be modified in this transitional period.
252. Section 6.4 describes arrangements for the set up of the governance arrangements of the SEC (the SEC Panel, Panel Chair, SECCo, Code Administrator and Code Secretariat) that will need to be in place when Stage 1 of the SEC is introduced. Drafting to give effect to these arrangements is also included in section L.
253. Depending upon the exact timing of the introduction of the SEC, some detailed procedural steps might also need to be varied for the first year. For example, C2.3(k) contains a requirement for the SEC Panel to hold a general meeting in July of each year and the DCC is subject to some procedural timings which might be difficult to achieve in relation to the production of its first charging statement and its set of first invoices. These matters will be kept under review and further drafting will be included in section L if required once the exact timing of the introduction of Stage 1 of the SEC is known.

¹¹ This is subject to any relevant changes being made to the UNC, iGT UNC and MRA.

Consultation Question	
13.	Do you agree with the proposed variation to the SEC modification regime in the transitional period, including a right of veto for the Secretary of State?
14.	Comments are invited on the approach to transition as set out in this chapter and section L of the SEC. Please provide rationale to support your views.

6. Establishment of the SEC

254. This section considers requirements to accede to the SEC when it is designated and the process for doing so, including a timetable for establishing the SEC, and proposals for the process by which SEC Parties will accede to it when it is first introduced.

6.1 Licence conditions to accede to and comply with the SEC and to enrol relevant meters with the DCC

6.1.1 Reasons for becoming a Party to the SEC

255. For all market participants with a stake in the energy smart metering market, there are different motives and requirements for acceding to the SEC. Most obviously, as the SEC will govern the relationship between the DCC and the users of its services, any party wishing to use the DCC's services will have to accede to the SEC through the corresponding framework or accession agreement.

256. Some market participants will be able to make a decision as to whether it is in their interest to become a Party to the SEC. These could include energy service companies who may or may not wish to use the DCC's services depending on their business model. Other participants will have a requirement to accede to the SEC.

257. As well as governing the relationship between the DCC and the users of its services, the SEC will ultimately set out other detailed provisions that are necessary to ensure that the arrangements for end-to-end smart metering are managed consistently across both the gas and electricity sectors, and to ensure the delivery of the Government's overarching policy objectives for smart metering.

6.1.2 Obliging suppliers to enrol domestic smart meters with the DCC

258. The draft DCC licence (http://www.decc.gov.uk/en/content/cms/consultations/smart_mtr_sec/smart_mtr_sec.aspx) contains an obligation on the DCC to enrol metering systems where requested to do so, and subject to the criteria for such enrolment set out in the SEC. This will not apply when the DCC licence is initially granted, but will take effect when the DCC begins to offer services to Users. Section H of the SEC describes the criteria for enrolment for SMETS2 compliant smart metering systems, by way of reference to an Approved Products List.

259. The Foundation Smart Market Consultation considers issues surrounding the enrolment of SMETS-compliant smart metering systems that have been installed prior to the DCC offering a smart meter enrolment service. The Government is keeping under review the potential case for mandating enrolment of meters compliant with the first version of the SMETS (SMETS1). However for SMETS-compliant smart metering systems that are installed in the enduring environment, it is the Government's expectation that the supplier will be required to enrol the smart metering system with the DCC.

260. The regulatory framework currently does not include a provision that compels domestic suppliers to enrol SMETS-compliant meters with the DCC. The roll-out licence condition requires that suppliers install smart meters, and acceding to the SEC provides the right for suppliers to enrol smart metering systems with the DCC. To complete the framework and ensure that, from a specified point in the future, smart meters that are installed at domestic premises are enrolled into the DCC, the Government proposes that electricity and gas suppliers will have a regulatory obligation, either in their licence or the SEC, to request the enrolment of those metering systems by DCC.

Consultation Question

15. It is the Government's intention to introduce a regulatory obligation on suppliers to enrol SMETS-compliant domestic meters with the DCC and that this obligation would apply in relation to smart meters installed (from a specified point in the future). Do you agree with this intention? Please provide a rationale for your views.

6.1.3 Obliging organisations to accede to and comply with the SEC

261. The April Consultation set out the Government's proposal to introduce a new licence condition, requiring accession to and compliance with the SEC, into the following licences:

- Electricity Supply Licences
- Gas Supply Licences
- Electricity Distribution Licences
- Gas Transportation Licences

The rationale for a condition on holders of Electricity and Gas Supply Licences

262. As set out in section 4.2.7, the charging arrangements under the SEC will provide for the recovery of the fixed costs of the DCC. These will be recoverable when Stage 1 of the SEC is designated, to corresponded with the awarding of the DCC licence. It is the Government's intention that, at this time, a proportion of these costs should be recovered from suppliers on a pro rata basis based on domestic meter points for which they are the registered supplier. Consequently, gas and electricity suppliers of domestic smart metering systems will be required to accede to the SEC from the point at which it is introduced.

263. For suppliers serving non-domestic customers via a smart meter, there is no requirement to use the DCC's services, with suppliers instead able to use other data and communications services to communicate with smart meters. However, it is the Government's expectation that the SEC will include some provisions that relate to smart metering systems irrespective of whether or not they are enrolled with the DCC. Whilst there are no such elements of Stage 1 of the SEC, provisions relevant to metering systems that are not enrolled with the DCC will be the subject of consultation for subsequent stages of the SEC. These include the governance within the SEC of the

SMETS, and also arrangements for dealing with security matters associated with smart metering. For that reason the Government is minded to require all suppliers who serve a customer via a smart meter to accede to and comply with the SEC. Draft conditions for both electricity and gas supply licences are included in Annex C of this document.

264. The Government notes that, for some suppliers who specialise in supplying energy only to larger non-domestic customers, it is possible that their portfolio of meters will not include any smart meters. In such circumstances the Government does not propose that any such supplier should be obliged under its licence to accede to and comply with the SEC. However, should they begin to supply a customer with a SMETS-compliant meter, their licence would require them to become a Party to the SEC.

Consultation Question	
16.	Do you agree in principle with the placing of a licence condition on gas and electricity suppliers to accede to and comply with the SEC?
17.	Do you agree that the licence conditions as drafted meet the policy requirements as set out in the chapter? Please provide a rationale for your views.

The rationale for a licence condition on network operators

265. As is the case for domestic energy suppliers, the charging arrangements under the SEC will provide for the recovery of the fixed costs of the DCC and these will be recoverable when the SEC is introduced. In relation to network operators, it is the Government's intention that a proportion of these costs should be recovered on a pro rata basis of all meters that will be mandated to be enrolled with the DCC for which the distribution network operator or transporter is the relevant network operator. Consequently there is a need for electricity distribution network operators and gas transporters to be required to accede to the SEC from the point at which it is designated.
266. Both gas and electricity networks will also need to be Parties to the SEC in order that the necessary obligations described in section E of the SEC (to provide the DCC with the information it needs from meter registration systems) are active and enforceable. This will be an essential element to enable the DCC to fulfil its requirement to validate requests for information from DCC Users and to enable the DCC to calculate its charges.
267. The Government therefore proposes a similar licence condition on all licensed network operators to accede to and comply with the SEC. As with the Supply Licence conditions, the licence condition for network operators would include a reference to a start date, being either the SEC designated date, or the date when a network operator offers or begins transporting or distributing energy. Draft conditions for both electricity and gas supply licences are included in Annex C of this document.

Consultation Question	
18.	Do you agree in principle with the placing of a licence condition on gas and electricity network operators to accede to and comply with the SEC?
19.	Do you agree that the licence conditions as drafted meet the policy requirements as set out in the chapter? Please provide a rationale for your views.

6.2 Timetable for establishing the SEC

6.2.1 Stage 1 of the SEC

268. As Chapter 3 sets out, there needs to be a well defined and logical transition from the point at which the Government first consults on legal drafting for Stage 1 of the SEC, to the point at which the SEC is a complete document, and the DCC starts providing services to its Users. The first part of this process is underway, and this document comprises a critical part by setting out an initial legal draft of the SEC for consultation, based on engagement with stakeholders across the energy industry and beyond. Following this consultation, the Government will analyse responses and, if necessary, make amendments to the legal text of Stage 1 of the SEC.
269. The DCC licence contains regulatory provision for the introduction of the SEC. Specifically, condition 22 of the DCC licence defines the SEC as the document that is designated by the Secretary of State as the Smart Energy Code. This designation will apply for Stage 1 of the SEC and take the form of a notice by the Secretary of State, setting out the legal text of the SEC and specifying the date the SEC should take effect.
270. The licence conditions to accede to and comply with the SEC will be introduced through the Secretary of State's powers under the Energy Act 2008 (Section 88). Modifications under this process are required to be laid in draft in Parliament prior to being made.

6.2.2 Stages 2 and 3 of the SEC

271. Thereafter, changes to the SEC for Stage 2, and for any subsequent modification undertaken by the Government, will be made using powers in the 2008 Energy Act (Section 88 (4)), which allow the Secretary of State to modify industry codes for the purpose of introducing smart metering.

6.3 SEC commencement

272. Existing registered suppliers and network operators required to accede to the SEC as a requirement of their licence, (as described in section 6.1) must do so at SEC commencement. This is expected to be on the date the SEC is designated by the Secretary of State. Organisations wishing to accede for other reasons will be able to do so at the same time. The Government will facilitate the process for Parties acceding to

the SEC at SEC commencement, although it will remain the responsibility of organisations with licence obligations to accede to ensure they meet these obligations.

273. The Framework Agreement (Schedule 1 of the SEC) is the legal document which prospective parties will be required to sign in order to accede to the SEC at SEC commencement. The Government intends to operate a postal accession process, as opposed to all parties physically signing the Agreement on the date the SEC is designated. This is intended to place a reduced burden on acceding SEC Parties as representatives will not be required to travel to a specific location on the day that the SEC is designated.
274. This option would require prospective SEC Parties to give authority to a trusted person (for example a Government-appointed lawyer) to execute the Framework Agreement on their behalf. The process has been followed in the accession process for other industry codes and it is not expected to be unduly burdensome for future SEC Parties, although alternative provisions may be needed in the event that authority is not granted by an individual party.

6.4 Establishment of SEC governance arrangements

275. At SEC commencement the SEC will become a legally enforceable framework setting out contractual rights and obligations, to which Parties will be required to adhere. Governance arrangements are required to be in place from this point onwards to oversee the operation of the SEC.. The SEC Panel will have the responsibility for overseeing the appointment of each of the SEC governance entities (the SEC Panel, Panel Chair, Code Administrator and Secretariat). However, the SEC Panel will not be in place to oversee the appointment of the SEC Code Administrator and Code Secretariat at SEC commencement.
276. Alternative arrangements are therefore required. The Government considers that, in developing the approach to establish initial SEC governance, it is preferable that the responsibility for SEC governance is transferred to industry as soon as is practicable, supporting the principle of industry-led governance.

6.4.1 The Initial SEC Panel

Appointment Process

277. The enduring process for the appointment of the SEC Panel on an ongoing basis is set out in section 4.2.8 (the SEC Panel). Under these arrangements the SEC Panel and Code Administrator and Secretariat (CAS) will manage and oversee the appointment of SEC Panel members. Neither the SEC Panel nor the CAS can be legally constituted until SEC commencement, and the SEC Panel cannot oversee its own initial appointment. It is therefore necessary for alternative arrangements to be applied to the practical management of the first set of appointments. The Government proposes to facilitate this appointment process but, in so doing, to mirror the enduring appointment processes which will be described in the SEC. The Government's role in this process is expected to be purely administrative. The appointment of Panel members will be the direct outcome of the appointment processes themselves, for example the candidate

with the most number of votes in an election process. The Secretary of State will then nominate the successful candidates to be members of the initial SEC Panel.

Composition

278. The composition of the SEC Panel is also described in section 4.2.8. These arrangements have been designed to establish a Panel which is able to undertake effective governance of the SEC, and which contain members drawn from industry and consumer organisations. It is not considered necessary to alter the composition of the Panel when appointing the initial members. Where there are specific requirements of the SEC Panel from SEC commencement (for example skills in setting up governance) Government will advise Parties of these requirements as part of the SEC Panel member nomination process. It is expected that the natural cycle of SEC Panel member appointments will enable Panel members with specific skills related to setup to be appointed at SEC designation and succeeded by those with different sets of skills required at the start of mass rollout if required.

Initial appointment terms

279. It is proposed that approximately half of the initial Panel members will be appointed for a period of 12 months and approximately half for a 24 month period. This is intended to provide continuity in the SEC Panel membership by preventing member appointment terms from being completed at the same time.

6.4.2 The Initial SEC Panel Chair

280. The SEC Panel will require a Chair to oversee its proceedings from SEC commencement. The ongoing appointment process for the SEC Panel Chair will be led by the SEC Panel and the appointment will be subject to Ofgem approval. Unlike the appointment of SEC Panel members, the process for appointing the SEC Panel Chair will require a more detailed decision to be made on the specific skills and attributes of the appointee, rather than relying on the outcome of specific process (for example an election). The Government considers that it is in keeping with the principle of industry-led SEC governance for the appointment decision to be taken by SEC Parties. It therefore proposes that the SEC Panel should appoint the enduring SEC Panel Chair. A timeframe of five months will be applied to this process to allow sufficient time for the appointment to be undertaken effectively.

281. It is proposed that, during the five month period, an interim SEC Panel Chair will be appointed by the SEC Panel. The appointee will be a representative from industry with sufficient experience of the energy industry and managing and facilitating code governance and member of the SEC Panel who is elected as Chair at the first Panel meeting. As the interim Chair would already be a voting member of the Panel, it is not considered suitable for them to be able additionally to exercise a casting vote in the event of deadlock. In such an event, no decision will be taken and the current position would remain in place. Where the interim Chair was a directly affected party, for example in a dispute, they would not be able to Chair the discussion and the Panel would be able to put an alternative arrangement in place.

6.4.3 The SEC Code Administrator and Secretariat (CAS)

282. As set out in section 4.2.9, the SEC Code Administrator and Secretariat will undertake day-to-day management of SEC governance. The CAS will play an important role in the smooth running of the SEC and it is considered important that the CAS is in place from SEC commencement to support the Panel in its early work. The Government is therefore proposing to facilitate the procurement of the CAS in advance of SEC commencement ensuring that their services and support are available at the outset.
283. Mirroring the arrangements for the DCC's service providers, the Government will run the procurement process and will engage with the industry to ensure that the requirements for the CAS services are appropriately specified. Further detail on the procurement and engagement process will be made available in due course. The contracts for the appointment of the CAS will then be signed by the SECCo at SEC commencement.

6.4.4 Establishing the SECCo

284. There are a number of activities which are required to be undertaken at SEC commencement in order for the SECCo to become operational under the terms of the SEC. In order to ensure that the SECCo is able to undertake its obligations on day one, it will be established as a company prior to SEC commencement with Government-appointed lawyers given the legal responsibility to be its directors. This step is solely intended to allow for a smooth transfer of ownership and directorship of the SECCo to industry at SEC commencement, at which point SEC Panel members will become SECCo directors and SEC Parties will become shareholders (in-line with the enduring SECCo arrangements set out in section 4.2.9).

Annex A: SEC stage 1 legal drafting

SEC legal drafting is published separately alongside this publication and is available at: www.decc.gov.uk/en/content/cms/consultations/stage1_sec/stage1_sec.aspx

Annex B: List of consultation questions in this document

General question on SEC legal drafting	
1.	Do you agree that the Government conclusions are appropriately reflected in the SEC Stage 1 legal drafting? Please provide a rationale for your views, and any further comments on the draft legal text.
DCC Charges	
2.	Do you have any comments on format of the DCC's Charging Statement for Service Charges?
3.	Do you agree with the thresholds applied to the 'first comer / second comer' principle (Five Year Rule for costs over £20,0000)? If you disagree please set out the reasons for your preferred approach.
SEC Panel	
4.	Do you think the members of the Panel nominated by industry should be drawn from and elected in equal numbers by Party category OR be elected by all Parties (as set out in the legal drafting). Please give reasons for your answer.
Modifications	
5.	Do you support the proposed composition of the Change Board and its decision making arrangements?
6.	Do you think that the SEC should provide for Parties and the consumer representative to appeal Change Board recommendations before they are submitted to Ofgem? If so, what is the appropriate mechanism for determining such appeals?
7.	Do you have any further comments, or views on the cost implications to SEC Parties, regarding the proposals for governance, the modification process and the approach to appeal rights set out here and reflected in the legal drafting of Stage 1 of the SEC?
Liabilities	
8.	Do you agree that liability provisions for intellectual property rights and confidentiality should be included in the SEC. If so, do you agree that they

	should be unlimited?
9	Do you agree with the Government's proposal that in instances where the DCC is exposed to liabilities that exceed what it can claim from the person causing the original breach, the net liabilities for the DCC will be recoverable from SEC Parties by way of an increase in the DCC's fixed charges?
Dispute resolution	
10.	Do you agree that the Government's proposal to allow DCC to link service provider and SEC disputes in the arbitration process?
Code co-ordination	
11.	Do you agree that the proposed legal drafting covering change co-ordination with other codes meets the requirements as set out in chapter 5?
Passing registration information to the DCC	
12.	Do you agree that the proposed legal drafting for the SEC covering obligations on SEC Parties to pass registration information to the DCC is appropriate? Please provide a rationale for your views.
Transitional arrangements	
13.	Do you agree with the proposed variation to the SEC modification regime in the transitional period, including a right of veto for the Secretary of State?
14.	Comments are invited on the approach to transition as set out in this chapter and section L of the SEC. Please provide rationale to support your views.
Licence conditions	
15.	It is the Government's intention to introduce a regulatory obligation on suppliers to enrol SMETS-compliant domestic meters with the DCC and that this obligation would apply in relation to smart meters installed (from a specified point in the future). Do you agree with this intention? Please provide a rationale for your views.
16.	Do you agree in principle with the placing of a licence condition on gas and electricity suppliers to accede to and comply with the SEC?
17.	Do you agree that the licence conditions as drafted meet the policy requirements as set out in the chapter? Please provide a rationale for your views.
18.	Do you agree in principle with the placing of a licence condition on gas and electricity network operators to accede to and comply with the SEC?
19.	Do you agree that the licence conditions as drafted meet the policy requirements as set out in the chapter? Please provide a rationale for your views.

Annex C: Draft licence conditions to accede to and comply with the SEC

Draft Electricity Supply Licence condition to accede to and comply with the SEC

Condition [GG] – The Smart Energy Code

Party to the Code

GG.1 The licensee must:

- (a) by no later than the Commencement Date, be a party to the Smart Energy Code; and
- (b) thereafter remain a party to and comply with the Smart Energy Code.

Derogation

GG.2 The Authority may (following consultation with the licensee and where appropriate any other person likely to be materially affected) give a direction (“a derogation”) to the licensee that relieves it of its obligations under the Smart Energy Code in respect of such parts of the Smart Energy Code, to such extent, for such period of time and subject to such conditions as may be specified in the direction.

Interpretation

GG.3 For the purposes of this Condition the licensee’s obligation to comply with the Smart Energy Code is an obligation to comply with the provisions of the Smart Energy Code so far as they are applicable to the licensee.

Definitions

GG.4 In this Condition:

- Commencement Date** means the date which is the later of:
- (a) the SEC Designated Date; and
 - (b) whichever of the following dates occurs first:
 - i) the date on which the licensee commences to supply electricity to any Domestic Premises;
 - ii) the date on which the licensee commences to

supply electricity to any Designated Premises through a Smart Metering System at those premises,

DCC Licence	means the Licence for the Provision of a Smart Meter Communication Service granted pursuant to sections 7AB(2) and (4) of the Gas Act 1986 and sections 6(1A) and (1C) of the Electricity Act 1989.
Smart Energy Code	means the document of that name, as designated by the Secretary of State under Condition 22 of the DCC Licence.
SEC Designated Date	means the date the Smart Energy Code is designated by the Secretary of State in a direction given for the purposes of Condition 22 of the DCC Licence.

Draft Electricity Distribution Licence condition to accede to and comply with the SEC

Condition [ZZ] – The Smart Energy Code

Party to the Code

EE. 1 The licensee must:

- (a) by no later than the Commencement Date, be a party to the Smart Energy Code; and
- (b) thereafter remain a party to and comply with the Smart Energy Code.

Derogation

EE. 2 The Authority may (following consultation with the licensee and where appropriate any other person likely to be materially affected) give a direction (“a derogation”) to the licensee that relieves it of its obligations under the Smart Energy Code in respect of such parts of the Smart Energy Code, to such extent, for such period of time and subject to such conditions as may be specified in the direction.

Interpretation

EE. 3 For the purposes of this Condition the licensee’s obligation to comply with the Smart Energy Code is an obligation to comply with the provisions of the Smart Energy Code so far as they are applicable to the licensee.

Definitions

EE. 4 In this Condition:

Commencement Date	means:
	(a) the date which is the SEC Designated Date; or
	(b) where this Condition comes into force after the SEC Designated Date, the earlier of the date on which the licensee offers to distribute electricity or the date on which it begins to distribute electricity in Great Britain.
DCC Licence	means the Licence for the Provision of a Smart Meter Communication Service granted pursuant to sections 7AB(2) and (4) of the Gas Act 1986 and sections 6(1A) and (1C) of the Electricity Act 1989.
Smart Energy Code	means the document of that name, as designated by the Secretary of State under Condition 22 of the DCC Licence.
SEC Designated Date	means the date the Smart Energy Code is designated by the Secretary of State in a direction given for the purposes of Condition 22 of the DCC Licence.

Draft Gas Supply Licence condition to accede to and comply with the SEC

Condition [GG] – The Smart Energy Code

Party to the Code

GG.1 The licensee must:

- (a) by no later than the Commencement Date, be a party to the Smart Energy Code; and
- (b) thereafter remain a party to and comply with the Smart Energy Code.

Derogation

GG.2 The Authority may (following consultation with the licensee and where appropriate any other person likely to be materially affected) give a direction (“a derogation”) to the licensee that relieves it of its obligations under the Smart Energy Code in respect of such parts of the Smart Energy Code, to such extent, for such period of time and subject to such conditions as may be specified in the direction.

Interpretation

GG.3 For the purposes of this Condition the licensee's obligation to comply with the Smart Energy Code is an obligation to comply with the provisions of the Smart Energy Code so far as they are applicable to the licensee.

Definitions

GG.4 In this Condition:

Commencement Date	means the date which is the later of: (a) the SEC Designated Date; and (b) whichever of the following dates occurs first: i) the date on which the licensee commences to supply gas to any Domestic Premises; ii) the date on which the licensee commences to supply gas to any Designated Premises through a Smart Metering System at those premises.
DCC Licence	means the Licence for the Provision of a Smart Meter Communication Service granted pursuant to sections 7AB(2) and (4) of the Gas Act 1986 and sections 6(1A) and (1C) of the Electricity Act 1989.
Smart Energy Code	means the document of that name, as designated by the Secretary of State under Condition 22 of the DCC Licence.
SEC Designated Date	means the date the Smart Energy Code is designated by the Secretary of State in a direction given for the purposes of Condition 22 of the DCC Licence.

Draft Gas Transportation Licence condition to accede to and comply with the SEC

Condition [ZZ] – The Smart Energy Code

Party to the Code

EE. 1 The licensee must:

- (a) by no later than the Commencement Date, be a party to the Smart Energy Code; and

- (b) thereafter remain a party to and comply with the Smart Energy Code.

Derogation

EE. 2 The Authority may (following consultation with the licensee and where appropriate any other person likely to be materially affected) give a direction (“a derogation”) to the licensee that relieves it of its obligations under the Smart Energy Code in respect of such parts of the Smart Energy Code, to such extent, for such period of time and subject to such conditions as may be specified in the direction.

Interpretation

EE. 3 For the purposes of this Condition the licensee’s obligation to comply with the Smart Energy Code is an obligation to comply with the provisions of the Smart Energy Code so far as they are applicable to the licensee.

Definitions

EE. 4 In this Condition:

Commencement Date means:

- (a) the date which is the SEC Designated Date; or
- (b) where this Condition comes into force after the SEC Designated Date, the earlier of the date on which the licensee offers to transport gas or the date on which it begins to transport gas in Great Britain.

DCC Licence means the Licence for the Provision of a Smart Meter Communication Service granted pursuant to sections 7AB(2) and (4) of the Gas Act 1986 and sections 6(1A) and (1C) of the Electricity Act 1989.

Smart Energy Code means the document of that name, as designated by the Secretary of State under Condition 22 of the DCC Licence.

SEC Designated Date means the date the Smart Energy Code is designated by the Secretary of State in a direction given for the purposes of Condition 22 of the DCC Licence.

Annex D: Draft DCC Charging Statement

ADD DCC LOGO

The Charging Statement for Service Charges

Effective from [DD MMM YYYY]

Based upon

The Charging Methodology

contained within

The Smart Energy Code

1. Introduction

This document is the first Charging Statement for Service Charges (the CSSC). This CSSC has been prepared and published in accordance with Condition [19] of the SMART METER COMMUNICATION LICENCE of [add name of firm] (the DCC) in a format approved by the Secretary of State.

This document sets out the annual charges applicable for Mandatory Business Services (other than Elective Services) and the inputs used to calculate these charges.

The approach is prescribed in section K – Charging Methodology of the Smart Energy Code which is available on our website [ADD the DCC URL].

If you require further detail on any of the information contained within this document or have comments on how this document might be improved please contact [ADD the DCC contact details].

2. Assumptions

This section contains a range of assumptions that are used within the determination of this CSSC. The acronyms within these tables are those utilised within the SEC Charging Methodology.

Table 1 – Cost Assumptions

Acronym	Name	Value / Units
EAR_t	Estimated Allowed Revenue for the Regulatory Year (t)	[£99,999,999]
$EESR_t$	Estimated Elective Services Revenue for the Regulatory Year (t)	[£99,999,999]
$EECR_t$	Estimated Explicit Charges Revenue for the Regulatory Year (t)	[£99,999,999]
EFR_t	Estimated Fixed Revenue for the Regulatory Year (t)	[£99,999,999]
NM_t	number of months in the Regulatory Year (t)	[12 months]

Table 2 – Charging Group Assumptions

Charging Groups		Size of Charging Group ($EMSMS_{gt}$)	Charging Group Weighting Factor (α_{gt})
g1	Import electricity Supplier	[99,999,999]	[0.9999]
g2	Export electricity Supplier	[99,999,999]	[0.9999]
g3	Gas Supplier	[99,999,999]	[0.9999]
g4	Electricity Network	[99,999,999]	[0.9999]
g5	Gas Network	[99,999,999]	[0.9999]

3. Fixed charges

The following table details the monthly fixed charge applicable to each meter within every charging group from the effective date on this document.

Table 3 – Charging Group Monthly Fixed Charge

Charging Groups		Monthly Fixed Charge (£/meter) (FC_{gt})
g1	Import electricity Supplier	[£9.9999]
g2	Export electricity Supplier	[£9.9999]
g3	Gas Supplier	[£9.9999]
g4	Electricity Network	[£9.9999]
g5	Gas Network	[£9.9999]

4. Explicit charges

The following table details the explicit charge applicable from the effective date on this document.

Table 4 – Explicit Charges

SEC Reference	Name	Value / Units
K7.5 (a)	Detailed Evaluation for potential elective services	[£99,999,999]

Annex E: Illustrative example of schedule of core communication services

UGC ID	Name	Description	Service Response Time	Automatic or Requested (A or R)	Consent (Y/N)	Perf. Standard	SEC Party Type	SMETS1/2
1.1	Update Tariff -	To allow a DCC User to send a new tariff structure to a meter at a specified end point id, such that the meter can update its configuration and confirm that the operation has either completed or the reason for its failure	24 hours	R	N	99.9%	Registered gas supplier Registered electricity supplier	SMETS1 SMETS2
1.3	Update Credit mode	To allow a DCC User to send a command to a meter to switch Payment Mode configuration from Prepayment Mode to Credit Mode at a specified End Point Id, such that the meter can update its configuration and confirm that the operation has either completed or the reason for its failure whilst maintaining energy supply	12 hours	R	N	99.9%	Registered gas supplier Registered electricity supplier	SMETS1 SMETS2
4.1	Read Instantaneous Import Register Values	To allow a DCC User to obtain an instantaneous import register read on an electricity or gas meter.	12 hours	R	Y/N	99.9%	Registered gas supplier Registered electricity supplier Electricity network operator Gas transporter Authorised third party	SMETS1 SMETS2
6.5	Update Device Configuration (Voltage)	To allow a DCC Service User to set the power quality monitoring configuration parameters at a specified MPAN	24 hours	R	N	99.5%	Relevant electricity network operator	SMETS1 SMETS2

