



Making a positive difference  
for energy consumers

Date: 26 August 2014

### **Ofgem's response to the Department of Energy and Climate Change's consultation on stage 4 of the Smart Energy Code**

We welcome the opportunity to respond to your consultation on the fourth stage of the Smart Energy Code (SEC)<sup>1</sup> and accompanying draft legal text. Ofgem regulates the gas and electricity markets in Great Britain. We have an important role in ensuring the interests of consumers remain protected, both during the transition to smart metering and in the enduring framework. This regulatory role will include making decisions on whether to approve certain modifications to the SEC.

We recognise the significant amount of work that DECC has undertaken to publish this important part of the SEC in such tight timescales. We also recognise the challenge that DECC has in balancing the views of such a diverse range of stakeholders.

We set out below our response to some of the key issues in DECC's publication. The appendix to this letter sets out more detailed comments.

#### ***Subsidiary documents***

It is planned that a large number of technical documents will be introduced into the regulatory framework as SEC Subsidiary Documents. Some of these documents will be developed by DECC, working with stakeholders, while others will be developed by the Data and Communications Company (DCC).

We agree with DECC that it is important that stakeholders engage with the DCC's consultations on these Subsidiary Documents, just as they would for Government consultations. We also encourage DCC to continue to actively engage with all stakeholders,

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<sup>1</sup> The Smart Energy Code is a new industry code which sets out the terms for the provision of smart meter communications services in Great Britain, and specifies other provisions to govern the end-to-end management of smart metering.

in particular with small suppliers, who might find the amount of documents to review and the timescales very challenging, due to their more limited resources.

Looking ahead to when these technical documents are incorporated in the SEC, we are interested in ensuring the modification process operates as efficiently as possible. We anticipate that as the industry gains operational experience there could be a high number of modification requests for the Subsidiary Documents. At present, the SEC envisages that these documents follow the same modification procedures as the main Code, which means they could be modified either following a decision by the Authority, or directly by the Change Board (in case of Path 3 modifications). Given the nature of these technical documents it may be more efficient to have a different governance framework. For example, changes to some of the Subsidiary Documents could be made, by unanimous voting, directly by the Technical Sub-Committee (or other bespoke sub-committees if more appropriate). Only in the case of disagreement, the decision could be escalated to the SEC Panel. Alternatively, specific documents could be determined to be automatically subject to the Path 3 modification process without the need for the Panel to decide on each individual proposal. Both alternatives would allow for decisions to be made in a more agile way related to the materiality of the proposed modification.

We would be happy to work with DECC to explore other ways in which the SEC Subsidiary Documents could be governed based on best practice in other industry codes.

#### ***Disputes in relation to provision of data to the Central Delivery Body (CDB)***

DECC are minded to include an additional Licence Condition in the Smart Meter Communication Licence to require DCC to provide the CDB with certain market share information, which is held by DCC. Given the potential commercially sensitive nature of this data, we agree with DECC that this information exchange should be subject to confidentiality restrictions on both parties in accordance with all laws regarding handling and disclosure of such information. We agree there are merits with the DCC providing CDB with this information.

The draft licence condition envisages the DCC and the CDB entering into an agreement setting out the terms on which the DCC will provide the information to the CDB. An alternative option would be to introduce a clear obligation on DCC to provide the information to CDB, in accordance with clear criteria. This would be a simpler solution that limits the scope for disagreements and delays and removes uncertainty. It would also mean a dispute resolution route would be unnecessary.

If the proposed approach in the draft licence condition is taken, we do not think that the Authority should have a role in determining any dispute that may arise between the DCC and the CDB in relation to the terms of their agreement. Any such agreement will be a commercial agreement between two individual parties and so we think it is more appropriate for any such dispute to be referred to an independent arbitrator for determination. We note this is proposed by DECC as an alternative consultation proposal, and we therefore support this alternative proposal.

#### ***Consistency of terminology***

We note that the SEC drafting refers to different qualifiers for the scope of the obligations: 'all reasonable steps', 'reasonable endeavours', 'reasonable steps', 'best endeavours', 'endeavour' for example. It is not always clear to us whether you are intending to apply a different level of obligation and why. We also believe this could lead to confusion and misinterpretation around SEC Parties' obligations. We therefore encourage DECC to align terminology and use "all reasonable steps" in all cases, in order to avoid any possible confusion and regulatory uncertainty.

### ***Service to allow consumers to find out which users have accessed their consumption data***

DECC are proposing that the SEC allows Users to access details of all 'read profile data' and 'retrieve daily consumption log' service requests for their Smart Metering Systems from Service Audit Trail data (the "transparency service"). This service will allow a User to provide a consumer with the identity of those Users who have read profile data from their Smart Metering Systems together with the date and time of the requests.

In our view all consumers should be able to have access to their service log, ie there should be a guarantee that this service is available. This is needed to ensure that consumers build and maintain trust in the system. Our view is that this service should be made available free of charge within reasonable and defined boundaries of eg frequency, speed and format, and charges could apply beyond the basic service provision.

We consider that this service request log should be made available to the consumer only, ie the User requesting this log from the DCC should not automatically be able to access it or use the information contained within it. In other words, any User who is the conduit of this data does not automatically have right of access. This will prohibit Users using this information inappropriately to their commercial benefit, especially for marketing and sales purposes.

It is of course the consumer's right to share their service log with the User who provides access to it. However, if the consumer is able to consent to the User accessing the data directly, then this consent needs to be explicitly given (ie. opt-in), within the clearly stated context of the service log (ie not buried amongst other consents or Terms and Conditions), and must not be conditional for receipt of the data.

### ***Security Governance***

We agree with DECC that the security of the end-to-end smart metering system is essential for the reliable delivery of communications to and from smart meters. We also agree that there is a need to ensure that security arrangements in the SEC are kept under review as the security landscape evolves. We therefore welcome the roles and responsibilities that the Security Sub-Committee (SSC) and the Smart Meter Key Infrastructure Policy Management Authority (SMKI PMA) will have in developing and maintaining the security arrangements.

We also agree that it is appropriate for a representative from Ofgem to be entitled to attend the SSC and SMKI PMA as a non-voting attendee.

### ***Explicit Charge of zero***

DECC are proposing to amend the charging methodology (Section K) to indicate that an Explicit Charge related to Services within the DCC User Gateway Services Schedule may be set to zero. This relates to a request from the DCC to amend the drafting in the SEC to ensure this approach can be taken.

We agree with the rationale behind the proposal: if recovering the costs of Service Requests in the fixed charge per meter reduces costs and complexity in the billing system this seems sensible. We also understand there could be benefits to SEC parties in terms of simplifying invoicing and the reconciliation process. But it is difficult to fully understand the benefits of the approach as DCC did not provide an analysis of the costs and benefits of the proposal. However, we understand DCC has since shared some worked examples at an industry workshop.

If the Explicit Charge is set at zero there is a risk that demand for those services would be higher. Users that pay a higher proportion of the Fixed Charges may end up paying costs,

through their Fixed Charges, that would otherwise have fallen to those Users using the services. The framework is designed such that over time the User groups that use more services would pay a higher proportion of the fixed costs, and DCC is required to review the charging methodology at least once a year. However, currently only licensees pay Fixed Charges, so there is a risk that licensees could pick up substantial costs generated by third parties.

Given these risks it will be important that DCC monitor usage and assess the volumes of service request to make sure particular SEC parties are not disadvantaged, and the rationale for setting the Explicit Charge to zero remains valid. For transparency we encourage DCC to share any ongoing and updated analysis with SEC parties. DCC will also need to ensure its billing solution is future proofed and capable of switching to charging for explicit services.

### ***Future content of SEC***

We welcome the constructive engagement we have had to date and we look forward to continuing our discussions with you on this and the following contents of the SEC. In particular, we are ready to engage with you on any SEC provisions required to support the future migration of meter registration to DCC.

We note that the SEC has been drafted and designated in different stages, an approach which was necessary to put in place the relevant arrangements in tight timescales. Therefore, we recommend that, as part of future consultations on the remaining content of the SEC, DECC undertakes a holistic review of the provisions and obligations drafted so far, to identify any inconsistencies or gaps in the SEC arrangements.

Finally, we consider that there should be careful assessment of the stability of sections of the SEC and its subsidiary technical documents before they are designated and subject to SEC change control procedures. In certain cases it may require industry testing and, potentially, operational experience to determine whether the drafting is sufficiently complete and robust. Premature application of the SEC modification procedures risks delaying change that may be necessary for the Programme to meet its milestones. We would welcome a scheme for designating the SEC and its subsidiary documents that sets out the necessary quality criteria for placing them under SEC governance.

If you would like to comment on this response, please contact

Yours sincerely,

## Appendix 1

### Detailed comments on the policy consultation

No.	Condoc Chapter / SEC Section	Condoc Paragraph / SEC Sub-section	Ofgem's Comments
1	4.3	151	<p>Third parties will be audited in terms of their compliance with the privacy rules in the SEC (eg. requirements to get consent before obtaining consumption data). Paragraph 151 suggests privacy audit results could be published. It is important that the context of the audit findings and the severity of any privacy breaches is appropriately presented.</p> <p>In your consultation, you ask for views on potential changes to the SEC to provide for reporting the results of privacy assurance assessments to bodies such as Ofgem. We will not need these on a regular basis and therefore we would prefer to not routinely receive these results, unless we expressly ask the Panel to provide them to us.</p>
2	4.4	156	<p>The proposal is that parties should have to get consumer consent before undertaking CAD pairing. There are risks associated with having a licence condition for suppliers and SEC obligations for third parties, eg:</p> <ul style="list-style-type: none"> <li>• If the requirements are in different places they may become misaligned over time. Is the aim to have the same rules applying to licensees as to third parties?</li> <li>• It could make the licence difficult to follow,</li> <li>• It isn't clear that getting consent for CAD pairing and the read log is in keeping with the wider licence condition, which is concerned with getting consent for accessing consumption data. This may have implications for wider data protection legislation.</li> </ul> <p>Section 12.5 is about payment for remote testing equipment. We consider 'User pays' would be better as it is an optional service that would appear to benefit the person using it.</p>
3	12.5	331	<p>Where a Party disputes any decision made by the Panel in relation to it under Section 12.31, it may appeal that decision to the Authority and the determination of the Authority shall be final and binding for the purposes of the Code. We do not consider appropriate for the Authority to hear such appeals before Initial Live Operations (as per the Testing provisions).</p>
4	1	2.34	<p>Paragraph 353 notes that "While we acknowledge the concerns that have been expressed, we note that evidence of differential costs was not provided by</p>
5	13.1	353	



No.	Condoc Chapter / SEC Section	Condoc Paragraph / SEC Sub-section	Ofgem's Comments
6	E	2.1 (d)	respondents. "... It may not be possible for suppliers to provide evidence on the differential costs of HAN variants. We think it would be more the job of the DCC and communications Service Provider.
7	N	2.4	The drafting does not refer to the supplier as the registered party, but rather the 'person'. Is there a valid reason for this?
8	H	3.17	Is written confirmation is literally required for each meter or for a class of meter? Why is there a different approach for low and high volume gateway disputes? We think it makes sense to have a consistent approach so that both disputes in H3.17 are referred to the Panel.
9	M	11.12A	SEC Parties can apply to Ofgem for derogation to anything under the Code. Derogations can be a useful tool for the management of obligations and modifications in some circumstances. Consideration should be given to extending the ability to grant derogations to the SEC Panel, who either may either i) complete a report and sent it to Ofgem for approval or ii) have the power to issue derogation themselves.
10	C	2.3	Should the Panel Duties in C2.3 also include a requirement to decide whether or not to investigate an Event of Default (M8.3). M8.3 gives the Panel discretion as to whether to investigate - but may be better to have explicit duties/powers to investigate.
11	D	6.8 (f)	Suggest adding 6.8 (f) (ii) "where the Panel has indicated that the views of the Security Sub-Committee should be sought". The Panel may have an initial view when conducting their Initial Consideration of a Mod at D3.5.
12	7.7	252	"...on the occurrence of any significant disruption to the Services, the DCC shall use its reasonable endeavours to ensure that those Services are restored within four hours of the occurrence of that disruption; and ensure that those Services are restored within eight hours of the occurrence of that disruption. Does 'Services are restored' mean all users can use services?
13	3.1	105-106	Change to DCC Licence to require DCC to offer services to non-SEC parties where required to under the SEC. This is fine provided the SEC only has appeals of Panel decisions and not direct dispute to Ofgem.
14	3.4	45	A Party's forecast for that month and the subsequent months up to the delivery month should be refined to state the number of Device Models (WAN variants and HAN variants) it requires in each CSP region - there needs to be recognition that there are uncertainties on when new HAN solutions will be available to the market. Forecasting should recognise this
15	12.3	326	Does this mean that power voltage alerts will not be issued for interruptions that affect

No.	Condoc Chapter / SEC Section	Condoc Paragraph / SEC Sub-section	Ofgem's Comments
16	F	5.3 and 5.4	more than 50 homes? This is the requirement of regular forecasts 30 months ahead. The reliability of such forecasts will be limited. The difference between forecasts and actual order volumes can be used to justify uplift on the costs of Comms Hubs. How far can the DCC and CSP's go to rely on these forecasts in planning their business?
17	G	2.22 (a) and 3.12 (a)	For FS.4, additionally regionalising forecasts makes them even less reliable. "[...] the development of bespoke software or firmware, or the customisation of any software or firmware, for the purpose of its installation on any part of the DCC Live Systems;" should be changed to "[...] the development of bespoke hardware, software or firmware, or the customisation of any hardware, software or firmware, for the purpose of its installation on any part of the DCC Live Systems;"
18	G	7	to make it more robust/secure. It may be desirable to alternate election times of Board members to maintain continuity of Board members
19	K	3.16	Refers to DCC using the prudent estimate for the contingency fund for the 3 month float. We would prefer that DCC takes a view on the appropriate use of the 'prudent estimate' in accordance with its licence obligations.

# Comments on SEC drafting

No.	SEC Section	SEC Sub-section	Ofgem's Comments
1	General comment	All SEC	There are a large variety of qualifiers to the scope of obligations. This is not a complete list, but we noticed "reasonably, as is necessary or expedient, as may be necessary, reasonably necessary, to the extent necessary, endeavour, reasonable endeavour, best endeavour, all reasonable steps, reasonable steps, reasonable steps to do such things as are within its power and necessary or expedient, all the steps, appropriate steps, all necessary steps, reasonably practicable, practicable, as is necessary." We suggest a holistic review of code and choose "all reasonable steps" to align with SM Lcs
2	General	All SEC	SEC uses "he or she" phrase. A2.1 (c) says: "a gender includes every gender". So SEC should use either "he" or "she", or be gender neutral.
3	A		The expressions used in this definition will be added to the Code should the supply licences be modified to include such expressions" - we think this could benefit from a re-draft to make it clearer
4	A		There is a new definition of Problems, but there are a number of continuing references to problems, undefined, in the SEC. This may be deliberate, but there were some, eg. H8.16(g) where it felt more ambiguous as to whether or not the defined term was intended
5	B	1.17	The definition of Party ID says it is a number allocated by the Code Administrator under B1.17. However, B1.17 says that it is the Panel who issue the Party ID. Should they be aligned?
6	E	3.12 & 3.13	Consider moving the paras to the top of section E.3 for clarity.
7	F	10.8	This section applies to non-SEC Parties (TCH Participants) and seeks to place obligations on them. This cannot be done in the SEC as they are not parties to the SEC. Can you confirm how it would link to pro-forma agreement?
8	F	10.11	The intent could be clearer. Is it attempting attribute responsibility to the DCC where there are multiple causes for loss or damage? Or is it attempting to stop the DCC arguing it is not their fault, but allowing for others to also be liable together with DCC?
10	G	2.1	Need a definition of "DCC Information Security" in Section A
11	G	5.3 and 5.18	"Management System " is defined only in G but we think it needs a definition in A too
12	G	3.4	Need a definition of "User Information Security" in Section A
13	G	6.2	Requirement to "delete" communications from DCC Systems. Is it clear from this how permanently and irretrievably this needs to be deleted? Should the term "delete" be defined to clarify what it actually means to delete, so to avoid confusion?



No.	SEC Section	SEC Sub-section	Ofgem's Comments
14	G	7.6	Is the intent of this section that someone can only apply to be reappointed once to continue to be a member of the sub-committee or is it that they may be re-appointed more than once? We do not think that is explicitly made clear by the condition
15	G	8.37	Rather than use an uncapitalised disputes, which invites confusion, it might be preferable to replace "disputes" with "disagrees with", as appropriate (ie when it is not capitalised Dispute). We also note that Dispute is used when it is both an appeal and a dispute and this will cause confusion
16	H	1.10 (C)	User Security Assurance – can you confirm that this is the right term? Should it be 'Initial Full Security Assessment: User Entry Process' (G8.29)
17	H	4.2	Need a definition of "CoS Update Security Credentials Service Request" in Section A
18	H	11.15	Should this clause refer to "object code" (or "byte-code") rather than "source code". Making source code public weakens H11.14.
20	K	3.7	"For the reasons described in Section K3.5 and K3.6, the DCC must split the Estimated Fixed Revenue for Regulatory Year (t)..."
			we suggest that this should read:
			"For the reasons described in Section K3.5 and K3.6, the DCC must apportion the Estimated Fixed Revenue for Regulatory Year (t)..."
	L	3.5	Replacement of 'must' with 'shall' - ensure 'shall' is used for all obligations to avoid confusion. Appears consistent with the rest of the wording for that provision but we are flagging this to prompt consideration as to whether this was an intention to create a less onerous condition
21	N	3.9	Should this be 'Eligible' Meters rather than 'Energy' Meters? DECC may wish to check that the correct usage of these defined terms has been applied throughout.
22	N	1.1	It's unclear why the undefined term "SME Technical Specification" has been used here, when SMETS is a defined term in section A
23	N	4.4	N4.4(i) introduces the concept of an <i>unreasonable</i> security risk. It is not clear exactly what makes a security risk reasonable or unreasonable. It would seem to be more helpful if the terminology continued to match N2.10 and references to materially increased level of security risk
24	N	4.5	"May" is used interchangeably in new provisions to mean both "permitted to" and "obliged to". Here it is used to mean that the DCC is obliged to do something. Although this can generally be discerned from the context, we think it would be helpful if "shall" could be used universally (as elsewhere in the licence) rather than "may", when referencing an obligation
25	O	1.2	Obligation on the DCC to ensure that Non-Gateway Interface is available at all times (subject to

No.	SEC Section	SEC Sub-section	Ofgem's Comments
			Planned Maintenance). Very onerous. What if matters beyond control render it unavailable. Is O1.1 sufficient?
26	O	1.8	Paragraph stipulates two separate points - should be separated into two paragraphs for clarity.
27	O	1.12	Where a Party disagrees with any decision of the Panel made pursuant to Section O1.11(b), then that Party may refer the matter to the Authority for its determination, which shall be final and binding for the purposes of this Code. Extends obligations of the Authority. The key point here is that it be considered as an appeal to the Authority to uphold or overturn to decision of the Panel. The Authority should not be in a position of determining what the remedy should be.
28	O	2.2 & 3.1	. An example where 'All reasonable steps' should be used
29	O		Would these details of how testing is to be carried out be available at this time? What if the method changes?
30	T	4.4 (C)	Wording is unclear - does 'latest' refer to the most recent date or the very last date that the Test can be made?
31	T	5.13	What is the significance of this amendment? The first line of 5.13 states that all the subsequent obligations are to be fulfilled prior to testing in accordance with the SRT doc
32	X	8.3(e)	Text says that the format of an alert will be equivalent to an Alert. However, an Alert is defined in Section A as one of two things. Therefore, is it clear which of those two things this is equivalent to?