

CONSULTATION ON DETAILED POLICY DESIGN OF THE REGULATORY AND COMMERCIAL FRAMEWORK FOR DCC

SCOTTISHPOWER RESPONSE

Executive Summary

Nature of DCC

A decision has evidently been taken that the DCC should be a 'thin' organisation with a role that is essentially limited to contract management of two large service provider organisations. This decision underpins much of the approach set out in the consultation and will have a strong bearing on the type of organisation that is willing to bid. It is unclear from the consultation document what the rationale is for this decision – as opposed to adopting the more conventional model of a prime contractor which is explicitly accountable for delivering the contracted service and which internalises the integration risk (i.e. the risk arising from integrating communication and IT services from different providers).

Moving to a more conventional prime contractor model would have a number of implications:

- DCC would need to have the financial weight to take on financial responsibility for the overall contract, including liability for non-performance of its subcontractors;
- DCC would need to have more 'skin in the game' to justify the associated risks; this might involve a greater operational role (perhaps in system integration) and the ability to charge an appropriate mark-up on the charges of its subcontractors;
- DCC would also need to be confident that it would be in place for a reasonable length of time – which implies that its licence should be capable of being revoked only after a well defined and measured escalation process.

We see significant merit in such an approach, in terms of minimising the risks of delay and/or poor service quality, and simplifying the management interface. We have largely responded to the detailed questions on the assumption that the 'thin' model is adopted, but have noted particular issues around the model in appropriate contexts. In any event, we would urge DECC to give serious consideration to adjusting its procurement towards a more conventional prime contractor model. If the "thin" model is retained, it will be necessary to understand clearly how the integration risk (and indeed any risks to service arising from defects in the contracts with service providers) is to be managed.

DCC establishment

It is essential that DECC ensures that the DCC has a primary focus of delivering cost effective and robust contract management. To this end, we fully support the DCC contracting services from third parties, through a recognised best practice competitive tender process, providing end users with the necessary confidence that central services will be equally robust and cost efficient. Should additional, currently unknown, services be required, we think that it is appropriate that these are contracted in the same way.

It is important that the DCC's role is clearly positioned as the 'prime contractor', providing services under contract to its users. Initially we do not see that it should have a consumer facing role,

(although the future intention to centralise registration services will require an information facility so that consumers can establish who their supplier is). Neither should it have objectives or responsibilities (such as delivery of energy efficiency) which overlap with those of its users. This will ensure that any unhelpful blurring of roles between market participants is avoided.

We are in general agreement with DECC's intended approach to the way in which the DCC is established. We believe it sets out a structured framework for parties competing for the award of the DCC licence, or seeking to provide the communications and data services. This will help to promote a level playing field for users and help mitigate risks of unforeseen developments impacting upon mass rollout timescales.

We agree that these principles should extend to the facilitation of any competition in establishing future smart grid arrangements; although we feel it is too early to determine how/what role the DCC will play in this context. From a DCC user's perspective, it is essential that the process remains transparent at all stages of development and that the scope of roles and responsibilities remain clearly defined.

Licence conditions

We welcome the proposal for a single set of licence conditions applied to both gas and electricity licences. However, we would make the following observations:

- We would welcome further clarification as to how the changes to existing licence conditions set out in the Consultation document will be applied.
- We believe consideration should be given to extending Ofgem's licensing powers to include energy service companies (ESCOs) that use DCC services; this would help ensure a level playing field amongst market participants in order to avoid the potential reputational risk to the programme (see our response to Question 4).
- Responsibility for interrupting consumer supplies should remain solely with the registered supplier and/or Distribution Network Operator (DNO). We see no need for any licence modifications to cater for interruptions by the DCC, since the DCC would only ever take action at the supplier or DNO's request, and consumer protection can therefore be managed at the supplier/DNO level. We would suggest that the licence states that the DCC can only interrupt and restore consumer supply upon the instruction of either a supplier or network operator. (Please see our detailed responses Questions 7 and 13).

We feel it is appropriate that the Smart Energy Code (SEC) is suitably flexible to enable the future evolution of the DCC and its associated services through subsequent modifications to the SEC. However, it must be ensured that such an approach does not result in a future conflict between the DCC's and SEC's long-term objectives or vice versa.

We assume that there will be an explicit duty on licensees to comply with the terms of the SEC, and that Ofgem will have powers under certain circumstances to make modifications to the SEC that have not been agreed by all parties. It is essential, therefore, that any decision under such powers is designated as subject to appeal under section 173 of the Energy Act 2004.

Cost recovery and charging mechanisms

We are broadly supportive of the approach DECC is taking with regard to the DCC charging methodology and cost recovery mechanisms. However, we would make the following observations:

- ‘Postage Stamp’ – We support the proposal to socialise costs as this will promote a consistent smart meter experience for consumers and DCC users alike, regardless of location, and avoid needless complexity.
- DCC costs prior to go-live – We consider it is appropriate for DCC licence applicants to commit sufficient investment to fund their internal activities ahead of go-live, such that DCC users do not incur costs in advance of receiving DCC services.
- DNO charges – Given that no allowance has been made in the Distribution Price Control for this, network operators would ultimately bear a cost they would be unable to recover. We do not consider this to be appropriate. However, reopening the price control would simply see the costs passed through to suppliers as ‘use of system’. Therefore, we think it simplest to socialise these costs among all other users of DCC services.
- Charges for non-compliant metering – The principle that DCC services (core and elective) are provided on a non-discriminatory basis should apply to compliant and non-compliant metering systems alike, as it is crucial that the DCC establishes itself at the centre of smart arrangements for all market participants. DECC must ensure that DCC’s terms for non-compliant metering systems remain cost reflective.
- We think that the structure of DCC services requires further consideration. In particular, we believe that services charges should be non-discriminatory and transparent, perhaps set out in a menu of charges within the SEC. This applies to both ‘core’ and ‘elective’, though not to ‘value-added’ services. However, we believe additional categories may also be required to ensure innovation is not in any way inhibited. (See our responses to Questions 20 - 24).

Performance

It is vital for the success of the DCC procurement that a sufficient number of well qualified companies is incentivised to bid. There is a risk that the combination of performance measures, payment terms, licence revocation arrangements and other contractual conditions could, when taken in aggregate, be seen as too onerous or risky. The correct balance must be struck between attracting suitable bidders and protecting the DCC’s customers’ interests.

We consider it essential that a performance management framework is set out in the SEC. This should cover the approach to both the DCC’s procuring of communications and data services and its management of its contracted service providers.

Whilst we recognise DECC’s intentions to return any measurable benefits through the operation of the DCC, we seek further clarification of how, in practice, any savings that the DCC achieves can realistically be shared amongst appropriate parties without the need for complex processes which could significantly reduce any benefits due to be delivered.

We support giving Ofgem the ability to instruct both annual and ad hoc independent audits. Whilst we do not foresee ad hoc audits as the norm, we believe this would be a useful complement to SEC escalation processes where serious issues are emerging.

SCOTIISHPOWER DETAILED RESPONSES TO QUESTIONS

Question 1: Please provide views on the approach to basing the prohibition upon contracting with all licensed suppliers in respect of all domestic smart meters, and on the way in which the specific wording of the prohibition should be developed.

The proposed definition of the licensable activity is:

"contracting with all licensed domestic gas/electricity suppliers (as appropriate) in Great Britain to provide, in respect of every smart meter installed at every domestic premises which is supplied with gas/electricity (as appropriate) by each such supplier, a service by virtue of which information may be communicated by and to that meter on behalf of the supplier".

It will be important for DECC to check that this definition works and is *intra vires*. On the vires point, it is necessary for DECC to be satisfied that the legislation covers **agreeing** to do something connected with [smart meters] as opposed to actually doing that thing.

On workability, we think that the definition may have some problems. For example:

- (a) It is not evident that the suppliers who contract with the DCC will contract as respects every smart meter as there may be some legacy arrangements or exceptions to deal with initially; and
- (b) It would not prevent a rival communications supplier offering services on an unlicensed basis to some suppliers or in respect of some homes.

We therefore wonder whether DECC would be better off with a broader prohibition with exemptions, as in the case of most of the existing prohibitions. For example, the prohibition could be on "providing to licensed [domestic] gas/electricity suppliers (as appropriate) in Great Britain, in respect of smart meters installed at [domestic] premises which are supplied with gas/electricity (as appropriate) by such suppliers, a service by virtue of which information may be communicated by and to that meter on behalf of the supplier".

There would then be exemptions including the supply of services to a DCC licence holder, supply of services under contracts entered into before [date], supply of services wholly to non-domestic customers of various types etc.

Question 2: Do you think there will be any persons other than DCC who might inadvertently be captured by a definition structured in this way?

No. But the proposed definition probably doesn't catch the DCC either. Please see our response to Question 1.

Question 3: Do you have any other comments on the form of the licensable activity?

No.

Question 4: Please provide comments on the proposed changes to legislation identified in Table 2.1 and Table 2.2 and any other possible changes that you consider might be appropriate.

We make the following observations based on our review of Tables 2.1 and 2.2 within the Consultation document and the proposed changes to legislation:

- G7(A) & E6 - we note DECC's intention not to prevent a person holding both DCC and other types of licence through legislation, however we have concerns that this approach may not be sufficiently robust. Normally, such rules have been set out in legislation "sitting above" licences rather than the conditions of one licence affecting the eligibility of the holder to hold another. We therefore request further clarification of the rationale for this approach.
- G41C and E56A – we seek further clarification over what is considered "connected with the DCC activity".

Question 5: Do you agree with the proposal to have a single document with a single set of licence conditions that apply to both licences?

Yes in principle. However, we suspect that some issues may arise in the drafting or there may be some differences that emerge between gas and electricity. If this is the case, we do not think that much would be lost by moving to two documents.

Question 6: Do you agree with, and have any comments on, the proposed approach to establish all of the DCC licence conditions as "special" conditions?

There is an argument for structuring the conditions which set the framework in which the DCC operates as Standard Conditions and those relating to the financial arrangements, price restrictions etc. as special conditions. This broadly reflects the approach used in networks. However, given that policy currently envisages that there will never be more than one DCC, DECC's proposed approach set out in the Consultation document is a functional alternative.

Question 7: Do you have any comments on the scope and nature of the consequential licence changes that we propose to make?

In principle, we can see the merit of the proposed consequential licence changes summarised in Table 2.3 of the Consultation document, however, we would welcome further clarification in the following areas:

- Supply Licence, SLC26. Whilst the DCC may be required, from time to time, to send a communication to an individual meter to disable the energy supply, this would be at the request of the registered supplier or (for example, in the event of an emergency) network operator. That party would remain fully responsible for that process. The DCC would never be expected to interrupt customers' supplies without instruction. Accordingly, there is no need for the DCC to receive and/or retain information with regard to suppliers' Priority Services Registers (PSR) and such an obligation risks confusing responsibilities. Instead, the SEC or possibly a Licence Condition should prohibit the DCC from interrupting consumer supplies other than upon the explicit instruction of either the relevant supplier or network operator, or from restoring them without the instruction of the party that requested the interruption.
- Electricity Distribution Licence, SLC 37. We believe there should be some recognition that current arrangements for retrieving meter readings will be necessary for some years to come. There will be a clear requirement for suppliers to use the DCC for all SMETS compliant meters by 2019, and on this basis, it would seem inappropriate to remove the DTS obligations at this stage. However, appropriate consideration should be taken to ensure that there are no overlaps between licences.

We believe it would be unfortunate if some suppliers continued to use the DTS at the expense of the DCC before then or for Advanced Domestic Meters (ADM) sites with smart meters thereafter. It is, therefore, important that no overlaps should exist between licences and, looking ahead, there may well be some requirement to amend the DNO licences to mitigate this.

We would recommend a further detailed review in this area.

- Condition 11 of the Gas Shipper Licence. We are not convinced that Condition 11 of the Gas Shipper Licence need include a role for the DCC with regard to the exchange of information during the disconnection / connection of meters. Condition 11 is mainly a legacy condition relating to "dumb" meters that were provided by Transco at the time of the introduction of competition. It (and indeed other similar provisions in the shipper licence) should be reviewed more generally, both as respects its continuing function for legacy meters and any function it may need to have for smart.

Question 8: Are there any other consequential licence changes that you consider might be necessary as a result of the creation of the new licensable activity?

We are not aware of any other requirements for further consequential licence changes at this stage; however, we will continue to keep this area under review.

Question 9: Please provide any comments on the proposed approach in relation to geographic scope of the DCC licence and provisions relating to its duration.

We broadly agree with the proposed approach in relation to the geographic scope of the DCC licence. The suitability of the provisions relating to its duration depends on whether the DCC is entirely "thin" or plays more of a prime contractor role. In the latter case, there may be scope for longer or evergreen licensing.

Question 10: Do you agree with the proposed general objectives of DCC set out above?

No. We believe there should be an explicit obligation on the DCC to have regard to the impact of any proposal on users' systems. It is not sufficient, as DECC proposes, to rely on the DCC's obligation to 'maintain and operate an efficient, coordinated and economical system'. It is easy to envisage circumstances where interests of maximising the efficiency and economy of DCC's system could be in conflict with (or at least have no bearing on) maximising the efficiency of users' systems.

We also believe consideration should be given to:

- an explicit objective not to unduly discriminate between users;
- an appropriate distinction between the DCC as a 'prime contractor' and the broader smart metering policy objectives of DECC and Ofgem;
- ensuring the DCC's objectives do not come into conflict with the Smart Energy Code (SEC) objectives (or vice versa); and
- depending on the nature of the DCC (i.e. the "prime contractor" issue), the smooth transition between DCC providers during a re-award of the DCC contract.

Question 11: Do you think it is necessary to include any statutory duties on DCC in the Gas and Electricity Acts or is it appropriate address these issues in the DCC licence alone? Please provide the rationale for your views.

There may be some benefits in including in statute the central duties of the DCC in the way that this is done for networks. This could provide DCC bidders and indeed users with a degree of assurance as to the basic structure and its durability, given the ease with which licence conditions can be changed. However, we believe it would require considerable redrafting of the Gas and Electricity Acts to incorporate the full general duties of the DCC. Given there will be a single DCC licence holder, it would be more appropriate to address at least the more detailed general duties through the DCC licence.

Please see our response to Question 10.

Question 12: Do you agree that any obligation to facilitate competition in the area of distribution should be considered as part of the implementation of any future smart grids related arrangements?

Yes. We agree with the proposal that obligations to facilitate competition in the area of distribution should be a consideration of any future smart grids arrangements. However, we would suggest that it is too early to determine the necessary obligations to place on the DCC to facilitate such areas of competition. Therefore, we propose that any DCC licence condition, devised to facilitate competition in distribution, should be considered outside the present scope but may be subject to revision of the licence at some point in the future.

Question 13: Do you agree with the approach proposed in relation to the protection of consumers' interests?

Yes, we broadly agree with the proposed approach. In particular, we agree that it would be inappropriate to impose explicit consumer protection duties on DCC. To do so would risk unhelpful overlap with the duties of licensed Suppliers and DNOs.

We also note that initially there will, and should be, no direct contractual relationship between the DCC and consumers, given that it has a non-consumer facing role. Any moves to change this position would destabilise the effectiveness of the proposed industry model, adding additional complexity and the potential for consumer confusion. However, this position possibly needs to be reconsidered during the future centralisation of registration services.

Consistent with the existing operational practices, we would note that disconnection should be performed only on the instruction of either the registered supplier or network operator (with the

exception of pre-payment self-disconnection or technical failure), and we believe that consumer protection can be managed appropriately within existing commercial and service level arrangements. For completeness, we would recommend a suitable Licence Condition stating that the DCC can interrupt and restore consumer supply only upon the instruction of either a supplier or network operator.

We note that there is potentially a tension between an objective to *promote competition in energy efficiency services* and an objective to *promote energy efficiency*. The former objective might induce the DCC to take steps to exclude or restrict the ability of supply licensees to provide energy efficiency services, in order to encourage new entry – but thereby sacrificing energy efficiency not only in the short term but (if the supply businesses have a genuine advantage) possibly on an enduring basis. We consider it would be more appropriate to impose an objective to *promote energy efficiency (where appropriate through the promotion of competition in energy efficiency services)*.

Question 14: Do you think DCC should have a separate objective to promote (or facilitate) energy efficiency?

Yes. We believe the DCC should have an objective to promote (or facilitate) energy efficiency which incorporates its objective to promote competition in energy efficiency services (see response to Q13 above).

The DCC potentially has an important role in facilitating the delivery of innovative solutions which promote energy efficiency – particularly in the future development of smart grid. It also has an opportunity to promote energy efficiency through its management of service providers by which suppliers and network operators can implement energy efficiency products and management solutions.

Question 15: Do you agree that SEC licence condition should be drafted so as to provide flexibility over the future scope of the SEC, i.e. that the scope of the SEC in the DCC licence condition should be drafted in a permissive manner?

We agree that the Smart Energy Code (SEC) licence condition should be drafted in a way that allows for appropriate future extensions in scope – provided that such extensions in scope are consistent with the original objectives of the SEC.

Whilst there is potential for the SEC to develop over time, the DCC's objectives should not come into conflict with the SEC objectives or vice versa. Neither should the DCC's narrower scope hinder the future development of the SEC.

We assume that there will be an explicit duty on licensees to comply with the terms of the SEC, and that Ofgem will have powers under certain circumstances unilaterally to make modifications to the SEC. It is essential, therefore, that any decision under such powers is designated as subject to appeal under section 173 of the Energy Act 2004.

Question 16: What are your views on the SEC Applicable Objectives set out above?

We support the inclusion of the proposed SEC Applicable Objectives in the DCC's licence, whilst ensuring that this does not hinder the subsequent development of the SEC. The objectives themselves are comprehensive in their coverage of related matters.

DECC's recognition of the potential opportunities to amalgamate some of the objectives is welcomed and this approach should be encouraged whenever it is feasible to do so. It is assumed that the SEC Panel will be obliged to consider future modification proposals against these Applicable Objectives, most probably without guidance on where to place any emphasis. However, it is important to keep the list of applicable objectives to a minimum without sacrificing underlying principles.

Question 17: Do you agree that the SEC should be designed to take into account consumers' interests by meeting its applicable objectives, rather than having an explicit objective related to the protection of the interests of consumers?

We consider the proposal within the Consultation to meet this general objective through other applicable objectives to be a sound approach, though it should be backed by inclusion of consumer representation on the Smart Energy Code Panel.

Whilst the vires currently contemplated for the SEC will not see it having any direct involvement with consumers, smart meters and the energy efficiencies they will deliver will certainly affect customers. Should the Domestic Installation Code ever be incorporated into the SEC, direct customer involvement would potentially follow.

Question 18: Should there be an SEC objective related to promoting (or facilitating) efficiency of energy networks?

Yes. We agree in principle that there should be an SEC objective related to promoting (or facilitating) efficiency of energy networks. We take this as referring to efficiency in a general sense (i.e. the provision of smart energy services which enable network operators to run better networks) rather than specifically energy efficiency, though this is one factor in the overall efficiency of a network.

We believe that the DCC has an appropriate energy efficiency objective through its management of service providers by which network operators can implement energy efficiency products and management solutions. The role of the network operator, and their objectives to roll out greater energy efficiency on their network, will be developed over time through the analysis of available smart metering data and therefore the SEC should enable an appropriate level of flexibility in this area.

Please also see our responses to Questions 14 and 19.

Question 19: Do you think the SEC should have a separate objective of promoting (or facilitating) energy efficiency?

Yes. We believe that a separate objective for promoting (or facilitating) energy efficiency should be considered within the SEC.

Question 20: Do you agree with the definitions of the services that DCC should be required or permitted to provide?

Yes. We agree with the definitions provided for DCC services; however, we recommend that a clear distinction is made between the services that the DCC will be required to provide through the Smart Energy Code and those which it provides on a permissive commercial basis. On this premise, we propose an additional category of 'Enhanced Core Services' needs to be added to the range of services offered by the DCC.

Enhanced Core Services

Our definition of 'Enhanced Core Services' would be similar to the definition of 'Elective Services' set out in the Consultation document, and would be where a service user chooses to pay a higher tariff for a core service which, in some way, exceeds the minimum requirements for that service (e.g. improved SLAs, more frequent use of a particular service etc.). Details of the Enhanced Core Services would be available to all service users on non-discriminatory terms.

Elective Services

We believe that Elective Services should be re-categorised and should be services that are agreed on a strictly commercial basis and there would be no requirement for the DCC to make available details relating to these services to the wider DCC user community.

Please see our response to Question 23.

Question 21: In relation to which non-compliant metering systems should DCC be required to offer services?

We believe that the DCC should be required to offer terms for non-compliant energy smart metering systems where these metering systems are able to communicate via the DCC's Communications Service.

In drafting the licence conditions in this area, it will be important to clearly set out the requirement for the DCC to offer terms for non-compliant metering systems. Any requirement to offer specific services would effectively commit the DCC licensee to procuring functionality from the outset to support non-compliant metering systems, even where they have no contractual commitment from any service users. This could potentially oblige the DCC to procure functionality from service providers that will never be used. However, if the DCC is simply obliged to offer terms, then it would only need to procure the functionality to support those services which are specified in a specific contractual commitment between the DCC and user. In addition, the DCC's terms need to be contingent upon any relevant metering system being proven to meet the DCC's security requirements and being certified as technically interoperable.

By restricting this obligation to purely the types of non-compliant metering systems that are likely to remain in use throughout the initial licence term of the DCC, it should help to minimise the investment risk for service providers, and provide the opportunity for the DCC to offer realistic terms for the use of those services.

We think it will be of considerable importance to the DCC's Service Provider procurement that prospective bidders are afforded a clear understanding of the numbers of metering systems they can expect to service. Without restrictions around novating contracts with respect to non-compliant metering systems, these volumes will be unknown.

Question 22: In relation to which non-compliant metering systems associated with energy supply at consumer premises should DCC be permitted to offer services?

We believe that there should be no restrictions on the non-compliant metering systems associated with energy supply that the DCC is permitted to offer terms for. We believe that this is primarily a commercial decision for the DCC and it would be inappropriate for any restrictions to be placed on the DCC licensee in relation to this.

Instead, we would recommend that a more practical approach to regulating the DCC with regards to this may be to stipulate that, where it does offer terms for non-compliant metering systems, the terms and services offered need to adhere to the following principles:

- Services can only be provided for non-compliant metering systems that are exempt from the proposed Supply Licence.

- Services can only be provided for non-compliant metering systems that are proven to meet the minimum security requirements for the DCC.
- Any services provided for non-compliant metering systems need to be self-financing (i.e. all implementation and operating costs should be recovered exclusively through the charges levied for those services) and include an appropriate share of common costs.
- The provision of services for non-compliant metering systems does not jeopardise, in any way, the DCC's capability to provide services for compliant metering systems.

Please also see our response to Question 21.

Question 23: What information should be made available to all users about:

- **elective services;**
- **value-added services?**

Should information be restricted to that required to assess the impact on other users of DCC services or should there be full transparency? Should DCC be required to make available the detailed commercial terms and conditions of such services?

It is imperative that the DCC effectively manages the delivery of any services, such that its communications network remains, at all times, able to support the core and elective service requirements of all users, thus promoting a level playing field.

We share DECC's concerns that complete transparency could stifle innovation and, with regard to elective services, can see no requirement for the DCC to disclose the specifics of the services being provided to any single party. However, it is crucial that the DCC in facilitating competition ensures non-discrimination between users - e.g. not providing a service to one party while refusing it to another. The terms offered must therefore be equal i.e. a large supplier must not be allowed to negotiate more favourable terms for the provision of a service, as compared with a small supplier. It would, therefore, seem appropriate for some element of service and charging menu to be included in the SEC.

With regards to value-added services, we consider that these are a matter entirely between the DCC and the recipient, provided that the service is agreed and delivered with full regulatory oversight. Again, it is imperative that value-added services do not impact on the provision of services to any other user. Therefore, we would propose the confidential involvement of the SEC Panel in the decision to offer such terms, to allow for a comprehensive independent impact assessment to be conducted.

Based on the additional service category and re-definition of Elective Services (i.e. a new category of 'Enhanced Core Services') detailed in our response to Question 20, we believe that the following information needs to be made available to service users for each category of service:

Core and Enhanced Core Services – Full publication of the range of services available and detailed pricing information.

Elective Services – The commercial agreements to provide these services may or may not allow the DCC to publish details about them, therefore the DCC should not be mandated to publish any information about these services.

Other SEC Services – For any other service listed in the SEC all details, including pricing information, should be made available to service users.

Value Add Services – Decisions about the scope of the information that needs to be published by the DCC should be made on a case-by-case basis by the Authority as part of their consideration to grant permission to offer a particular service.

Other Services – As these will be restricted to a de minimis level there should be no requirement for the DCC to publish any information relating to this service category

For all new service offerings the DCC needs to make available to the SEC Panel sufficient information to allow them to accurately assess the potential impact on the provision of existing services.

Question 24: Do you think the detailed terms and conditions for elective and value-added services should be set out in the SEC or included in bilateral agreements between DCC and persons to whom it is providing services?

We think a menu of elective services could be included in the Smart Energy Code to ensure non-discrimination. However, to address potential commercial sensitivities, specific details of which elective services are being provided to which user should not be disclosed by the DCC.

DCC value added services, need to be considered on a case by case basis by the Authority as part of their decision whether to grant permission to offer a particular service.

Please see our response to Question 23.

Question 25: Are there any other matters that we have not addressed related to the nature of services provided by DCC? (Note that provisions addressing independence and non-discrimination in the provision of DCC services are covered in paragraphs 3.119 to 3.120).

We do not think that there are any other matters relating to DCC service provision which require consideration at this time.

Question 26: Do you agree that DCC should be required to externally procure specific services and have principles that determine what other services it should externally procure?

We believe that the DCC licensee is appointed as a 'prime contractor', providing services under contract to its users. Whilst we agree that the DCC should be required to procure data, communications and secretariat services from external providers it must be ensured that the DCC remains focussed on the cost effective and efficient delivery of communications and data services. However, we propose that there should be sufficient flexibility to support new requirements such as centralised registration services.

With regard to other related, but yet unknown, services, we believe these should be procured in a similar way to the core services identified. Alternative arrangements where the DCC extends its own capabilities to deliver services could lead to the DCC becoming distracted from its main function of effectively managing its core activities. There would also be the potential for complex DCC related SLAs.

Question 27: Do you agree with the procurement objectives for DCC identified above?

In principle, we are supportive of the procurement objectives identified in the Consultation document, although we have concerns around the 'procurement and contract management approach document'. We feel it necessary to ensure that there is a clear distinction between an effective, best practice, competitive tender process and DECC and Ofgem's aspirations around further competition within the energy market.

We are also concerned about the statement in paragraph 3.84 that "DCC will therefore be required to demonstrate the financial viability of a service provider over the life of the contract it awards." DCC can reasonably be expected to take steps to minimise insolvency risk in its selection of service providers, but we do not see how it can be expected to 'demonstrate the financial viability'.

Please see our responses to Questions 28 and 29.

Question 28: Do you agree that DCC should be required to produce a procurement and contract management approach document?

Given that procurement best practices and criteria will change over time, especially with regard to accepted standards and protocols, it does seem a reasonable approach to maintain a contemporary statement of the DCC's procurement and contract management approach. If this is to be delivered through a licence obligation, then perhaps this should be worded such that the DCC's procurement and contract management approach document is subject to reasonable review. The procurement

and management approach should be included in the Smart Energy Code (SEC) and any amendments made through SEC governance.

It would be sensible to keep the level of detail within this document reasonably high-level and to provide appropriate flexibility. Otherwise there is a risk that the document will become an industry in itself and an opportunity for bidders to game.

Question 29: We seek your views as to whether the procurement and contract management approach document should be required to be submitted for approval by the Authority and/or the Secretary of State.

We think maintaining a procurement and contract management approach document, in line with DCC's objectives, may not satisfy Ofgem's wider policy objectives. We would therefore suggest that the document is subject to SEC Panel Governance.

Question 30: Is the scope of the proposed prohibition on discrimination, which is limited to undue discrimination between uses or classes of users, adequate?

We agree with DECC's proposed scope of prohibition on discrimination. To ensure effective competition, we think it appropriate that the DCC licence must specifically preclude it unduly discriminating between users and/or classes of user in respect of core and elective services. We would also recommend taking a similar approach to Value Added Services.

Although the scope of Value Added Services is, as yet, unknown, they might present users with cost savings and, therefore, we support permissive competition in this area. However, we are less certain of a need to prohibit DCC affiliates from taking Value Added Services from the DCC, provided these services are completely unrelated to the energy markets.

For that reason, we are minded to see non-discrimination conditions applying equally to Value Added Services.

Question 31: Are any specific provisions needed which require DCC not to discriminate between service providers? Or is it sufficient to rely on obligations on DCC to maintain and develop an economic system and, in the procurement of DCC services, to promote competition in the provision of such services?

We believe that there should be an explicit requirement that there is non-discrimination during the procurement of DCC's service providers. We think this requirement is best catered for through the proposed obligations to maintain an economic system and promote competition in service provision.

However, we have concerns that non-discrimination extends beyond the award of service provider contracts, and that less specific obligations will be applied over time.

Recognising that there may be scope for DCC affiliates to become users of Value Added Services, we believe it may be important that specific non-discrimination rules be in place.

Please see our response to Question 30.

Question 32: Do you agree that DCC should be independent of service providers? Do you agree that a de minimis level of affiliation between DCC and service providers should be permissible?

Yes. We fully support DECC's proposals that the DCC should be independent of its service providers.

However, we would question the practicability of some of the measures suggested in paragraph 3.110. For example, we cannot see how, once DCC has been appointed, Ofgem could enforce a prohibition on 'being a user or service provider' on DCC's affiliates or related undertakings. (We note that in other contexts licensees may be required to "procure" that affiliates and related undertakings do not engage in specified activities, but it is not clear that DCC would be in a position to procure this.)

Question 33: What level of affiliation do you consider should be set for the maximum level of shareholding or control of any individual service provider may have in DCC?

Typically large commercial arrangements have investors holding diverse and extensive stock portfolios. It is therefore feasible that such investors will hold shares of energy, communications and IT companies.

However, a clear distinction needs to be drawn between investment and control. The Government suggests that 20% is the maximum stake a user can have in DCC and this would be a starting point for service providers. However, there may be concerns that a 20% stake could be perceived as compromising the integrity of the DCC's procurement process and therefore it might be sensible to set an interest or shareholding limit at 10%.

Further consideration needs to be given to how such a limit would be enforced, given that DCC would, if part of a quoted company, not be able to control who its owners are. One possibility might be to disqualify any company owning more than 10% of DCC from bidding to provide DCC services and to include a contractual condition in service contracts not to raise any stake in DCC above 10%, though again a service provider may not be able to control its ultimate owner.

Question 34: Do you agree with the business separation between DCC and users that is proposed? More specifically, do you agree that no DCC user that operates in a competitive environment should be permitted to have more than a 20% shareholding or control in DCC, and that DCC and its subsidiaries should not be permitted to have any shareholdings in users or service providers?

Yes. We agree with the proposal set out in the Consultation document dealing with the business separation between the DCC and its users. We believe that applying business separation principles to the relationship between DCC and its users is fundamental to creating market confidence in DCC's central governing role. We are less certain that such prohibition is required beyond the energy sector.

However, as noted in our response to Questions 33, we are unclear how DECC envisages the maximum shareholding limit would be enforced. It might be possible, for example, to implement such a constraint through changes to relevant licences (Supplier, Gas Shipper etc) – but unless ESCOs are subject to a licence it is difficult to see how they could be prevented from acquiring a stake in DCC.

Question 35: Do you agree that it is not necessary to explicitly require business separation between DCC users and DCC service providers?

Yes. We agree. Please see our responses to Questions 32, 33 and 34.

Question 36: Should DCC be prohibited from using confidential information for any purpose other than the licensed DCC activity? Should DCC be obliged to impose this restriction on service providers contractually?

Yes. We agree that the DCC should be prohibited from using confidential information for any purpose other than the licensed DCC activity – subject to the following provisos:

- 'confidential information' means personal data as defined in the Data Protection Act (and possibly equivalent data obtained from business customers' meters);
- 'using' means use of the data in the capacity of Data Controller (i.e. for its own purposes) rather than in the capacity of Data Processor (i.e. processing data on behalf of and under the direction of its customers);
- 'licensed DCC activity' means activities which the DCC is *obliged to* provide under its licence (as opposed to the *licensable activity* covered by the prohibition order or the set of activities which the DCC is *permitted to* engage in under the terms of its licence).

The first proviso is necessary because we see no need to place restrictions on use of other forms of confidential information such as business secrets. Such information will be covered by normal contractual protections.

The second proviso is necessary because the prohibition should not prevent the DCC from processing personal data on behalf of its customers where they have obtained the necessary consent from the data subject (and where the activity is permitted under the licence).

The third proviso is necessary because this is the only meaningful interpretation of 'licensed activity' in this context. However, it may be noted that this definition is unnecessarily broad: as far as we can see, the only 'licensed activity' where the DCC will be acting as Data Controller is provision of registration services.

Question 37: To what extent do you believe that the existing financial ring fencing provisions (and those proposed by Ofgem in its recent consultation on this issue) should be included in DCC's licence?

Creating a monopoly service, such as the DCC, requires suitable financial arrangements to be put in place to limit the exposure of any of its customers, and the wider market in general, to financial losses and operational disruption in the event of failure – whether of the monopoly operator or of the wider group in which it exists.

The ring fencing arrangements already in place within the industry in the context of network operators are similarly designed to minimise the risk of failure and ensure business continuity, while mitigating loss to customers, in the event that it were to happen. When considering these arrangements, we believe most aspects could be similarly applied to the DCC, including disposal of assets. Although we do not consider the DCC's asset ownership in the same context as network operator's asset ownership (i.e. the basis of its business model), we regard business premises etc. as a central element to its service delivery.

Question 38: Do you agree that a flexible approach to financial security should be adopted and, if a financial security is required, what level of financial security should be provided?

A flexible approach to financial security may be desirable. However, we do not consider it appropriate to introduce such onerous financial penalties as to make the dissolution of the enterprise more attractive to investors than meeting their obligations in the event of failure. It is also clear that letters of credit, or similar financial arrangements are not without cost and we can expect the DCC to seek recovery of these costs through their proposed charges. In the circumstances of a start-up business, it is likely that the cost of these financial arrangements will be higher than they may otherwise be for an established company.

We think it is of equal importance that the failure of the DCC, or its service providers, should not translate to losses among its customers. Therefore, we would support the principles that:

- the DCC must provide some form of financial security;
- this security should be linked directly to the value of DCC's own financial exposure at any given time; and
- the DCC should be permitted to propose alternative financial security arrangements, but these must not conflict with the two points raised above.

Question 39: What are your views on whether it would be appropriate to require DCC to pay for a proportion of the costs of appointing a new DCC in the event of an early licence revocation? Do you think that this potential liability should be reflected in the level of financial security required from DCC?

Whilst desirable in theory, we think in practice it is likely to prove impractical to obtain a proportion of the DCC appointment costs where the incumbent licensee has had its licence revoked. Given the cost of appointing a new DCC licensee is unknown, it will be difficult to incorporate an accurate upfront value within their overall financial security arrangements.

Question 40: Are there any other conditions that you consider should be imposed in DCC's licence to ensure its continued financial viability?

Please see our responses to Questions 37 – 39.

Question 41: Would it be appropriate for a special administration scheme to apply to DCC?

It would be desirable for the process of Administration in the general law to be reformed so that there was confidence that it would work in relation to essential or very important services rather than seeing the piecemeal implementation of special administration across some sectors of the economy (but not others, equally significant).

Absent such resolution of the problem at a fundamental level, we think that the DCC is a sector where special administration could be justified. The impact of a DCC failure could have ramifications throughout the industry, particularly once the rollout of smart meters has reached market saturation levels. The most serious impact of a loss of system functionality would be on households with prepayment meters, who might be prevented from topping up their accounts. It could also adversely affect customers' ability to monitor their energy consumption and impair suppliers' ability to produce accurate bills.

Although a special administration scheme will be a useful safeguard, it may not offer sufficient protection in the event that the failure of the DCC was actually attributable to the failure of a service provider. In such circumstances we think that the special administrator may have little power at its disposal to maintain services and therefore further consideration may need to be given to the probability and impact of such a scenario.

Question 42: Do you agree with that DCC should be required to ensure business continuity of service providers and should monitor the provisions that they have in place to deliver business continuity?

Yes. Business continuity management (BCM) is recognised globally as a fundamental requirement of good business practice, enabling mission critical activities to recover from an unplanned incident. The embedding of business continuity standards within organisations helps to manage the risks to the smooth running of mission critical delivery by ensuring that the business and the services they deliver can continue in the event of a disruption.

Disruption could result in a number of factors including technological systems failure, or in the context of the DCC licensee, business or technical failure of one of its primary service providers.

BCM provides a framework for improving resilience to interruption so key systems and processes can be recovered while at the same time ensuring that business critical functions and vital services can continue.

We think it is imperative that the DCC include business continuity requirements in commercial contracts with its service providers, with a necessary level of due diligence undertaken during the procurement stage to ensure appropriate levels of resilience. The DCC and its service providers should be able to demonstrate a BCM framework which ensures appropriate levels of planning and review cycles on an on-going basis. In the wider context of smart metering delivery, this requirement should extend beyond the DCC and its service providers to include all market participants to ensure end-to-end resilience in the delivery of smart metering in Great Britain. Whilst existing market participants should already have robust arrangements in place there are no tangible commercial drivers and therefore an obligation within the SEC could be considered.

Maintaining a regular maintenance and review cycle of business continuity plans is essential to ensuring they remain relevant. For this reason, we would be keen to see business continuity featuring strongly in the SEC, both as an entry requirement and as part of any ongoing assurance regime across the industry.

Question 43: Do you believe that DCC needs to include in its service provider contracts any further protections which help to secure against, or mitigate the consequences of, a financial failure of a major service provider? Please provide examples of any additional protections you consider suitable.

As a contract management entity, the DCC should be expert at placing contracts so, we would assume, it will look to contract with only reputable, robustly managed and soundly financed organisations. These organisations should have a demonstrable track record in the specific area of the service they are contracted to provide, giving confidence in their ability to deliver value through reliability and efficiency.

In selecting appropriate partners to effect delivery of its services, we believe the DCC should also take account of the scale of prospective service providers' enterprises, their business structures and ownership models. They must be able to demonstrate how their service provision to the DCC would be insulated from exposure to any outside interests or contractual relationships they may have and, it almost goes without saying, service providers must be demonstrably on a secure financial footing themselves.

A final measure could be a requirement to assist with the transition to an alternate service provider in the event of financial failure or termination of contract.

Please see our responses to Questions 37 – 40.

Question 44: Do you agree that it is appropriate to grant the initial DCC licence for a ten year period?

Yes. The role of the DCC will be central to the smart meter programme as a whole and the overall success of the Programme will largely depend on the establishment of the DCC as a steady-state business. We think that awarding the licence for a ten-year period should serve to facilitate this, as the appointment should extend well beyond the end of the rollout phase.

A ten-year licence award will also serve to engender investor confidence by providing applicants with a degree of surety over the longevity of their role. For the wider market, it promises to extend the window in which the DCC can seek to achieve a return on its investment, so spreading the costs of the rollout to market participants beyond initial implementation into the benefits realisation phase and mitigating the immediate impacts of pass through costs to consumers.

We would also suggest that there should be a right, but not an obligation, to retender the licence at the end of the ten year period (or 15 years if an extension is granted). It seems to us quite possible that, if the DCC has performed well, it will not face any serious competitive pressure on retendering, and that a different approach may be required to ensure value for money. This could for example involve a more traditional regulatory price control of the DCC's services. Removing the obligation to retender would keep such options open.

Question 45: Do you agree that flexibility for the Authority to decide to extend the initial DCC's licence by up to 5 years would be desirable?

As is stated in the Consultation document, there is a risk that a major service provider's contract termination date will coincide with the planned reapplication for the DCC Licence e.g. the need to maintain a reliable and consistent data and communications network will demand that these service providers have contracts which are of a similar length to that of the DCC. A degree of flexibility to the DCC contract term would, therefore, be preferable, such that it would allow the DCC to re-procure these services as necessary.

It may also take some years to introduce a new DCC licence holder into the market. In such circumstances, it may be better to maintain the existing relationship until the new DCC is able to properly assume control.

Question 46: Do you agree with the approach described for the treatment of DCC internal costs for any extension period?

Although we are not opposed to this approach, we are of the view that requiring applicants to provide estimates of such internal costs as may arise, in the event that the right to extend their contracted period is exercised, is unlikely to produce any accurate projections.

The challenge facing prospective applicants would be whether to pitch this value low, in the hope it secures the contract, or to pitch it high to mitigate the risk of the Authority refusing a re-opener. In both cases, the value would potentially be unrepresentative of the true costs to be recovered from the DCC's customers and, therefore, somewhat meaningless. A more conventional price control approach for the extension period might be more effective.

Question 47: Do you agree that DCC should be required to ensure that any critical services can be transferred to a successor?

It is essential that the DCC structures its contracts in a way which ensures that critical services can be transferred to a successor in order to ensure that there is seamless service provision during, and after, any transfer period.

We think that critical services should be limited to the core DCC services and any other which the SEC specifies that the DCC is required, or has an obligation, to provide. Any additional categories of service should be based on commercial arrangements between the DCC and its service users, and

accordingly we believe that it would be inappropriate to impose a licence obligation to transfer those services to their successor.

Careful planning and management of the process will be required to ensure seamless transition from the incumbent DCC and will depend largely on the retention of the outgoing DCC's service providers, at least to some extent irrespective of their performance.

Question 48: What scope of matters governing the handover to a successor do you think need to be included in DCC's licence?

On the basis that the replacement of the DCC is to be a realistic possibility, we would agree that the items proposed at paragraph 3.167 of the Consultation document should be included.

The handover should encompass all matters necessary to maintain the DCC's critical services to its customers. To that end we would anticipate their scope should extend to the contractual arrangements with service providers, accrued rights and the ownership of any intellectual property.

We believe that it is imperative that critical services are uninterrupted by the appointment of, and handover to, the successor DCC. Apart from the obvious requirements for careful planning and management of the process, seamless transition from the incumbent DCC may also depend on the retention of the outgoing DCC's service providers, but we recognise that this should be part of standard novation arrangements.

Please see our response to Question 47.

It is however important to note that provisions of this kind will help to reinforce in the minds of prospective DCC applicants that significant investment and/or taking of integration risk will be unattractive. In an alternative "prime contractor" view, the focus would not be on easy exchange of the DCC so much as sufficient controls to ensure that the DCC performs well and efficiently.

Question 49: Do you agree that DCC's licence should be capable of being revoked in the event of a repeated or material failure to meet service levels?

We believe the DCC should operate in a transparent, performance managed environment and, so, fully support DECC's proposals with respect to licence revocation should the DCC consistently fail to satisfy prescribed performance criteria. However, we consider this to be the ultimate sanction and must only be arrived at following a predefined escalation process. Without this due process, it could be difficult to attract organisations of suitable standing to be DCC.

As the DCC will operate a monopoly business, we think that this process should also be fully transparent to the market. To that end, a performance management regime could perhaps be incorporated into the Smart Energy Code.

Question 50: Do you agree that the DCC licence should contain a condition which gives it a high-level obligation in relation to foundation and subsequent rollout, activities and that the detailed obligations can be dealt with as part of the development of the SEC?

Yes. We agree with this as a sensible option and would support the earliest possible delivery of the Smart Energy Code. We are concerned previously published project timelines that suggest the Code might not be designated in time to govern the foundation arrangements. We would welcome a firm commitment from the Programme to finalise this document as soon as possible.

Question 51: Do you agree that DCC should have a high-level obligation, albeit initially "switched off", relating to the provision of meter point/supplier registration services?

We agree that the DCC should have a high-level obligation for the future provision of meter point/supplier registration services. We also believe that this obligation should not simply replicate existing industry registration processes but seek to improve upon them. The obligation should, therefore, set out a number of objectives for the DCC, including:

- the alignment of gas and electricity registration data;
- the alignment of gas and electricity registration processes; and
- the facilitation of quicker and more efficient consumer switching processes.

We also believe that consideration should be given to the possibility of including an objective with regard to transferring the Central Fits Register (CFR) into the DCC. This would have the benefit of introducing a single point of contact for all of the UK's energy registration services whilst also greatly simplifying the DCC's Access Control processes by allowing it to source appropriate data from a central location.

In the interests of improving and maintaining levels of industry data quality, we think consideration should also be given to requiring that the DCC be capable of supporting Unique Property Reference Numbering (UPRN) from its outset.

Question 52: Do you agree that conditions should be introduced in other licences providing the ability to release other licensees from the requirement to provide meter point/supplier registration services at some point in the future?

Yes. We think that conditions will be required in other licences to provide the ability to release other licensees from the provision of meter point/supplier services at some point in the future.

We support the proposal to use powers under the Energy Act 2008 to facilitate the necessary amendments to relevant licences.

Question 53: Do you agree that DCC and other relevant licensees should be subject to an obligation requiring the licensee to take steps to facilitate the transfer of meter point/supplier registration activities to DCC?

Yes. We think that it would be appropriate for a high level obligation of this nature to be placed in the relevant licences. However, we believe the exact nature of the activities that will be required to facilitate the transfer cannot be determined until the full scope of the registration services that will be provided by the DCC has been fully defined. Any such obligation must be qualified by the word "reasonable" and, in the case of network operators, must be subject to any costs incurred being fully recognised in the price control arrangements.

Question 54: What dispute mechanism would be appropriate to apply to disputes involving DCC and who should be enabled to determine such disputes?

We believe the Smart Energy Code (SEC) Panel should be obliged to establish a disputes process, including forming a special committee to hear disputes raised by SEC parties. Where necessary, disputes committee determinations could be referred to the SEC Panel and, possibly, Ofgem, although this should be subject to a *de minimis* materiality threshold.

Care should also be taken to ensure the disputes process extends to any disputes that may arise from the DCC being replaced. In such circumstances, the outgoing DCC will be obliged to secede from the SEC and, unless special provisions are made, this would prevent it from raising any dispute.

Question 55: Do you believe that DCC should be required to operate its business in a way that ensures it does not restrict, prevent or distort competition in gas shipping, the generation of electricity and participation in the operation of an interconnector?

We agree in principle that DCC should be required to operate its business in a way that ensures it does not restrict, prevent or distort competition in certain specified markets. The Consultation document suggests the following markets may be relevant:

- gas shipping
- electricity generation
- operation of an interconnector
- meter operation (para 3.191)
- provision of energy services (para 3.191).

We would support inclusion of all the above markets, with the exception of interconnector operation, as they seem sufficiently close to the activities of DCC that competition could in theory be affected. We see less scope for such impact on operation of an interconnector, and unless DECC has specific examples in mind, we would suggest that including this market may be unnecessary.

Question 56: Do you have views on the additional conditions discussed above?

We broadly agree with the Government's position on the additional conditions detailed (3.190 to 3.200) in the Consultation document, but would make the following observations:

- Theft damage and meter interference- Although we acknowledge that the DCC's scope for involvement here may be limited, we believe its requirement to report tamper alerts is, on its own, enough to suggest it has some role to play.
- Business carbon footprint reporting – Although we support the motivation for this obligation, we note that there is an increasing trend toward voluntary carbon reporting by businesses, and would prefer to see such reporting encouraged rather than mandated; and if it must be mandated, reporting to voluntary standards (such as Carbon Disclosure Project) should be sufficient to comply.
- Performance Principles/Indicators and Monitoring- While we fully support the principle of the DCC having reporting obligations, it is important not to overburden it with duplicated provision of information.

Question 57: Are there any additional conditions that you would wish to see included?

We have not identified any additional considerations at this time.

<p>Question 58: Is it appropriate to consider extending the Secretary of State's powers to provide equivalent powers to modify DCC's licence conditions as it does for other energy licences for the purposes of implementing smart metering?</p>
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We do not have any specific objections to extending the Secretary of State's powers to enable modification of the DCC's licence conditions, and can see some merit in harmonising the approach across licences. However, we would question whether the Secretary of State's powers need to be extended in this way given that:

- even if changes to supply and/or distribution licences (and, to a lesser extent, generation and transmission licences) necessitate changes to the DCC's operating practices, it would be more practicable to make such changes to the DCC's operating practices through the Smart Energy Code rather than through the amendment of licence conditions.

- *if*, as proposed, the DCC licence contains only Special Conditions, this, in effect, would mean that Ofgem could unilaterally modify the DCC's licence conditions without the need for additional powers.

We agree that any material costs arising from the Secretary of State exercising any such powers should be recovered by the DCC and that this principle should be included in conditions setting out its allowed revenues.

Question 59: Do you consider that it is practicable for DCC licence applicants to provide costs for undertaking meter point/supplier registration? Or is it more appropriate to include a specific reopener for DCC's costs of undertaking meter point/supplier registration?

No. We do not consider it practicable to request cost estimates, in respect of the future inclusion of meter point / supplier registration among DCC services, during the procurement process.

Ideally, DCC licence applicants should be required to set out a fixed price framework for meter point/supplier registration in their tender submissions, as this would mitigate the risk of unbudgeted costs arising, for both the DCC and market participants, during mass rollout. However, we consider this approach would be unrealistic for the following reasons:

- It is as yet unclear what functionality would be required of this new registrations system (we would posit that it cannot be assumed to simply replicate existing registration systems);
- Costs are likely to vary over time; and
- There is a risk that regulatory change (SEC Modifications or, perhaps, European intervention) would render original estimates invalid.

It is not expected that the DCC will deliver this change directly (rather its role will be to manage change delivery through a service provider, possibly appointed for this specific instance).

We, therefore, consider that a specific reopener would offer a more practicable solution than a request for specific cost estimates during the procurement process.

Question 60: Do you have views on the relative benefits of the two options (cost pass through and volume drivers) for recovery of DCC internal costs associated with SEC modifications?

We expect that changes arising from SEC modifications would normally be delivered by the DCC in its capacity as prime contractor, with the majority of work carried out by the DCC's service providers, following a formal impact assessment / cost estimation process.

We would not wish to see any further consideration given to adopting a 'volume driver' approach, as we believe such an approach would potentially inflate fixed costs, with each change attracting the maximum allowable charge within its relevant volume band.

With regard to cost pass through, we consider this to represent a more feasible method to realise cost efficiencies. However, we think that DECC should give further consideration to a competitive tendering process, whereby service providers compete with one another to secure contracts to deliver change. This approach could generate a level of competitive tension and promote greater transparency and reduced costs; although some caution would need to be exercised in applying this principle to particularly minor changes, where the cost of running the tender exercise may exceed any benefits. In such cases, it may be for the SEC Panel to determine the approach to take.

Question 61: Do you have a view on the appropriate materiality threshold (trigger) for the revenue reopener?

The appropriate materiality threshold for a revenue reopener needs to be considered in the light of the profitability of the contract. A threshold of around 10 per cent of profits seems reasonable for a bidder to bear; 10% of annual revenues seems very high unless there is intended to be a profit margin in excess of say 25% of revenues.

It is important to note that, in the "thin" model, the DCC's administrative costs are utterly dwarfed by the costs of service providers. It is important that the DCC puts all its effort into optimising the service costs and is not distracted by small internal costs.

Question 62: Do you consider that any other cost areas may require mechanisms to deal with uncertainty?

We think further consideration should be given to mechanisms for dealing with uncertainty around:

- costs arising from repairing/replacing smart metering devices, such as communications hub modules;
- or additional costs associated with installations in difficult properties.

We understand that both scenarios are currently under consideration by the Programme, pending policy decisions. However, we are concerned that policy making in this area could be hampered by inherent difficulties in determining the level of incidence of the scenarios identified above. We, therefore, believe this to be a clear indication of the need for further testing and trialling during the Foundation Stage, to determine suitable mechanisms ahead of mass roll out.

Question 63: Do you agree that market share should be based on MPANs and MPRNs that are mandated to receive smart metering systems, rather than all MPANs and MPRNs?

Yes. It is important that users are only required to fund DCC to the extent that they are able to receive services. It would therefore be inappropriate to recover costs based on MPANs and MPRNs which are not yet enrolled in the DCC.

Question 64: Do you have a view on whether suppliers of only larger non-domestic customers should be charged a proportion of DCC internal costs?

Where a supplier will not be in direct receipt of any benefit from the DCC, we can see no reason why they should be asked to pay towards the DCC's internal costs.

Question 65: We welcome views from stakeholders in regards to charges on network operators for DCC internal costs pre-"go-live" and whether they should charge DCC for services provided to DCC.

No. We are not persuaded that it is appropriate for DCC's pre-"go-live" internal costs to be recovered from its prospective users and would question the extent of its service provision ahead of the communications network and data services coming on-line.

We would also urge careful consideration of any proposal that would see network operators charging the DCC for services. Whilst there is precedent for network operators to charge for access to data on registration systems, we do not feel the current menu of charges to be appropriate in this context.

Network operators should however only be required to provide services to the DCC where they are compensated for the cost, through charging the DCC and/or adjustment to their price control settlements.

Question 66: Do you agree that DCC should only begin to charge users for communication service providers' costs from "go-live"? Please provide reasons as to why this is or is not appropriate.

Yes. We fully agree with this proposal.

Service providers must bring their own investment to the table to cover their start-up costs, as it would be inappropriate for users to be asked to pay for a service which they may not receive until some point in the future.

Once the DCC is fully established, we believe that the recovery of internal costs should be based on market share, but agree that this should only account for meters included in the mandate. We also consider it important to establish a process where market shares are reassessed on at least an annual basis.

We seek further clarification around the proposal that the DCC will be responsible for testing and trialling during the period before go-live. We are of the opinion that this activity will fall rather more into the remit of Programme delivery, in conjunction with service providers and users, in accordance with the principle of the DCC being an organisation focussed entirely on contract management.

Question 67: Do you have a view on whether the data service provider(s) should be treated differently from communication service providers and be allowed to recover its fixed costs evenly over the length of its contract from "go-live"? Please provide reasons why this is or is not appropriate.

We do not believe that data service provider(s) should be treated differently to communication service providers in this regard, and that their costs should also be recovered based on rollout profiles, which aligns cost recovery to service provision.

Based on this position, we believe a mechanism to recover some of these fixed costs from ESCOs will be necessary. We also believe that basing cost recovery on transaction volumes, and therefore actual usage, will engender a self-regulating mechanism that does not penalise new entrants to the market.

Question 68: Is it appropriate that the allocation of costs on suppliers during rollout be based on the suppliers' rollout plan for the year plus actual smart meters installed in preceding years? If so, how can this option for allocating costs during rollout be improved? If not, what is your preferred option and why?

Yes. In principle, we support this approach as it offers considerable scope to maximise efficiencies during rollout by:

- incentivising suppliers to adhere to their rollout plans;
- aligning communications service providers' investments with user requirements; and
- promoting capacity trading between suppliers, so reducing inefficiencies on a national scale.

We look forward to undertaking further work with DECC in this area.

Question 69: Do you have a view on how any additional costs resulting from suppliers exceeding their rollout plans should be allocated? Should DCC be able to pass through to the relevant supplier any higher costs resulting from this (or should such costs be averaged across all users)?

Yes. We agree that DCC should be able to recover higher costs resulting from exceeded rollout plans from the relevant supplier, since this will incentivise suppliers to adhere to committed rollout plans. However, we believe that there should be some form of trading mechanism in place, whereby 'booked capacities', within regions, can be traded to maximise the efficiency of the implementation.

As the rollout progresses it will become increasingly difficult to achieve against plans that detail activity at a regional and wider, inter-regional level. Capacity trading arrangements may, therefore, become necessary. Such arrangements should therefore take into account some account of potentially uneven communications network investment costs.

Question 70: Do you agree that network operators should be charged in line with their market share?

No. We do not agree that network operators should be charged in line with their market share.

It would be unreasonable to impose charges on network operators unless those charges have been provided for within a network price control. Even assuming that the price control was reopened for this purpose, the costs would simply be passed through to suppliers as a 'use of system' charge.

We would therefore prefer that cost smearing is applied across all market participants (except network operators) such that smearing is applied to DCC transactional charges.

Question 71: Do you agree that a standing charge should cover the service providers' fixed costs for providing core services, DCC's internal costs and the SEC management funding requirements?

Yes. We agree that service provider fixed costs for providing core services, DCC's internal costs and the SEC management funding requirements should all be recovered through a standing charge.

However, while it is important that costs for core services are socialised, such that these charges remain consistent across the country, it is equally important that users only pay for services they actually receive. Therefore, any standing charges levied on a supplier must be in direct proportion to the numbers of smart meters it has enrolled in the DCC (including planned rollout for the year).

Question 72: Do you agree that a proportion of service providers' fixed operating expenditure should be converted to volumetric charges?

Yes. We agree in principle with the proposal that a proportion of a service providers' fixed operating expenditure should be converted to volumetric charges. However, we seek further clarification with regard to the percentage of service providers' fixed operating expenditure which is likely to be converted in this way.

We would propose that other charging mechanisms should be considered by the Programme. For example, volumetric charging could be differentiated by time of day.

Question 73: Do you agree that the proposal for postage stamp charging is consistent with the objectives of the smart metering programme?

Yes. We agree that 'postage stamp' charging for core DCC services is the correct approach and is in line with the objectives of the Smart Metering Programme.

Under alternative arrangements where the DCC services were charged out on an actual cost basis, whether to account for regional, technological or other variations, there would be considerable complexity in the charges made to suppliers. If suppliers simply absorbed these variations, then clearly the variations would not signal anything. If suppliers tried to pass them on, this would lead to considerable complexity in consumer pricing and confusion in marketing, and it is unclear whether consumers could react to the signals given in any meaningful way. We therefore believe that the complexity from charging other than on a postage stamp basis is not at the present time justified by benefits of economic efficiency.

Question 74: Should postage stamp charging apply to all users including network operators?

In principle, we believe that postage stamp charging should apply to all users, and this would include network operators if they were charged. However, we do not think that it is necessary or desirable to make charges to network operators.

Question 75: Do you agree with the proposed charging principles?

Yes. We broadly agree with the proposed charging principles set out at paragraph 5.38 of the Consultation document.