

DECC Consultation – Smart Metering Implementation Programme – Draft DCC Licence and Licence Application Regulations

Response from E.ON

General Comments

We believe the suggested DCC Licence and the Licence Application Regulations meet the requirements of the Smart Metering Implementation Programme.

The DCC Licence is comprehensive and well thought through. It seems robust and we support the approach to innovative price control allowance which hopefully should incentivise the DCC and yet still provide comfort that consumers are not paying more than they should.

Our only reservations with regard to the DCC Licence concern the Smart Energy Code (SEC). These reflect our dissatisfaction with the governance regime suggested for this industry framework agreement.

These issues for the DCC Licence we believe could be easily rectified by amending the relevant Licence conditions and making them less prescriptive. Detail of the governance regime for the SEC should be left for inclusion within the SEC where it is easier for it to evolve and change. The DCC Licence should only set out the high level governance requirements and objectives for the SEC.

The DCC price control regime and innovative contracting arrangements will require a different approach and resource level from Ofgem compared to existing monopoly network licence holders.

We believe the DCC Licence includes the required tools for the regulator to manage this task. Ensuring that this oversight works will be critical in ensuring that all stakeholders have faith in and trust the DCC. This trust is important; as without, it is likely that all the potential opportunities that the DCC could provide to the industry and consumers may not be realised.

Responses to consultation questions:

1. Do you agree with the structure and content of parts 1 and 2 of the licence?

Yes, the way in which parts 1 and 2 of the licence are structure seems sensible and clear.

2. Do you agree with the proposed list of licence revocation events, in particular do you agree with the inclusion of revocation triggers linked to:

- ***A failure of the DCC to comply with an enforcement notice issued under Section 40 of the Data Protection Act;***

Yes, data privacy is a concern for consumers and the enhanced collection of information from smart meters increases the risk from this issue. If the DCC doesn't take the issue particularly seriously then the consequences for the reputation of the wider industry and its ability to deliver services to customers may be undermined. It is therefore appropriate for the DCC Licence to include explicit reference to this issue as a potential reason for the revocation of the licence. This, as well as the Data Protection Act, should ensure that the DCC is correctly incentivised.

- ***A contravention of the licence condition or statutory requirement in a manner so serious as to make it inappropriate for the licensee to continue to hold the licence;***

Yes, this new addition to an energy licence would seem appropriate considering the function that the DCC will undertake.

- ***A contravention of the independence Condition 9; and***

Yes, although the condition could be seen as being particularly onerous considering the scope of non-licensed users of the 'authorised business' of the DCC is not that clear at this stage. However the inclusion of Part D in Condition 9 should provide mitigation.

- ***The licensee no longer being, or never having been, a fit and proper person to carry out the Authorised Activity?***

Yes, this new addition, a first to an energy licence, would seem appropriate considering the function that the DCC will undertake.

3. Do you agree that the DCC licence should be issued for a fixed-term only?

Yes, now that there is greater clarity around the duration of the DCC service provider contracts the proposal for a 12 year initial contract period for the DCC seems sensible.

4. Do you have any comments on Chapter 1 of the licence conditions, in particular do you have any comments on the drafting of the definitions?

Yes, the licence conditions seem clear, logical and warranted. The definitions within Chapter 1 seem comprehensive and we have no further additions to suggest including.

5. Do you have any comments on Chapter 2 of the licence conditions, in particular do you have any views on:

- ***The general objectives of the DCC;***

Yes, we support the revised proposals within this consultation. These are a marked improvement upon the initial draft proposed last year. We agree with the Government that there is no need to have a specific Objective for the DCC with regard to consumers or energy efficiency advice.

- ***The way in which the Mandatory and Permitted businesses of the DCC have been constructed;***

Yes, this now seems much clearer as to how the Mandatory and Permitted businesses of the DCC would operate. The proposal is interesting and hopefully will deliver a good balance between innovation in services and the lowest cost for all consumers.

It will require a different approach to monopoly oversight and compliance from Ofgem. This will not be a licenced monopoly service provider that Ofgem can manage via periodic price control reviews. Ofgem will be required, and must be appropriately resourced, to oversee the functioning of the DCC Elective and Permitted Business.

This robust oversight will be needed to ensure that the DCC does not abuse its monopoly position and also that Users of the DCC services have confidence that it operates in fair manner. Without the trust of DCC Users the service will not evolve and deliver its true future potential.

- ***The interaction between the mandatory and permitted businesses;***

Yes, this now seems clearer and we consider it reasonable.

We would like to see an inclusion within Part D: procedure for authorising any value added services, 6.8, of a requirement for the DCC to generally consult on any proposal with all existing Users of its Mandatory or Permitted Business.

It's likely that Ofgem would feel it would need to undertake a similar exercise before authorising the DCC to undertake any new Value Added Service. Requiring the DCC to undertake the exercise will assist the Authority and also ensure that the DCC develops the right behaviours with regard to its consulting Users and stakeholders.

- ***The proposed general and security controls for the DCC?***

Yes, this now seems clearer and we consider it reasonable.

6. ***Do you have any comments on Chapter 3 of the licence conditions, in particular do you have any comments on:***

- ***the independence requirements of the DCC and the interaction with the revocation provisions;***

Yes, these seem clear, although we are concerned that the limitations with regard to independence from DCC Users could be considered a little draconian. The number of future DCC Users, both licenced and in particular non-licenced is not clear at this stage and could be very wide.

An ownership restriction therefore may limit the future options for choosing a potential DCC. However the inclusion of Part B: Permitted exceptions to the General Prohibition seems a good compromise and should provide the industry with future flexibility in this area.

- ***the broad condition on protection of confidential information;***

Yes, this seems reasonable considering the scope of the DCC's activities.

- ***the scope and nature of the role of the compliance officer?***

Yes, the scope and nature of the role seems reasonable and clear from the proposed licence requirements.

7. ***Do you have any comments on Chapter 4 of the licence conditions, in particular do you have any comments on the drafting of:***

- ***the transitional obligations on the DCC, possibly as part of a wider transition scheme;***

Yes, it would seem appropriate to include requirements suggested in the consultation.

- ***the proposals for how the DCC would set out its future business development objectives;***

Yes, the proposal seems similar to that applied to network businesses. The visibility that these currently provide to Stakeholders is useful and therefore a similar requirement for the DCC is welcome.

- ***the proposed inclusion of a licence condition that would facilitate future transfer of registration to the DCC?***

Yes, we agree with the inclusion of a specific requirement in the licence for the DCC to undertake registration activity.

Within the licence condition there is an explicit reference to the Smart Energy Code (SEC). Although we understand the logic for this as it may be the future home for the governance of registration processes for the energy market. However this isn't certain at this stage and therefore it would be preferable not to reference this explicitly and let the industry decide this at the time via amendments to relevant industry codes.

What is important is that the future benefit to the industry and consumers of having a single dual fuel registration activity goes ahead. We would also like the DCC to be actively engaged in the provision of a plan to simplify the existing industry processes and to support the initiatives that Ofgem's Smarter Markets team are considering.

Within the Licence Condition Part E Interpretation, 15.13, Central Registration Bodies, there is reference to Elexon Ltd and Xoserve Ltd. These references should be to BSCCo Ltd, the Joint Office of Gas Transporters (for the UNC) and there needs to be a reference to the IGT UNC. Although Elexon and Xoserve are the parties that are contracted to deliver services for the BSC and the UNC it should be the organisations with formal accountability for the services that are notified in a similar way to the references to SPAA Ltd and MRASCo Ltd in the Licence Condition.

- 8. Do you have any comments on Chapter 5 of the licence conditions, in particular do you have any comments on:**

- ***The procurement obligations, including the balance between what the DCC must competitively procure and what it may self provide;***

Yes, this would seem to strike a sensible balance between services that it would be in all stakeholders' interests that the DCC is required to competitively procure and those smaller scale services that it may be more efficient for it to deliver itself.

As mentioned in our response to question 5 the nature of the proposed DCC, including its procurement obligations, is going to require a more robust approach to compliance monitoring by

Ofgem than they have undertaken to date with network businesses. It is important therefore that clarity around this issue is presented to stakeholders either as part of the DCC Audit process or within the DCC's annual regulatory reporting.

- ***The most appropriate role, if any, for the Authority in influencing how the DCC should balance various competing public interests, when preparing for future procurements of Fundamental Service Capability;***

Yes, we believe it would be necessary for the Authority to be involved in balancing the various competing public interests when the DCC procures future services.

We would expect these issues to arise from time to time for the DCC and believe that stakeholders and consumers would look to the Authority to be involved in the decision making processes.

What form of influence or formal approval this takes is not clear to us at this stage. Unofficial feedback could be expected to be provided on an ongoing basis with perhaps formal approval being required for any contracts that the DCC has with service providers that extend beyond its licence duration.

- ***Do you have any evidence from other sectors about how the public interest is taken into account by regulated bodies when making major procurement decisions;***

No, we are not involved in any other sectors where this issue arises.

- ***The obligations on the DCC in relation to provision of services, recognising that these conditions will need to be reviewed in light of a more detailed definition of services; and***

Yes, these all seem sensible and appropriate.

- ***The charging methodology provisions, particularly the objectives of the methodology?***

Yes, these seem sensible although it isn't clear to us why they are referred to as 'policy objectives' rather than simply 'objectives' and why the first policy objective should only be possible to be amended by the Secretary of State.

Why Ofgem would not be able to change this element of the licence in the future, having followed due process and considering its primary duties, isn't clear and is not explained in the consultation. We would recommend removing this element of Part C: Relevant Policy Objectives of the Charging Methodology, 18.15.

9. Do you have any comments on Chapter 6 of the licence conditions, in particular do you have any comments on :

Yes, Licence Condition Part B: Compliance duties under other Core Industry Documents seems to be missing a reference to the DCC being a party to the IGT Uniform Network Code. This would appear to be an oversight but as there are almost 1 million domestic gas consumers served by IGT networks this omission would potentially create problems.

We do not believe that the DCC Licence should include 22.23 (b) the obligation for the Authority to appoint an independent chair of the SEC Panel. We do not believe that this is necessary and that the appointment of the Chair of the SEC Panel should be a matter for the SEC governance to address and not the DCC Licence.

The separation of functions within 22.24 of SEC Administrator and SEC Secretariat is somewhat odd as we would not ever consider these to be different roles fulfilled by different service providers.

The section of the licence which deals with SEC change control is far too prescriptive about the process that will be followed. It is preferable for the licence to set out the principles that the change process should follow and allow the detail to be included within the SEC itself. This provides for significantly more flexibility for the processes to be amended and evolve over time.

The proposal for the SEC change control process detailed within the DCC licence is inappropriate for the nature and content of the SEC. The SEC will contain technical specifications for metering, business processes for interacting with the DCC and the Service Levels that the DCC will provide Core Services to Users.

The change control process for the SEC should reflect the needs of these types of issues. This may involve a number of slightly different approaches to change control (e.g. one for technical issues and a different one for business process/DCC SLA issues). The proposed change process within DCC Licence would not facilitate these different types of change control from being possible.

- ***The scope of the SEC as set out in the SEC condition and the SEC objectives;***

Yes, the scope of the SEC as set out looks reasonable and the revised set of SEC objectives are an improvement on those initially proposed. We are therefore in support of the proposal.

- ***Whether the DCC should have a licence obligation to maintain and keep in force the SEC;***

Yes, this is a common safeguard arrangement that is used in other Licences to ensure protection for industry codes. Inclusion of this requirement within the DCC Licence would seem appropriate although logically it could equally have been included within the Supply Licence considering the requirement to install smart metering resides here.

- ***The proposal to allow the Secretary of State to block SEC modifications in the period up to 31 October 2018; and***

Yes, we can understand the logic in the Government wishing to maintain these powers for a period of the smart metering roll out project. We do not believe that these powers are appropriate on an enduring basis but are comfortable with the suggestion that these powers last until 2018.

The inclusion of these powers will make the change control process for the SEC slightly more complex than other codes and perhaps a little longer.

It would be sensible for the Secretary of State to give an undertaking that they would provide notice of a decision to block any proposed modifications by a certain time after Ofgem has made a decision on a change.

Without this comfort signatories to the SEC may be confronted with inappropriate regulatory risk from the change process to the SEC with their always being a level of uncertainty as to whether a change would be approved or blocked.

- ***The way in which interoperability should be addressed through the SEC objectives?***

The proposed third Relevant SEC Objective 'to facilitate effective competition between persons engaged in, or in Commercial Activities connected with, the Supply of Energy under the Principal Energy Legislation' should be sufficient to address interoperability. The purpose of interoperability is to ensure that the energy supply industry is not adversely affected by the roll out of smart metering.

10. Do you have particular comments on how best to ensure the consumer interest is met in the SEC Objectives, in particular:

- ***Can you identify any potential scenarios where a modification might be proposed which would be in the interests of consumers but which would not be supported by the objectives set out for the code; and***

No, as with the other industry codes we do not believe that there is a requirement for there to be an explicit objective regarding this. Meeting all or any of the other objectives suggested should be in consumer interests.

We are not aware of any potential scenarios where a modification in consumers' interests would not meet one of the proposed objectives. The third Relevant SEC Objective to facilitate effective competition between persons engaged in, or in Commercial Activities connected with, the Supply of Energy under the Principal Energy Legislation would be expected to cover nearly all potential scenarios.

- ***If you think the objectives could be set out to better capture the interests of consumers, as opposed to the proposed approach for SEC objectives to be balanced in the round with due regard for energy consumers' interests, how do you think this could be done?***

No, we are not convinced that there is the need for Part C: Relevant Objectives of the Smart Energy Code, 22.15. It is not clear what value this condition adds to the change processes that is not already captured by Ofgem's primary duties when it considers any modifications to the SEC.

11. Do you have comments on the proposed condition allowing the Authority to put forward code modifications and for this power to be limited to specific areas defined in the SEC?

Yes, we are not convinced that Ofgem needs these powers to unilaterally change the SEC. Ofgem already has sufficient powers to enable any change that it feels may be needed to protect consumer interests by making amendments to the various Licences. This process provides greater transparency and accountability for Ofgem's actions.

12. Do you have any comments on Chapter 7 of the licence conditions, in particular do you have any comments on:

- ***The proposals in relation to financial security, in particular the requirement to provide a performance bond in addition to financial security?***

We are in support of the proposed DCC Licence conditions that are intended to ensure that it is financially secure. The nature and importance of the services that it provides to the energy industry justify these requirements.

13. Do you have any comments on Chapter 9 of the licence conditions, in particular do you have comments on:

- ***The need for the revenue restriction conditions in the DCC licence to evolve as the DCC's role changes;***

Yes, we appreciate that the ability for Ofgem to amend the revenue licence conditions of the DCC in the future may be seen as a significant risk by potential DCC bidders. However Ofgem would need

to balance the needs of consumers of having a viable DCC against those of ensuring that it didn't make excessive profits and should therefore not act in an imprudent way.

- ***The need to incentivise the DCC to concentrate on achieving programme milestones at the beginning;***

Yes, this would seem a sensible approach to ensure the programme is successful.

- ***The proposal that the DCC's internal costs should be passed through with a (£/annum margin applied;***

Yes, this would seem sensible initial approach to take.

- ***That incentives on reduction in the DCC's internal costs and on output measures should be applied later;***

Yes, the DCC Licence condition 37 seems well thought through and we are not aware of any reason at this point to believe that it would fail to set an appropriate level of allowed revenue for the DCC.

The audit, oversight and compliance function needed by Ofgem (or its appointed Reviewer agent) is considerably different to that it is familiar with for monopoly network operators. It is therefore a requirement for Ofgem to be provided with sufficient resource to carry out this important task.

- ***That the DCC should be subject to an element of bad debt risk unless it takes reasonable measures to recover such debt; and***

Yes, this would incentivise appropriate behaviour.

- ***Particular KPIs that could be applied to the DCC after it starts to deliver services?***

The suggested list of KPI's proposed in the consultation seems reasonable. Whether additional KPI's are warranted is unclear at this time and we would suggest are developed as the DCC service is established and included within the planned price control review.

The application of any financial incentives in relation to the KPI's is a possibility although again might be better left until it was clear which KPI were the most relevant to Users.

- 14. Do you have any comments on Chapter 10 of the licence conditions, in particular do you have any comments on:***

- ***The proposed arrangements applying to Management Orders, including the scope of the powers of the Authority in such circumstances;***

Yes, these would seem appropriate considering the nature of the role undertaken by the DCC.

- ***The arrangements proposed in relation to the Business Handover Plan and the process for resolution of matters between the outgoing and incoming DCC;***

Yes, these would seem reasonable to ensure a smooth transition between DCC licence holders.

- ***The scope of matters that the Business Handover Plan should provide for;***

Yes, the Licence condition sets out clearly and comprehensively what is needed within the Business Handover Plan and we have no further suggestions to make.

- ***The scope of the matters that may need to survive for a period of time to continue to ensure a smooth handover to the DCC's successor and whether the two year timeframe is appropriate; and***

Yes, the proposal seems reasonable and we agree that 2 years is a suitable timeframe.

- ***The proposed approach to Intellectual Property Rights?***

Yes, this is an area of particular importance for the handover of activities between DCC licence holders and requirements with regard to this will ensure that the process happens more smoothly.

- 15. For the initial licence application, do you agree with the Government's intention to apply the BAFO stage in all circumstances, so as to mitigate the risks associated with the changing requirements and improve the competitive outcomes?***

Yes, this follows procurement best practice and we support the proposal.

- 16. Do you agree with the proposal not now to include a fast-track process to appoint a temporary DCC, but instead to rely upon the provisions for intervention to keep the DCC's service functioning whilst a standard licensing application process is conducted to appoint an enduring successor DCC?***

Yes, this would seem to ensure that Users are least affected by a problem with a DCC.

17. Do you have any comments on the proposed competitive application process for the DCC licence and, in particular, on the Government's stated intention to operate an extensive 'best and final offer' stage for the first licence competition?

Yes, this would seem appropriate considering that this is the initial appointment of a DCC licence holder and therefore we support the proposal.

18. Do you have any comments on the draft DCC licence application regulations and, in particular, whether they effectively implement the proposed competitive application process described in this consultation document?

Yes, the licence application regulations reflect the proposed process and we have no suggested amendments to make.