

**[REDACTED] Response to
DECC:**

**Smart Metering
Implementation Programme
Consultation on the Draft DCC
Licence and Licence
Application Regulations**

About

Our Response

We welcome the opportunity to respond to this consultation. In terms of the proposals outlined, on the whole we are in agreement with many parts of the licence drafting. However, we still have concerns regarding the approach to protecting consumer interests within the code objectives; we discuss possible solutions below. In addition, we have some concerns over the proposals for intervention in the case in which the DCC has its licence revoked and a new one must be procured unexpectedly. We also seek greater clarity around the security framework as a whole.

At a higher level, we continue to seek reassurances around the proposed DCC approach more generally. We understand the following to be the rationale for the DCC and what it is intended to achieve:

- Ensuring commercial interoperability. To retain and enhance switching, avoid competitive disadvantage to smaller suppliers and remove barriers to entry.
- Facilitating competition and innovation in new and emerging energy service markets, by ensuring ease of access to data.
- Enabling smart grid, by ensuring communication service providers deliver smart energy network requirements and facilitating access to data for the energy network operators
- Delivering efficiency and maximum communications coverage through economies of scale
- Ensuring clear and effective accountability for the security of the end to end system

While [redacted] understands the above rationale for the DCC and in principle supports what it intends to achieve we seek reassurances in a number of areas:

Value for money

- [redacted] has a general uneasiness about the lack of robustness of the business case. The centralised model appears to be largely based on a 2009 Baringa impact assessment, however, the options considered by this report did not include an assessment of alternative methods of achieving the intended policy outcomes, such as the implementation of compulsory technical standards (for equipment, data and communications), without requiring the creation of new centralised bodies in the marketplace.
- As we understand it, the costs of the DCC and its service providers are unclear at this time because the tender processes have not run their course. The market co-ordinator for electricity, ELEXON, has estimated they may be of the order of £0.7-1.2bn in set up costs followed by ongoing expenditure of ~£300m per annum. Other estimates suggest that the cost of the three regional communications suppliers is around £1.8bn (£3bn if they were subject to extension).

- It is our impression that it has been a challenge to the Programme to ensure it has sufficient independent expertise to make informed decisions. This has undermined our confidence in the process.
- A stable technical specification has still not been agreed and we have concerns that insufficient timing has been allocated for testing (see below). There is real potential for the DCC to run significantly behind schedule (therefore undermining the cost benefit analysis) and over budget.
- We have a general uneasiness that Government appears to be procuring a solution where the specifications and requirements are still developing and are therefore not yet fully defined.

Recommendations

- We seek reassurances that the business case assessment has been robust and that as part of this, an evaluation of the possible alternatives has taken place. Currently we are concerned that pressing deadlines mean work is ongoing on the DCC despite serious issues as it would be difficult to change course at this stage.
- Given the scale of DCC agent costs (~£3bn over ten years) it is vital that proper incentives exist to keep external costs down. The incentive regime must find the right balance between internal and external costs. As the DCC is largely a contract management body, rather than a service provider in its own right, the bulk of its costs will be external rather than internal (probably of the order of 95% vs 5%). It is therefore vital that any incentive regime put in place on the DCC places greater weight on managing external costs than managing internal costs, because the former will hit consumers' wallets much harder.
- The Government decision to procure in parallel the DCC licence holder and its service providers is problematic because potential DCC licence candidates will naturally be worried about the prospect of taking on significant risk in relation to contracts they inherit rather than define. This may make them less likely to accept an incentive regime which focuses on minimising these external costs, whereas they will be more open to a regime which looks to reduce internal costs under their control. Government needs to manage this tension.

Testing – consumer scenarios testing urgently needed

has concerns that there appear to be few published plans around testing. Where testing is considered it appears to be focussed on technical processes only – e.g. 'is connectivity feasible?' – rather than how long it takes or what any change of process means for the consumer experience.

Recommendations

- We need end to end testing covering customer journeys (change of supply, change of tenancy, change from credit to prepayment payment methods), and not just connectivity testing.
- DECC must ensure that consumer scenario testing takes place at every stage – this should be the starting point. For example:

Prepayment – it has been reported that the customer could be waiting up to ten minutes at the retailer to get a receipt and confirmation of their top-up.

This would be unacceptable to both the retailer and the customer. Similarly it has been reported that it could take up to 30 minutes for this top-up to be registered on an electricity meter, and 45 minutes on a gas meter because of the proposed data passage. This would be a loss of service compared to today and not appear very smart to the customer.

Self-installation of IHDs - if a customer is sent an IHD through the post, what process do they go through to get their near real-time energy data feed and how long does this take to become operational?

Estimate bills – what process will be put in place to prevent the customer from getting estimate bills? i.e. will suppliers carry out sporadic remote diagnostics to check that the communications system is working? It would be inappropriate for the supplier or DCC to have to wait until a read request fails and the customer gets an estimated bill, before this triggers corrective action in the system.

Concerns that opportunities to address historic problems will be missed

would urge DECC to adopt a more consumer-centric strategic approach to the design of the DCC, including consideration of the possibility of the DCC providing consumers' data to them direct. We would welcome them mapping the historic consumer issues that DCC should address and outline how these will be resolved. Our fear is that time constraints will result opportunities being missed. For example data flow issues such as the following which negatively impact customers must be addressed:

- Misdirected payments
- Change of supplier failures
- Incorrect billing caused by transposed meters

Appropriate thinking about the customer experience and consumer scenario testing is needed as a matter of urgency.

Transition between Foundation and Go-Live

- We are unclear what processes are in place to ensure smooth transition from Foundation to Go-Live. This should be a seamless invisible process for the customer. It is important to avoid a situation where the customer starts to get estimated bills again, or additional home visits are needed when DCC takes over providing communication services.
- We have concerns that not enough time has been allowed for robust end to end testing including market participants.
- We query how DECC plan to ensure readiness across the whole market. When the bulk of liberalisation happened in 1998 it culminated in a two stage market opening process as a number of suppliers were unable to meet the initial start date. Is DECC planning a big bang approach or a more graduated start? i.e. will DCC go live from a particular date? If so from that point, a whole series of functions will then be relying on the DCC to work. What consideration has been given to the customer experience in this regard i.e. how will complaint handling processes and resolution of customer problems change pre and post DCC?

- How will accreditation testing be carried out in practice? We need to ensure that all suppliers, as well as any potential third parties have appropriate processes in place prior to Go Live.

Barriers to competition and innovation?

We seek reassurances that the DCC will not inadvertently hinder competition in existing and emerging markets such as data services, energy services and telecommunications. For example:

- Some uncertainty exists as to whether an imposed centralised technical model with exclusive contracts will be able to stimulate innovation. We seek reassurances that it will not create barriers to new entrants to the market and impede the necessary innovation required in the area of energy reduction and conservation.
- The proposed DCC would establish three regional communications monopolies with lengthy contracts. It has been suggested that the current proposed regulations would make it illegal for anyone else to seek to innovate or compete in this space. We have concerns that this would effectively remove any option of an open and competitive marketplace for at least a decade (the likely minimum contract duration).
- Linked to the above, the proposed approach to establish three regional communications monopolies, arguably isolated from any form of competition, has the potential to build an exclusive new communications network across GB. As well as meeting the immediate smart meter data and communications requirement, this network could be designed to offer additional services (potentially including broadband services). It is unclear what analysis there has been of this government intervention in the marketplace; what consultation with other communications providers (such as fixed and mobile operators) has taken place; and what the longer term impact could be on the provision and supply of communication and data services.
- There is also a need for clarity around the provision of open interfaces via DCC for independent energy service companies who might wish to help consumers.

Switching

- We welcome DECC's emphasis on helping to ensure that customers can switch easily and more quickly. However, we have a concern that in practice the creation of the DCC may not be the most cost effective way to deliver this. We would welcome reassurances that appropriate consideration has been given to alternative solutions such as open technical and data standards. In practice, millions of meters could be installed prior to DCC. To facilitate switching this will effectively require an interim solution to be created. We seek clarification on the value therefore of creating another solution on top of this, and what the cost impact will be for consumers, particularly if the DCC start date slips back further.
- As we understand it suppliers may or may not choose to enrol their SMETS 1 meters with the DCC. Potentially millions of meters could therefore still sit

outside of this process after the DCC becomes operational. What impact will that have on costs, interoperability and customers' ability to switch?

- DECC indicates that the three different regional suppliers will be permitted to use different technologies in different regions – could this potentially undermine national interoperability?
- Still very little consideration has been given to interchangeability. I.e. compatibility of appliances. E.g. if a consumer buys a home energy management system or enhanced IHD from one supplier and then moves home to a property in a different region, where a different supplier installed the communications system – will it still work? Water companies have raised concerns that they can't use HAN network to support their water metering services – thus adding cost and inconvenience for water customers. These kinds of broader compatibility issues need to be considered. We are not clear that the inclusion of interoperability in the SEC objectives will be sufficient for this.

Small business customers

- How do we ensure that small business customers are able to switch easily if business suppliers do not have to use the DCC? We are already getting a trickle of calls to the front line advice agency, Consumer Direct from companies who have faced barriers to switching because they have a smart/advanced meter.
- DECC has, in our view wisely, adopted the approach that charges for core DCC services should be applied on a postage stamp basis, i.e. all consumers pay the same. We think this is necessary in order to avoid perverse outcomes for consumers with non standard installations that might otherwise attract punitive service charges. However, non-domestic suppliers have the choice of whether to opt-in, or opt-out, of the SEC. This may create some distortions in the non-domestic market as suppliers in that market could choose to opt some customers in to the SEC arrangements while keeping others outside.
- It is unclear why the approach proposed for domestic consumers differs from that which GB has for business. DECC stated, "*Suppliers in the smaller non-domestic sector will not be obliged to use the services of DCC...*" because "*This should allow smaller non domestic customers better access to the competitive market, increase competitive pressure on industry costs and improve interoperability*". It is not clear why that analysis applies to small non-domestic customers and yet not domestic consumers.

Customer access to data

- There continues to be a lack of clarity about how the customer will access their detailed energy consumption data both pre and post DCC Go Live.
- We have special concerns about access to data pre-DCC. In order for the customer to switch to a basic tariff, for example, they can currently access the key information they need about their overall energy consumption from their annual statement, bill or even their IHD if they have one. They can acquire price comparison sheets from Consumer Direct, call a switching site or go online. But for more complex tariffs, such as TOU, more detailed data will be required. As we understand it, at present, the customer would have to go via their supplier for this kind of information. Experience in the mobile phone market highlights that where the incumbent provider is the data

controller this can act as a barrier to competition. Ofcom introduced new regulation as they found that the customer needing to go to the incumbent provider for their Porting Authorisation Code (PAC) before they switched resulted in mobile companies reserving their best deals for customers about to leave, and stalling on the provision of information the customer needed to switch, so they gave up moving provider.

- It is also unclear whether some customers will be able access their energy data locally at all even post-DCC Go Live. DECC is relying on the competitive market developing a bridging device that enables customers to access their data, or in the case of customers who do not use technology, third party phone based services or other alternatives emerging. There is a lack of clarity about how the consumer will communicate with the meter, with the back-end system and with appliances using whatever consumer electronics device they prefer to use for interaction. As a minimum we would expect consumers to be able to interact with the system via a web page: it is unclear where this facility will be provided and where hosted; who will control it; and how the provider of the service will have an incentive to assist the consumer in. We have been asking for the possibility to be kept open that consumers may be able to access their data through the DCC direct. We note that there is no provision in the SEC for this, and will ourselves cease to see it as necessary once a means has been confirmed for all consumers to be able to access their data themselves, without going through their supplier.

General Issues

- Despite SMETS 1, there continues to be a lack of a clear technical specification and clear technical open standards. DECC intend the smart metering HAN to be specified in September 2012 but we have heard anecdotally that it could be later.
- We believe there is an ambitious timetable given that the technical requirements have not been settled, and that they are likely to be complex given they will have to deal with multiple and evolving standards.
- There is a lack of clarity about how the smart meter will onwardly communicate with smart appliances. Without that capability, it is difficult to see how it enables smart grid: conversely, with that capability it provides an even deeper potential cyber penetration risk to every household in GB.
- We also have concerns that pre-DCC suppliers will select in-home communications solutions that could result in technical barriers to new entrants that use data or the HAN. For example we understand that the frequency and protocols around ZigBee are such that product innovation around the home area network (HAN) could be limited, as appliances such as iPhones and HTC phones do not contain ZigBee chips.
- Communication to stakeholders: Outside of working groups, there appear to be complaints from a number of stakeholders about a lack of visibility of what is going on around the DCC. This includes a real confusion around timelines. We suggest wider visibility of the programme plan so that other parties can prepare.

On a minor note, we note that in the draft licence the Secretary of State, and the Compliance Officer, are continually referred to as a 'he'. We suggest it would be more appropriate to replace all mentions of 'he' or 'him' with 'he/she' and 'him/her', as has been done in the accompanying DECC consultation document.

Answers to specific questions

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

Yes, we do agree with the structure.

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:

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

Yes

ii) 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

iii) A contravention of the independence Condition 9; and

Yes

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

Yes

We agree with the list of proposed revocation events but we are unclear as to the classification of the various triggers, and the various notice periods attached to the different classes. We would have assumed that the length of the notice period would be related to the seriousness of the trigger, and also to the risk of damage being done to consumers or DCC users during the notice period. It seems as though considerably less damage could be done by an insolvent DCC (which could continue to provide functions for a time while in administration) during its notice period, 24 hours in the draft, than a DCC which the Authority is satisfied never was a 'fit and proper person' for the job, for which there is a notice of 30 days, for instance.

In addition, it is unclear how the length of revocation notice periods relates to the interventions discussed below in Q16, in which it appears that a DCC which is having its licence revoked will in some form continue to provide a service for up to 18 months until a successor DCC is found.

We would welcome further clarification on the application of Revocation Event 7, specifically in the area of how a judgement could be made that a Licensee 'never was' a fit and proper person to carry on the Authorised Activity. We struggle to see how this provision could be applied in practice as the body empowered to make this judgement (the Authority) is also the body who would have appointed the DCC¹. It would be hard for the Authority to exercise this power without implicitly admitting culpability for having botched the DCC's appointment, which might expose it to legal liability for any losses this failure had caused, and its funding structure means such costs would flow through to consumers. It may also be hard to enforce because it would appear likely that a DCC threatened by an judgement that it 'never was' fit and proper would point to the fact that it must have been fit and proper at one point or it would not have been appointed.

3 Do you agree that the DCC licence should be issued for a fixed-term only?
Yes, we do agree with this.

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?
No, we do not have any comments on Chapter 1, or the drafting of the definitions.

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

i) The general objectives of the DCC;

If the DCC is to be charged with facilitating innovation which will contribute to a sustainable energy supply at part b) of the Second General Objective, we would suggest that it be altered to read 'such innovation....as will best contribute to the delivery of a secure and sustainable Supply of Energy, and to the reduction of energy demand...'

We are very much in favour of the rules around data protection and security being made into licence obligations rather than objectives, so that they are prior to other potentially competing objectives.

ii) The way in which the Mandatory and Permitted businesses of the DCC have been constructed;

We would suggest that there be a requirement that 'minimal' services must not impinge, or in any way undermine, any of the mandatory services provided by the DCC, including in any indirect ways.

iii) The interaction between the mandatory and permitted businesses
No

iv) The proposed general and security controls for the DCC?

We strongly support the focus on privacy and security. The prospectus states that *"The establishment of DCC and its services will involve creating a complete new*

¹ We note that the initial appointment will follow a slightly different process, with DECC appointing the DCC but with considerable input from Ofgem.

GB-wide entity with reach into every home". The proposed technical model creates a new third party between consumers and energy providers. It thus introduces an additional, and potentially significant, security and privacy risk. All or most households will be connected to the DCC, arguably presenting a major vector for cyber attacks given the vulnerability of a single centralised entity managing all the switching into every home. It also introduces a central point for surveillance and privacy compromise.

research and wider evidence indicates that despite changing social norms, personal privacy and misuse of personal data are key concerns for many people. Protection against hacking and security breaches will be essential not only for national security but also to prevent unauthorised disconnection of individual appliances or energy supply, which could have dire consequences for vulnerable consumers in particular, who are dependent on energy for their health and well-being, or small businesses for their livelihood. It is also very important that customers have confidence in the overall framework if they are to accept and engage with smart metering/grids.

However, despite the focus on security, we are unclear to what extent the proposed controls for the DCC will safeguard customers. Much of the debate around security, has, for reasons we recognise, not been in the public domain or subject to wider consumer engagement. Opportunities for consumer representatives and privacy groups to input into the discussions on security have been limited by lack of expertise, lack of resource (time and people) and the process itself which has been part-closed.

Now that these proposals are on the table we believe it would very be valuable for DECC to bring this issue to the Consumer Advisory Group (CAG) and Consumer Engagement and Rollout (CER) working group. Also, we suggest a workshop is held on end to end security involving security experts, consumer and privacy groups. This would be valuable to ensure that the customer voice can be properly heard and questions addressed.

For example, we would welcome clarity around the following:

- How will the licence condition operate in practice and which body, with what expertise, will monitor and enforce this?
- How will this framework ensure security not just on day one but in the future as new risks and technology develop?
- What will be deemed to be 'adequate and proportionate' security controls? IO Active's worm simulation demonstrated that it was possible to hack into and take control of more than 15,000 smart meters out of 22,000 in just 24 hours². The speed of attack could only be halted by disabling entire energy supplies and the resultant instability that would occur on the grid. The impact of this on consumers, in terms of inconvenience, cost, and potential danger to health for those who rely on their energy supply, are very significant.

² [Securing the Smart Grid. "To Act without Delay" IO Active.](http://www.ioactive.com/pdfs/InfosecurityEurope10SmartGrid.pdf) Also <http://www.ioactive.com/services/smart-grid-research.html>

- Will an Authorised Security Standard require security and privacy by design? Will the DCC be required to carry out privacy and security impact assessments? Will independent audits be carried out?
- How will the security of the end to end system be maintained? E.g. including the adoption of SMETS 1 or non compliant meters? How does this framework for the DCC sit within the wider approach to end to end security and who has responsibility for what parts of the process?
- While in theory the DCC is described as a 'data tunnel' not a store, in practice it appears that in effect there will now be a degree of data storage taking place. It is also unclear how this data role will evolve.
- How will the existing Data Protection Act and future EU Privacy Regulation apply to the DCC and sit alongside the licence conditions?
- We understand the DCC will have the ability to disable any meter remotely, a facility that creates a significant cyber security threat in the form of enabling an attacker (insider or outsider) to centrally disrupt or otherwise interfere with energy supplies. DECC have proposed a partial mitigation in the form of a "two man rule" which will require both DECC and a Trusted Third Party (TTP) to validate an instruction to disable energy supply. It is not apparent how such a mechanism could be made difficult to circumvent or how the DCC would deal with key compromise or recovery from any attack that required large scale re-provisioning.
- We strongly welcome the DCC being required to maintain a register of security incidents. We query the wording of licence condition in this area – as seemingly only those incidents that arise from a failure or absence of controls need to be reported. Who will have access to this information in addition to Ofgem, and how will it be used?
- What will be the consumer redress process where the customer has suffered detriment? What responsibilities if any will be on the DCC in this regard?
- The DCC is prevented from entering into any contractual arrangements that do not contain appropriate provisions for ensuring that the security arrangements can be met. What level will this be set at? What impact will it have on competition on third party services that require access to information via the DCC?

We would welcome further clarity on these and other issues before we can form a view on the proposed approach

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

i) the independence requirements of the DCC and the interaction with the revocation provisions;

No

ii) the broad condition on protection of confidential information;

No

iii) the scope and nature of the role of the compliance officer?

No

Q7 Do you have any comments on Chapter 4 of the licence conditions, in particular do you have any comments on the drafting of:

i) the transitional obligations on the DCC, possibly as part of a wider transition scheme;

No

ii) the proposals for how the DCC would set out its future business development objectives;

No

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

No

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

i) The procurement obligations, including the balance between what the DCC must competitively procure and what it may self provide

No

ii) 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;

No

iii) 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

iv) 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;

Clause 17.5 is not clearly drafted. The assertion that 'time is of the essence' does not make clear what the obligation is in respect of providing a compliant-requested service by the date specified in the request. We would suggest that 'time is of the essence' has no force, and should either be replaced or the whole clause removed.

v) the charging methodology provisions, particularly the objective of the methodology?

No

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

i) The scope of the SEC as set out in the SEC condition and the SEC objectives;

Please see answers to other questions in this section.

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

No

iii) The proposal to allow the Secretary of State to block SEC modifications in the period up to 31 October 2018.

No

iv) the way in which interoperability should be addressed through the SEC objectives?

Given that SMETS may change over time, we would be keen to see interoperability, and interchangeability addressed through the SEC objectives.

The easiest way to do this, given the concern of many stakeholders to keep the list of objectives short, would be to include it in an existing objective. We would suggest the first objective be altered to read 'to facilitate the efficient provision, installation, and operation, as well as interoperability and interchangeability, of Smart Metering Systems at Energy Consumers' premises within Great Britain'

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

i) 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;

Yes, we can identify a number of such scenarios. These principally relate to protections for vulnerable consumers.

For example, the SEC could provide a means to identify and target support to consumers who are self-disconnecting. Smart infrastructure could be used to remotely credit winter fuel, cold weather or other support payments to a consumer's smart meter. It could also govern the rules around how remote disconnections are managed, if these are allowed. Health and safety risks such as gas leaks could be tackled using smart data, i.e. by identifying abnormal consumption patterns. This is a far from exhaustive list, and in none of these cases can we see a clear linkage back to the objectives you propose.

In addition, as discussed on a number of occasions, we are not yet satisfied with the arrangements for consumers to access their own data, stored on their meters. If the various means which are currently being discussed for this (e.g. a dongle) do not turn out to achieve the desired functions or coverage, there may be a need to

alter the SEC in order to provide other ways for consumers to access their data. Depending on the proposed alterations for the SEC, they may not be supported by the objectives as currently constituted.

ii) 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?

We would suggest, as we have done before, that a specific consumer-interest objective be added to the current objectives. We disagree that adding a more general consumer objective may 'risk opening up the scope of the code so widely that modifications could be raised and justified on almost any matter' very much more than the objective relating, for instance, to competition would do so. There are natural disincentives to prevent stakeholders from raising spurious modifications. Because the DCC arrangements are paid for by SEC signatories a proposal to alter it that had nothing to do with smart metering would be highly likely to experience an extremely rough ride through the industry assessment process and face certain rejection by the Authority – any prudent stakeholder would wish to avoid this.

This issue, such as it is, could be dealt with by writing the objective as follows: 'to protect and act in the interests of consumers as they relate to smart metering and smart energy'.

We understand the Government's concern that adding consumer interest into the objectives risks diluting the importance of consumer interests because they would have to be balanced against other objectives. However, we are not sure that the proposed approach deals with this risk. The legal status of the sentence at the end of the objectives which states that the SEC achieves its objectives if it balances them in the round and with due regard to consumers interests, is unclear. Is the sentence as legally binding as the objectives themselves, or simply a narrative or statement of intent?

In addition, it is not clear what 'due regard' for consumer interests would constitute, or rather, what would constitute 'due' regard (as opposed to undue, or insufficient, regard), and how it would be determined whether decisions had indeed been made with due regard or not.

Given this lack of clarity, we would prefer there to be a consumer objective within the SEC Relevant Objectives, possibly in addition to within a statement about how the SEC achieves these objectives. This would allow consumer-related modifications to be passed, ensure that consumer interest has a legally binding status, and avoid diluting the importance of consumer interest, if this is seen to be a problem. In addition, currently, there is a requirement at 23.10 for every Modification Report to include an assessment of the quantifiable impact of the proposal on greenhouse gas emissions. We would propose that Modification Reports should also include an assessment of any quantifiable, as well as any unquantifiable (e.g. effect on access for the vulnerable) impact on consumers. This would focus the 'due regard' for consumer interests.

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?

No

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

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

We would be in favour of the requirement to provide a financial security instrument such as a performance bond in addition to assurances of financial security itself.

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

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

No

ii) The need to incentivise the DCC to concentrate on achieving programme milestones at the beginning;

No, we think this is important

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

We would argue that a strong enough case has not so far been made for the DCC to be allowed to apply a margin over and above its internal/external costs. although we can see there could be some benefits to this arrangement

currently provides balancing and settlement services on a not-for-profit basis to a satisfactory standard. Therefore we have yet to be persuaded that we would not be able to provide DCC services on a not-for-profit basis as well.

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

We think this is a sensible idea so long as there is active monitoring to enable the incentives to be applied in a timely manner.

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

No

vi) Particular KPIs that could be applied to the DCC after it starts to deliver services.

No

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

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

No

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

No

iii) The scope of matters that the Business Handover Plan should provide for;

No

iv) 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;

No

v) The proposed approach to Intellectual Property Rights?

No

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

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?

We have a number of concerns relating to this approach, although we understand the difficulties associated with a fast-track process to appoint a temporary DCC.

We are seeking reassurance that a DCC which is having its licence revoked, particularly if this is due to underperformance, is financially incentivised to provide the highest standard of service possible while it continues under an intervention regime. Otherwise we would be concerned that, knowing that its licence is being revoked, it could have 'nothing to lose' through further underperformance, and that therefore many resources may have to go into ensuring the services are maintained.

Separately, in the context of the Government's current position we are unsure of the significance of the various notice periods attached to different sorts of revocation events, discussed in Part 2 of the Draft Licence. If an incumbent DCC is to continue to provide services, albeit under an intervention, in the case of its licence being revoked, it is not clear what difference it makes whether the notice of

revocation is 24 hours, seven days, or 30 days. Would the incumbent DCC continue in fact to hold the licence so that it can continue to provide services with intervention until a new one has been procured?

We would also suggest that whether or not the best course of action is to engage in a fast-track process may vary according to circumstance. We are aware that a fast-track process may make it more difficult to assess suitable candidates robustly, and that the short term of the contract could reduce competitive pressure. However, if the incumbent DCC is failing so badly as to require its licence to be revoked, it is possible that fast track procurement could still deliver a better intermediate service for the 18-month period while a full procurement process is run. In addition, we would wonder whether conducting a fast-track procurement process could be less costly than implementing interventions to keep the incumbent DCC running while the full-scale procurement takes place.

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?

No

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?

No, apart from the comments above.