

Smart Metering Implementation Programme

A Consultation on New Smart Energy Code Content and Related Licence Amendments – March 2015

DCC Response

28 th May 2015

1 Executive Summary

1.1 Introduction and background

1. DCC provides the shared smart metering communications infrastructure allowing energy suppliers, network operators and other authorised users to communicate with smart meters. The smart meter communication service will enable consumers to manage their energy usage with near to real-time information of their energy consumption. Consumers will benefit from energy savings and reduced emissions as a result of more accurate information, bringing an end to estimated billing.
2. The Smart Energy Code (SEC) is an industry code which came into force under the Licence. The SEC is a multiparty contract which sets out the terms for the provision of the DCC's smart meter communications service, and specifies other provisions to govern the end-to-end management of smart metering. The content in the SEC is being added to and amended in stages.

1.2 Consultation on SEC content (March 2015)

3. On 26th March 2015, DECC published a consultation on new SEC content and associated Licence amendments. It consults on the following areas:
 - Performance reporting – amendment to the cost definition to include SMKI related costs and align consultation to all relevant stakeholders
 - Scope of risk management obligations for users – amendment to include any system used to secure a connection or communication with DCC
 - Confidentiality – sets out proposals to include a new category of data, 'classified', to remove the category of 'controlled' data, and amend the meaning of 'confidential' data
 - Security Licence Condition covering DCC enrolled Smart Meters – sets out overarching obligations on suppliers to ensure that their smart metering systems are secure
 - Implementation Performance Regime – sets out amendments to the Smart Meter Communication Licence (referred to in this document as the "Licence") providing for additional reviews of Implementation Due Dates and Implementation Criteria and an amendment to the definition of Baseline Margin Implementation Total (BMIT).

1.3 DCC's response

4. DCC broadly agrees with the proposals set out in the consultation, subject to specific areas for further consideration which we set out in the main body of this response.

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2 DCC's response

2.1 Performance Reporting

Q1	Do you have any comments on the additions to the Reported List of Service Provider Performance Measures (Annex E)? Do you have any comments on the revised legal drafting in Section H13 and the proposal to incorporate Section H13 into the SEC towards the end of 2015?
A1	<p>DCC broadly agrees with the proposed additions to the Reported List of Service Provider Performance Measures. In particular, DCC welcomes the proposal to incorporate some of Section H13 into the SEC towards the end of 2015, which would enable DCC to consult under H13.3 on changes to the Service Provider Performance Measures.</p> <p>However, DCC may need to amend the Service Provider Performance Measures where there are issues around its feasibility. An example is the definition and calculation of the Communications Hubs performance measures in the Reported List of Service Provider Measures, where measure 1.3 in the CSP contracts is incorrect, as the calculation defined in the CSP contracts derives the fault rate, rather than the success rate. As DCC refines the Performance Measurement Methodology, future Service Performance Measures may also require amendment through this process.</p> <p>DCC does not consider it appropriate to incorporate the entire Section H13 at the end of 2015, since it would be inappropriate to include reporting obligations before the relevant services have commenced.</p>
Q2	Do you have any comments on the proposal for the Secretary of State to formally identify the initial Reported List of Service Provider Performance Measures?
A2	<p>DCC broadly agrees with the proposal for the Secretary of State to formally identify the initial Reported List of Service Provider Performance Measures.</p> <p>As outlined in A1 above, DCC considers that changes will be required in order to ensure that the Reported List of Service Provider Performance Measures and their calculations reflect the original intent.</p>

2.2 Scope of risk management obligations for Users

Q3	Do you agree with the proposal, and associated legal drafting, to extend the scope of User risk management obligations to include systems that are used to secure communications with the DCC?
A3	<p>DCC broadly agrees with the proposal to extend the scope of User risk management obligations to include systems that are used to secure communications with the DCC.</p> <p>DCC considers that this approach would mitigate some of the risk to DCC</p>

Systems and User Systems from threats outside of the scope of User Systems (such as malware) without impacting significantly on the scope of User Systems.

DCC notes that the proposed obligation would apply to Users only and therefore would not apply to Non-Gateway Suppliers. DCC suggests that a similar obligation is placed on Non-Gateway Suppliers in Section O of the SEC (Non-Gateway Communications), in order to mitigate the types of threats described above.

2.3 Confidentiality

Q4	Do you agree with our proposal to limit DCC's liabilities in all cases to £1 million when breaching confidentiality of sensitive information and to consequentially amend confidentiality markings? Please provide a rationale for your response.
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A4	<p>DCC broadly agrees with the proposal to limit DCC's liabilities, where practical to do so, when sensitive information is shared between SEC Parties and that information is improperly disclosed and causes harm to the owner of the information (i.e. a data breach). DCC also agrees with the principle of mirroring the unlimited liability on confidential data shared with SEC Parties that DCC would be responsible for under its contracts with its External Service Providers.</p>
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DCC would, however, like to highlight that Condition 10 (Protection of Confidential Information) of the Licence sets out obligations in relation to Confidential Information. DCC notes that the proposed SEC drafting may conflict with Condition 10 Part A of the Smart Meter Communication Licence where DCC is required to carefully manage its disclosure of confidential information. Any inclusion of classification markings within the SEC (for example the introduction of redefined classifications with 'confidential' as the highest sensitivity) is likely to impact the wording in the licence and most definitely impact the way in which DCC handle the information. DCC suggests that DECC considers any consequential changes to the licence as a result of the proposed changes to the SEC.

In the private sector in the UK, it is common for the term 'confidential' to be the highest marking, with another term (such as 'commercial in confidence') used as the lower marking. The proposal to mark information as 'classified' may result in confusion in relation to the use of the term 'confidential' as the lower of two markings. There is no known history of using the term 'classified' as being a higher marking. Currently, DCC uses the 'confidential' classification as the higher of three markings which are:

- DCC PUBLIC
- DCC CONTROLLED
- DCC CONFIDENTIAL

The proposal would result in a need to translate between DCC's existing classification schemes and that which would be published to industry. Currently DCC uses a three-stage classification marking scheme (listed above). If the changes proposed were to be included in the SEC, the

resulting impact would be for an ongoing translation between the DCC markings and the SEC markings, which may give rise to confusion. DCC considers that this would be an unnecessary regulatory burden which would not be an efficient use of time and resources. In addition, as most organisations would readily recognise 'confidential' as being a classification of information that requires very careful handling, the term 'classified' or other may lead to confusion as to how the data should be handled.

ISO/IEC 27001 (the formalised specification for an Information Security System) states that information classification is used in order to ensure that the information asset receives an appropriate level of protection. Different information would receive appropriate levels of protection with respect to confidentiality, integrity or availability. For example, some organisations may require confidential information to only be sent encrypted or double wrapped. DECC's proposal does not consider the differences to the way in which information is stored, transferred or processed as a result of the different markings. Financial liability is one of many outcomes of a data breach; this appears to be the sole focus of this proposal. DCC is not proposing to introduce any form of information handling rules into the code but it considers that it is better for data to be protected in the first instance rather than after a breach has occurred.

It is unclear as to how pre-existing documents that have been marked 'confidential' would be classified if the markings were to change. In most cases these would attract unlimited liability on DCC from the External Service Providers and are already in the possession of other Parties on this basis. It would be impossible to retrospectively change markings to ensure unlimited liability where DCC is under a contractual obligation.

DCC alternative proposal

DCC proposes that 'confidential' is preserved as the highest classification marking with the addition of an informative caveat such as:

- 'Confidential – unlimited liability' instead of the proposed 'classified'
- 'Confidential – limited liability' instead of the proposed 'confidential'.

'Confidential' is a tried and tested, and universally accepted, classification of a type of data that requires very careful handling as it may cause damage or harm if it is disclosed inappropriately.

DCC proposes that where the marking 'confidential' is used (i.e. with no reference to liability) it should be assumed that this is equivalent to 'confidential – unlimited liability'. This would also address the issue of how to deal with pre-existing documents classified as 'confidential' (where DCC is under a contractual obligation with an External Service Provider).

DCC considers that these proposed markings would allow the document user to distinguish between the two types of document in a simpler and more intuitive way. The individual would then have the knowledge available in order to choose whether or not to open and/or save the document. The user, on receipt of the confidential information, could decide whether to use the same system of protection for both or adapt their procedures. The user would in any event understand that confidential information requires very careful handling whatever the liability, limited or otherwise.

Q5	Do you agree that Parties should nominate to the DCC individuals eligible to receive sensitive information marked as 'classified' to be able to receive such information? Please provide a rationale for your response.
A5	<p>DCC broadly agrees with the proposal for Parties to nominate individuals eligible to receive sensitive information. DCC would like to make the following observations:</p> <ul style="list-style-type: none"> ▪ The proposal appears to be predicated on the fact that DCC would 'send' information to Parties who may not wish to receive it due to the associated liabilities. If this is the case then DCC would suggest an alternative information distribution process which invites parties to come forward and collect the information (opt-in). For example Users could be provided with specific log-in details for nominated Parties to access DCC's SharePoint site which would hold most of this type of information ▪ The proposal may give rise to an issue of precedence within the SEC. For example, there are areas of the SEC where DCC has an obligation to provide information to Parties, for example under Section E2 of the SEC (Provision of Data). DCC assumes that any such opt-out would take precedence over those obligations, and therefore considers that this should be set out explicitly in Section A2.5 of the SEC.

2.4 Other SEC Amendments

Q6	Do you have any comments on the proposed amendments to the drafting in Section M8.6 which reinstates the ability of the Panel to remove a Defaulting Party's right to receive core communication services or local command services, but subject to the consent of the Authority where that Part is acting in the capacity of registered supplier or registered network operator?
A6	DCC agrees with this proposal.

2.5 Security Licence Condition Covering DCC Enrolled Smart Meters

Q7	In relation to the proposed licence condition requiring suppliers to take all reasonable steps to secure systems used to communicate with DCC enrolled meters, do you agree with the proposed approach and legal drafting?
A7	<p>DCC broadly agrees with the proposal to extend the scope of the supply licences to include 'Supplier' and 'Enrolled Smart Metering Systems'.</p> <p>DCC does, however, note that the obligation in 46A.1 remains ambiguous and does not refer to any standard by which this will be measured or indeed refer to a risk-based approach. DCC, therefore, suggests the inclusion of a reference to either:</p> <ul style="list-style-type: none"> ▪ ISO27001 (the formalised specification for an Information Security System)

on best practice for the implementation of security controls; and/or

- ISO27005 which is a formalised standard which provides guidelines for information security risk management.

2.6 Implementation Performance Regime

Q8	Do you have any comments on the scope for further amendments to each implementation Due Date and Implementation Milestone Criteria?
A8	<p>DCC agrees with the proposal to amend Part F of Schedule 3 of the DCC Licence to provide scope for potential further reviews of the Implementation Milestone due dates and criteria. DCC considers that this is a sensible approach to ensure that there is flexibility to address a potential situation where incentives are no longer appropriate. DCC considers it important that performance incentives continue to be challenging but achievable.</p> <p>Under the current LC3.9 of Part F in Schedule 3 of the DCC Licence, DCC must undertake a general review of all the IM due dates and criteria. DCC has recently undertaken a review, and is consulting on its findings. DCC anticipates that the consultation will have concluded and changes would be in effect by the time the Authority reaches its final price control determination for Regulatory Year 2014/15 – in which it will determine whether DCC has achieved the relevant Implementation Milestones for that Regulatory Year.</p>
Q9	Do you have any comments on the amendments to the definition of 'Baseline Margin Implementation Total'?
A9	DCC agrees with the proposal to remove any potential ambiguity in the Licence and considers that this is in line with the principles of the Implementation Performance Regime agreed through the Licence application process.