



The Authority (Ofgem), the SEC Panel, SEC Parties and other interested parties

23 November 2016

Dear Colleague,

INITIAL RESPONSE TO THE SEPTEMBER 2016 SMART ENERGY CODE AND LICENCE AMENDMENTS CONSULTATION (CHANGES TO SEC SECTION N: SMETS1 METERS)

1. The government published a consultation on Smart Energy Code (SEC) and Licence Amendments on 22 September 2016.¹ This consultation covered a variety of proposed modifications to the SEC and supply and DCC licences. This letter sets out our response and conclusions on question 12 regarding proposed changes to Section N of the SEC (SMETS1 meters).
2. By way of background, a number of energy suppliers have been installing SMETS1 meters using their own communications providers to trial, test and optimise their approaches prior to the main phase of the roll-out. While this has enabled consumers to take early control of their energy use and receive accurate bills, SMETS1 meters installed by one supplier are not always compatible with another supplier's system. Consumers with these meters can therefore lose functionality when they switch supplier, which the losing and gaining supplier have an obligation to warn them about.
3. The government is taking action on interoperability. We established the Data and Communications Company (DCC) to provide a single, secure communications infrastructure for smart meters (SMETS2 meters and beyond) to be installed in the future. For legacy SMETS1 meters, our objective is also that they are made interoperable, which is why we have required the DCC to prepare a report on options for enrolling them into its single communications infrastructure. The DCC published a consultation on a draft of this report on 11 November 2016,² and we would encourage interested parties to provide their views on the options proposed. We also encourage industry to develop interim solutions. It is unfortunate that no such solutions are currently in operation, but we note developments in this space.
4. The government consultation referred to in paragraph 1 above proposed changes to the SEC to support our future decision on enrolment of SMETS1 meters into the DCC. The consultation proposed drafting to:
 - enable government to direct the DCC to undertake further analysis, should it be necessary, on SMETS1 enrolment; and

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/554627/16_09_22_September_2016_SEC_Consultation.pdf

² <https://www.smartdcc.co.uk/more/news/consultation-on-initial-enrolment-project-feasibility-report/>



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- require energy suppliers to comply with any reasonable requests for information made by the DCC to support its analysis, should they wish their meters to remain within the scope of such analysis.
5. The SEC legal text we consulted on, revised as a result of comments made (see below), will be laid in Parliament shortly and, subject to successful completion of the Parliamentary process, should come into legal effect in January 2017.
 6. The government response on the other matters contained within the September 2016 SEC and Licence consultation will be published separately, in a response document planned for the turn of the year.

Yours faithfully,

Duncan Stone

Head of Delivery

Smart Metering Implementation Programme

(an official of the Department for Business, Energy & Industrial Strategy authorised to act on behalf of the Secretary of State)



ANNEX A – INITIAL RESPONSE AND CONCLUSIONS TO THE SEPTEMBER 2016 SMART ENERGY CODE AND LICENCE AMENDMENTS CONSULTATION REGARDING CHANGES TO SECTION N (SMETS1 METERS)

Summary of issue under consideration

1. In May 2015 we instructed DCC to commence work on the Initial Enrolment and Adoption Feasibility Report (IEPFR) in line with Section N of the SEC. The IEPFR will assess the feasibility and cost of enrolling SMETS1 meters into the DCC. The DCC issued a consultation on a draft version of the report on 11 November 2016.³ The DCC is due to submit its final report to government by the end of Q1 2017.
2. The proposed amendment to Section N of the SEC set out in the September 2016 SEC consultation would enable the government to direct the DCC to undertake further analysis on SMETS1 enrolment, should it be necessary, and to set out the process and timescales for doing so (including further consultation by the DCC where appropriate). This will provide flexibility, if required, to better inform a decision by government on the provision of a SMETS1 enrolment service by the DCC.
3. The proposed amendment would also require Supplier Parties to comply with any reasonable requests for information made by the DCC to support its analysis, should they wish their meters to remain within the scope of such analysis. While Suppliers would not be obliged to provide this information to the DCC, non-provision of the information would result in the exclusion of that Supplier's SMETS1 meters from the DCC's further analysis, unless government directs otherwise.

Consultation Question

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| 12. | Do you agree with the proposed changes and legal drafting in relation to Section N? Please provide any rationale. |
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Summary of responses

4. Nineteen responses were received from a variety of parties (see **Annex B**) and fourteen respondents replied to this question. The respondents broadly agreed with the part of the proposed amendment to Section N which enables the government to direct the DCC to undertake further analysis on developing a SMETS1 enrolment capability.
5. However there were mixed views from Suppliers over whether they supported the part of the proposed amendment that requires a Supplier to comply with reasonable requests for

³ <https://www.smartdccc.co.uk/more/news/consultation-on-initial-enrolment-project-feasibility-report/>



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information made by the DCC. Eight respondents agreed with it. Particular comments included:

- One respondent noted the importance to the DCC of having all of the information it needs to assess the feasibility of enrolling each meter cohort;
 - Some respondents noted that they would cooperate with requests from the DCC for information;
 - Some respondents sought clarification that the drafting related to any new information requests made by the DCC, which it does. The drafting does not introduce a new obligation to comply with information requests that the DCC has made previously. However it should be noted that under these new provisions, the DCC could repeat earlier information requests that have been made, where information has not been forthcoming; and
 - One respondent expressed its concern over being asked to provide to the DCC contract information that was commercially sensitive, and who the DCC might share the information with.
6. Five respondents did not support this part of the proposed drafting, in particular any requirement to provide information to the DCC on their SMETS1 communications arrangements. Reasons included:
- A few respondents did not think that they would be able to provide the additional information that the DCC would be seeking. For example, some Suppliers have confidentiality clauses in the contracts governing their existing arrangements for SMETS1 communications, which means that they would be unable to share information on them with the DCC without the consent of the other party. Others stated that they are not party to the relevant contracts; they contract with a Smart Meter System Operator (SMSO) who contracts separately with a SMETS1 communications service provider (CSP).
 - One respondent felt that the drafting should go further and that Suppliers should be mandated to provide information when requested. They noted that without this they would be unable to provide further communications information due to confidentiality provisions in their contracts with SMETS1 CSPs.
 - Another respondent considered that a clear explanation of why the DCC needed access to a Supplier's existing commercial arrangements for SMETS1 communications services had not been provided.
 - Some respondents flagged concerns with the drafting that proposed ruling a Supplier's meters out of scope of the DCC analysis where information was not provided to the DCC. One of these respondents was concerned that this could create market distortion and add costs. Additionally a respondent was concerned that where it had gained a SMETS1 meter and was not the installing Supplier, it might not be party to the relevant contractual information that the DCC is seeking.
 - Alternative suggestions included:
 - bilateral meetings with service providers to request the required information;



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- asking Suppliers to confirm the terms on which communications services could be adopted; and
 - for the DCC to contract anew for communications services rather than adopting the existing arrangements (thus obviating the need to assess the existing communications arrangements for the feasibility of adoption).
7. In addition, there were a number of comments relating to the SMETS1 enrolment project more generally, or any decisions to be taken by the government. These comments have been noted, but are not relevant to the specific drafting changes that are being made.

Government response

8. The respondents broadly agreed with the part of the proposed amendment to the SEC that will enable government to direct the DCC to undertake further analysis on SMETS1 enrolment. These proposed amendments will be made.
9. In relation to stakeholder views regarding the part of the proposed amendment which could result in a Supplier Party being required to provide information to the DCC on its SMETS1 communications arrangements:
- We recognise that alternative options exist for the DCC to contract for SMETS1 communications services (for example contracting anew). However, we are specifically asking the DCC to assess the feasibility of the option of adopting existing arrangements. This is required to support a future decision on whether this course of action should be pursued. Earlier government response documents on SMETS1 enrolment and adoption have set out as a preferred outcome the adoption of contracts by the DCC, subject to analysis of the terms within those contracts. To assess the feasibility of adoption however, the DCC needs to review actual contract terms, rather than relying on information that is provided to it verbally. Those terms need to be requested from a Supplier, as the Supplier is the party that the DCC has the contractual relationship with under the SEC.
 - The timely provision to the DCC of terms governing SMETS1 communications arrangements is important to enable it to finalise its analysis with respect to adoption, and therefore enable the delivery of any SMETS1 enrolment service as early as possible. If this information isn't made available until later in the process (for example at the point at which the DCC is seeking to adopt contractual arrangements for SMETS1 communication services), then this could create delays if contractual issues are subsequently revealed.
 - We recognise that there may be cases where Suppliers are unable to provide the requested information without agreement of their contractual counterparty. We expect Suppliers to seek to obtain such contractual consent.
 - In circumstances where the Supplier is unable to provide contractual information because it does not have in place a contract for communications arrangements for the meter in question, then should the DCC request such information, the Supplier would need to inform the DCC of their position.



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- Where contractual restrictions do not prevent a Supplier from sharing information with the DCC, we would expect the Supplier to provide the requested information to the DCC, subject to the information request being reasonable.
 - It should be noted that the DCC is being asked to assess the feasibility of adopting the arrangements for SMETS1 communications that a Supplier has in place. Therefore the relevant information is the arrangements for SMETS1 communications services that a Supplier has contracted for. Where a Supplier has contracted with an SMSO for data and communications, and that SMSO has separately sub-contracted for communications, the DCC is being asked to assess the feasibility of adopting the arrangements in the Supplier's contract with the SMSO (rather than in the SMSO's sub-contract). Equally where a Supplier has contracted for a bundled service of data and communications, it is only those arrangements in the contract relating to communications that the DCC is required to assess for the feasibility of adoption. In order for the DCC to assess the feasibility of adoption therefore, there is no requirement for a Supplier to provide the DCC with access to contracts that the Supplier is not a party to, nor is there a requirement for a Supplier to provide the DCC with access to terms that do not relate to communications services.
10. In response to concerns about the provision of commercially sensitive information to the DCC, the drafting already requires that the DCC should only request information that it considers reasonably necessary for it to perform the analysis that it has been directed to undertake. Section M4 of the SEC already sets out provisions governing the DCC's use of and onward provision to its contractors of a Party's Confidential Information. We believe that these provisions deliver the necessary protections, however for clarity we have amended the legal drafting to cross-refer to the provision in M4.
11. In response to concerns relating to a Supplier's meters being excluded from the scope of the DCC analysis where the information requested by the DCC has not been provided by that Supplier Party, we have decided to amend our approach. The revised drafting now requires a Supplier Party to take all reasonable steps to comply with any information requests made by the DCC. This recognises that there may be circumstances in which the Supplier could be prevented from doing this. Should the Supplier fail to provide the DCC with the requested information, and should the DCC consider that without this information, it cannot complete its analysis with respect to that Supplier's meters, then the DCC may apply to government for a determination on whether that Supplier's meters should be ruled out of scope. Therefore it is no longer the case that the default position is that the Supplier's meters would be excluded from the scope of the DCC analysis. As the revised obligation on the Supplier is to take all reasonable steps to comply with DCC information requests made in accordance with the SEC provisions, and as any decision to rule a Supplier's meters out of scope will be taken by government, the dispute provisions set out in N4A.8 of the proposed drafting (relating to whether the information request is reasonable etc.) are no longer required.
12. It is important that a mechanism exists for the DCC to request, and for a Supplier to be required to provide, the DCC with the information necessary to enable the DCC to further



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develop its SMETS1 enrolment proposals as soon as possible. In particular, the timely provision of information relating to a Supplier's contractual terms for communications arrangements is important in order for DCC to assess the feasibility of adopting those contractual terms, in accordance with previously established SMETS1 enrolment and adoption policy. The government wishes to see as many SMETS1 meters as possible included within the scope of any DCC enrolment project, in order to ensure that the maximum benefits of enrolling SMETS1 meters with the DCC are capable of being realised.

13. The government therefore intends to incorporate into the SEC the proposed changes to Section N subject to the amendments set out below. The drafting that the government intends to lay in Parliament is included in **Annex C**, and a version showing changes to the drafting that was consulted upon is set out in **Annex D**. We encourage Suppliers to provide any information that the DCC requests that is reasonably required to support the DCC analysis where possible and Supplier Parties should consider how they can assist the DCC in this regard, in order to drive forward timely development and delivery of a DCC SMETS1 service.

Final legal text affected

SEC reference	Content
Section N	<p>N4A.5 has been amended such that a Supplier has an obligation to take all reasonable steps to comply with any DCC information request. Should the Supplier fail to comply and should the DCC consider that it cannot complete its analysis/evaluation in respect of that Supplier's meters without the information, then the DCC may apply to government to determine whether that Supplier's meters should be ruled out of scope of the DCC analysis/evaluation. A consequential change has also been made to N4A.4.</p> <p>N4A.7 has been renumbered as N4A.8 and amended to cross refer to the provisions in M4 of the SEC that govern DCC's use of a Party's Confidential Information and disclosure of it to other persons such as its contractors</p> <p>N4A.8 has been deleted as these dispute provisions are no longer required.</p> <p>N5.1 A consequential amendment has been made here to recognise that the Initial Enrolment Code Amendments may need to reflect options set out in any further analysis/evaluation undertaken by the DCC.</p>



ANNEX B: CONSULTATION RESPONSES

1. The consultation launched on 22 September 2016 and closed on 17 October 2016. The consultation document is available on the BEIS section of the GOV.UK website.⁴ Respondents were invited to submit their comments to smartmetering@decc.gsi.gov.uk.
2. Nineteen responses were received to the consultation document as follows:

British Gas	Good Energy	Scottish Power
Blewberry Sustainable	Information Commissioners Office (ICO)	SEC Panel
Citizens Advice	Macquarie Energy Leasing	Smart Meter Assets
DCC	Npower	SSE
Economy Energy	Octopus Energy	Utilita Energy
EDF Energy	Ofgem	Eon
Ovo Energy		

⁴ <https://www.gov.uk/government/consultations/consultation-on-smart-energy-code-and-licence-amendments-september-2016>



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ANNEX C: FINAL LEGAL DRAFTING CHANGES TO SECTION N

Attached separately

ANNEX D: CHANGES MADE TO CONSULTATION VERSION OF PROPOSED LEGAL TEXT

Attached separately