



SCOTTISHPOWER

Smart Metering Implementation Programme -
Regulation Team
Department of Energy and Climate Change
3 Whitehall Place
London
SW1A 2AW

6 July 2012

Dear Sir/Madam,

SMART METERING - SMART ENERGY CODE

We are pleased to respond to your consultation on proposals for a Smart Energy Code (SEC).

We are in broad agreement with the proposals set out in the consultation document. Our main points are as follows:

- We do not support the "pay now dispute later" proposals, which could leave users facing unlimited costs. (See our response to Question 25.)
- We believe the DCC should be incentivised to minimise bad debt exposure, and suggest that an appropriate credit management policy should be adopted to minimise such risks, perhaps under the supervision of the SEC Panel (see our responses to Questions 8 and 26).
- We do not think the DCC should be permitted to recharge its internal costs to market participants ahead of go-live, since this would reduce the incentive on the DCC to incur costs efficiently and avoid delay (see our response to Question 29).

Our responses to the consultation questions are in Annex 1 attached.

Should you wish to discuss any aspect of our response or the matters raised, please do not hesitate to contact me.

Yours faithfully,

**SMART METERING – SMART ENERGY CODE
SCOTTISHPOWER RESPONSE**

Chapter 3 - SEC Party categories

Question 1: Please provide any comments that you have on the classification of party categories under the SEC.

We are in broad agreement with the categorisation of SEC Parties proposed in the consultation document.

Chapter 4 - Involvement of the meter services community

Question 2: Are the requirements of both meter asset providers and meter operators for access to smart metering systems adequately captured in this consultation paper?

Yes, we think the requirements of meter asset providers and meter operators for access to smart metering systems are adequately captured.

If not, please provide additional details of the requirements and why they are required.

We have not identified any further requirements.

Question 3: Do you support the Government's preferred solution to implement a simple variant of Option B whereby the registration of a meter operator in the existing electricity and gas registration systems would be deemed to constitute a nomination by the supplier of that meter operator to act as its agent to perform a specific set of commands?

Yes, we support Option B. It would seem reasonable to regard registration of a meter operator as a *de facto* appointment of an agent for the purposes of the SEC.

However, we consider it likely that the meter operator's role will change significantly through the advent of smart metering, perhaps being ultimately restricted to the provision of field services. At the same time, we consider it likely that suppliers will wish to assume more direct involvement in managing their metering asset portfolios through their interface with the DCC. We do not, therefore, think it can be assumed that meter operators will necessarily be engaged in tasks such as diagnostics, maintenance or responding to alarms/alerts.

The automatic nomination as agent should therefore apply to a narrow set of core functions. Any broader nomination should be at the supplier's discretion.

Question 4: Should meter operators be given limited participation rights in SEC governance under Options B or C, and if so what rights would be appropriate?

We believe that Option B is the most appropriate model. We do not think it is necessary or desirable for meter operators to have a role in SEC governance as they are supplier agents. It is unclear how as an agent of suppliers a meter operator could advance positions in the SEC governance independently from those of their principal.

Question 5: Would you support the tracking of assets being included within the future system requirements for the new registration systems, which are proposed to be provided by the DCC?

Yes. We agree that meter asset providers should be able to identify which suppliers are using their assets for the purposes of cost recovery. We believe it would be most cost effective to establish this capability at the point at which registration services become a central function of the DCC.

Chapter 5 - Accession to the SEC

Question 6: Do you agree with the process proposed for accession and the accession time limit?

Yes, we are in broad agreement with the proposed accession process. We also agree that the process should be managed by the SEC code administrator and that the SEC Panel should be responsible for approving (subject to appeal to the Authority) applications for accession to the code.

Counter Signatory

We believe that the DCC should be the counter signatory given that it will be the only party contracting to provide the services.

Accession Time Limit

We think the Accession Time Limit will be more difficult to manage than may at first appear. For example, an unlicensed entity may accede on the basis that it will be an 'Other User', taking a relevant service once within the time limit. It may be possible, under the proposed arrangements, for the entity to then continue as a Party without ever taking any further services, yet being fully engaged in the governance of the SEC. We would therefore propose that consideration is given to a requirement for non-licensed Parties to continue actively participating as a DCC user.

Question 7: Do you agree that once acceded, any SEC Party should be able to participate in the governance of the SEC prior to undertaking any further entry processes?

We would propose that parties complete the accession process before being allowed to exercise any rights in the Code's governance. In the event that they fail to complete the entry into DCC services after 3 months of accession or go-live, whichever is later, their rights to participate should be suspended.

Question 8: Do you have any views on the company, legal and financial information that should be provided as part of the SEC accession process?

In our view, the company and legal and financial information, to be provided as part of the SEC accession process, need not extend beyond:

- name and address;
- details of incorporation (to include company registration number and any VAT registration number); and
- proof that the application comes from an official signatory (a director) of the company; and

- evidence that the company is a going concern.

However, we think that consideration should also be given to empowering the SEC Panel to ask for additional financial information in support of a credit management policy designed to reduce the risk of bad debt. For example, the SEC Panel might set a credit limit for each SEC Party, such that once that credit limit has been breached, steps can be taken to reduce further exposure (such as instructing the DCC to refuse orders for new services). The credit limit for each party would need to be based on objective criteria, and the SEC Panel may wish to ask for financial accounts, reports from a credit checking agency or similar financial data to enable an objective decision to be made. Where it is not possible to establish sufficient creditworthiness from the financial information provided, there could be a requirement for parties to provide letters of credit or to deposit money in escrow.

Chapter 6 - Preparing to use the DCC

Question 9: Do you agree that Government should not mandate a specific solution for the DCC User Gateway and that Data Service Provider (DSP) bidders should be invited to propose the solution which they consider to be the most effective (such proposals could include the option of extending an existing industry network)?

Yes. We agree that a specific DCC User Gateway solution should not be mandated by the Government. Instead, final selection should be based on the best available solution which meets the medium and long-term objectives of smart metering operation across Great Britain.

Please also see our response to Question 10.

Question 10: Do you have any other comments on the Government's proposals for the DCC User Gateway?

We would anticipate that the selection criteria, against which DSP bidders and their proposed user gateway solutions will be measured, would include the following elements:

- robustness;
- stability of underpinning technologies;
- timescales for delivery;
- performance;
- cost to serve;
- scalability / flexibility; and
- experience and track record of bidder in delivering similar solutions.

Question 11: Do you agree with the proposed DCC user entry processes?

We broadly support the proposed approach to the user entry processes, as outlined in the consultation document. However, we believe that considerable development work is still required to develop these basic principles into a detailed process that is fit for purpose.

Security

We recognise that robust security measures will be of paramount importance. However, further clarification is required as to whether parties will be required to be certified or demonstrate compliance to standards such as ISO 27001.

DCC Interfaces

Approval of individual user interfaces will require a rigorous testing and accreditation regime which is yet to be formalised

New Business Processes / Data Items

Where new business processes are developed for inclusion in the SEC, we would expect these to be subject to a level of market readiness testing which needs to be developed further.

Chapter 7 - Enrolling, withdrawing and replacing smart metering systems

Question 12: Do you agree with the proposed rights and obligations relating to smart metering system enrolment set out in this chapter? Please provide your views.

We are in broad agreement with the proposed enrolment rights and obligations. In addition, we would propose that the rights/obligations of meter manufacturers and SMSOs should also be considered

Paragraph 143 of the consultation document concludes *'The Government considers it sensible that this express right for the DCC is set out in the SEC'* We assume that the right that will be set out in the SEC is not the right to interrogate enrolled smart metering systems, but rather the right to insist, as part of the enrolment process that suppliers grant the DCC such a contractual right. We would suggest that suppliers grant such rights before they are entitled to receive DCC services, and that this is achieved through supplier's commercial arrangements with any meter asset provider.

Question 13: Do you agree that the SEC should require, as a condition of enrolment, that the supplier grants the right to the DCC to access its smart metering system for specified purposes?

Yes. We agree with the proposed condition of SEC enrolment.

Question 14: Do you agree with the proposed rights and obligations relating to smart metering system withdrawal and replacement of devices?

While we are in broad agreement with the principles relating to the rights and obligations for metering system withdrawal or replacement, we believe the following withdrawal scenarios should also be considered:

- smart metering system replacement; and
- withdrawal of a smart metering system(s) from a DCC elective service

Swap out of SMS components

Although we support the principle that the SEC should incorporate assurance arrangements aimed at ensuring component interchangeability, we believe the right to swap out SMS components will either be based on the supplier's ownership of the relevant asset, or on the contractual relationship between the supplier and the asset owner. In either case we believe the actual swap out of components to be beyond the vires of the SEC.

Chapter 8 - Core and elective communication services

Question 15: Do you agree with the three different types of eligibility to receive core communication services that have been proposed?

Yes, we are in broad agreement with the categories proposed in the consultation. We would recommend that further consideration is given to the eligibility of 'nominated agents', such as MOPs and MAPs as highlighted in our response to Question 3.

Question 16: Are you aware of situations where there are two or more importing suppliers in relation to a single smart metering system and if so, where do such situations exist, how many exist and what metering arrangements have been made?

Although reducing in number, 'Heat with Rent' tariffs still feature in some parts of the country. Such schemes typically involve social housing landlords providing electric heating as a bundled service. Commonly, a switched register in the electricity meter will be assigned an MPAN that is distinct from that assigned to the un-switched register. This allows the MPANs to be independently traded by both landlord and tenant, creating the potential for a scenario where two suppliers simultaneously provide energy through a single meter.

Unfortunately, we have no figures to substantiate the number of such metering arrangements.

Question 17: Do you agree that amendments to the set of core communication services should be subject to the standard SEC modification process?

Yes. We agree with this approach.

Question 18: Do you agree that SEC Parties should be able to request elective communication services from DCC on either a bilateral or multilateral basis?

We broadly agree that elective services should be available via bilateral or multi-lateral agreements. However, we do not think it appropriate for the DCC to enter into such multi-lateral agreements without first ascertaining if there is sufficient demand amongst the general DCC user community for the service to be added to the list of Core Services. However, confidentiality around the elective services being provided will need to be considered.

Question 19: Do you agree that the following SEC requirements associated with the provision of core communication services should also apply to elective service provision: DCC user entry processes, technical security requirements, data privacy requirements, financial security requirements and dispute arrangements?

Yes, these requirements should also apply to elective services, subject to the following:

- The entry process testing performed for elective services should be specific to the services being taken by the market participant and the specific risks that these services present to the smart metering infrastructure.
- The amount of financial security to be provided should increase pro rata to the value of the elective services being taken.

Question 20: Do you agree that the SEC should set out mandatory procedures for the provision of an offer of terms for elective communication services by the DCC and with the mandatory procedures proposed? Do you consider that any additional procedures should apply? What do you consider are the appropriate timescales within which an offer of terms should remain open?

Yes. We agree that procedural steps for the provision of an offer for elective services should be set out in the SEC. However, we are unable to comment further on the mandatory procedures until such times as these procedures have been published by the Government.

We believe six months would be an appropriate timescale for an offer of terms to remain open, or earlier if there is any material change in circumstances (e.g. to the UK corporation tax arrangements).

Some consideration needs to be given to cases where an elective service for one user might preclude new core or elective services being made available to others.

Question 21: Do you agree that commercially sensitive terms and conditions associated with elective service provision, which might include the type of communication service that is being provided, performance standards associated with the provision of that service and the price associated with that service, should be confidential between the DCC and the party or parties receiving the service unless the party or parties receiving the service consent or unless requested by the Authority pursuant to the DCC Licence?

Yes. We agree that appropriate terms and conditions associated with elective services should remain confidential between the DCC and the receiving party / parties unless otherwise agreed, although consideration should be given as to a time limit for confidentiality (sufficient to encourage innovation but short enough to allow the DCC functionality to be widely understood). Any confidential functions would need to be disclosed when re-tendering the DCC role as competing new bidders would need to know what the specification was.

There may also need to be confidentiality exceptions where such an elective service precludes services being offered to other users as it may not be easy to resolve the conflict without the participants knowing at some level what is being talked about.

Question 22: Do you agree that the SEC should contain provisions requiring that the DCC notifies SEC Parties of the timing of the implementation of changes to its systems?

Yes, we agree that the DCC should notify SEC Parties of system changes and the associated implementation timescales.

Question 23: Do you agree that the DCC should only be required to offer terms for elective communication services from a specified date, and if so, what do you consider that date should be?

We agree that DCC should be required to offer terms for elective communication services from a specified date. We do not have a view at present on what that date should be. We

would suggest that it may be appropriate for the SEC Panel to decide on the date in consultation with SEC parties.

Chapter 9 - DCC charges

Question 24: Do you think that the proposed approach for DCC charging is reasonable?

DCC establishment

We would reiterate our previous concerns at the suggestion (at paragraph 204) that the DCC will be permitted to recharge its internal costs to market participants ahead of go-live. While we agree that costs directly associated with SEC administration should be recoverable, we do not believe that the costs directly related to establishing the DCC should be recoverable ahead of DCC go-live, since this would reduce the incentive on DCC to incur costs efficiently and avoid delay. We would, therefore, strongly urge the Government to reconsider its position on this.

We would expect that during the DCC Licence award process, prospective applicants will be required to demonstrate their financial stability. This would suggest that the successful applicant will be in a reasonable position to make some up-front investment in the enterprise.

Pricing

We continue to support the principle of 'postage-stamp' pricing with regard to the core service provision to domestic premises (paragraph 212). We also recognise that, as competition already exists for such services in the non-domestic arena, it would not be appropriate to offer uniform pricing to this sector of the market.

We also agree with the principle of combining fixed and volumetric elements in the core service charge (as outlined in paragraph 213), as this will both reflect usage and reduce the need for future recovery through the price control mechanism.

Market Share

The condoc suggests (paragraph 217) that the 'pots' would be *"divided between the parties based on the number of smart metering systems enrolled in the DCC previously plus those forecast to be enrolled in the DCC ... (that is related to market share)"*. We agree with this definition of market share with the proviso that the number of meters forecast to be enrolled in the DCC should be based on the supplier's rollout plan for the relevant period. If, by contrast, market share were defined in terms of total number of meters (smart and dumb), this would unfairly advantage suppliers with more aggressive deployment plans, or suppliers who had been able to agree a higher volume of adoptions than their competitors. Therefore, we think it is appropriate that supplier costs are allocated in direct proportion to the number of metering systems each has either enrolled with the DCC in the past or has identified in its rollout plan for the relevant period.

Forecasting

Setting the price for a year ahead will enable the DCC to promote greater certainty in the market. However, following the completion of roll out we would propose that setting of prices is extended to five years ahead.

A methodology which establishes each participant's share of the costs according to a forecast position should also take account of subsequent shifts in market shares, as this could materially impact a supplier with substantial net customer losses in a given period. To minimise such risks, final charges should be based on the measured market share at the midpoint of the relevant charging period – or as close as possible to that point.

Compensation for breach of SLAs

We note that Paragraph 228 states: *'In any event, it is proposed that a user's remedy in the event of DCC service failure will be a reduction in charges, and not compensation for economic loss that a user may suffer as a result of such failure.'*

Although not strictly analogous, we also note Ofcom's review of the SLAs and SLGs imposed on 'Openreach' in 2008¹, which proposed the following principles for compensation:

- when agreed service levels are not met, make provision for compensation to be made based on a pre-estimate of an average CP's loss;
- ensure that CPs are entitled to make a claim for additional loss;
- pay compensation on a per event basis;
- ensure that there are no caps on compensation; and
- ensure that compensation payments are made proactively.

The principles of Liquidated Damages (LDs), which have been based on a Genuine Pre-estimate of Loss (GPoL), are a long standing feature of the energy industry. LDs would offer a direct performance incentive on the DCC that is more transparent to users and more effective than a simple reduction in charges. Of course, it may be that the magnitude of the loss is too small to justify such an approach, or that the cost of managing the compensation process would outweigh the benefits. Nevertheless, it would seem sensible to retain the option for LDs in cases where such an approach can be shown to be appropriate.

Ultimately, the most important thing is to establish a compensatory mechanism that incentivises DCC performance. We would generally prefer more commercial routes to compensation, such as reduced charges in the future – we certainly would not expect to pay for a service we did not receive in the past. However, the monopoly nature of the DCC service also demands that some backstop be provided, to ensure that it cannot be more cost effective for the DCC to simply accept lost revenues than address problems, as customers with smart meters expect the associated benefits to be consistently delivered.

Emergency Funding

While we would agree with the principle of emergency funding, we would propose that it be solely at the discretion of the Authority. We recognise that this was probably the intent of the drafting in the consultation document; the relevant text (paragraph 229) makes it appear to be at the discretion of the DCC or the Authority.

Question 25: Do you consider that the "pay now dispute later" approach is consistent with the envisaged DCC regime? If you disagree please set out the reasons for your preferred approach.

We do not support the "pay now dispute later" proposals, which could leave users facing unlimited costs. A possible alternative might be to apply a cap, whereby a party would be permitted to withhold payment in lieu of the resolution of a dispute breaching a predetermined materiality threshold. However, the crux of this issue is likely to be the efficiency of the disputes process itself, as it is essential that any such disputes are resolved quickly.

¹ <http://nirakeyadens.ofcom.gov.uk/bodies/consultations/07/statement/statement.pdf> page 7.

Question 26: Do you accept that bad debt should be socialised explicitly within the current charging period across all DCC service users? If you disagree please set out the reasons for your preferred approach.

It will be vital for DCC to put in place an effective credit management regime that serves to minimise the DCC and its users' exposure to unpaid debts of defaulting parties. (Please also see our response to Question 8). Although it may be appropriate to socialise bad debt costs, we also believe that DCC should be incentivised to minimise bad debt and should therefore share some of the risk.

Chapter 12 - The SEC Panel

Question 27: Do you agree with the proposed functions, powers and objectives of the SEC Panel, as set out in Boxes 12A and 12B?

We broadly support the allocation of functions, powers and objectives to the SEC Panel.

However, while we consider it is appropriate that the SEC Panel oversees the performance of the Code Administrator, we are less persuaded that the Panel should be responsible for its appointment in the first place. Instead we think this could be a function of the DCC, perhaps with a Panel right of veto. It may, however, be reasonable for the SEC Panel to more directly appoint its own Secretariat, if such function is held to be discrete from code administration, although we think the contracting entity should still be the DCC.

While, in principle, we have no real objection to the same entity providing both administration and secretariat services, we do see advantages in these services being separated, to avoid conflicts of interest with regard to procurement etc.

Question 28: Do you think that a fully independent panel is the appropriate model for the SEC? Please give reasons for your answer.

Yes, we agree with the Government's proposals in this regard.

Complexity

Representative voting arrangements can be both complex to manage and obscure to the participants, however, they can be made to work. In our view, the more important question is whether they are likely to prove the most effective in this particular case.

Voting

Given the scope and diversity of the participating (possibly competing) interests in the SEC, we believe achieving a truly representative Panel could prove to be difficult. Constituency voting, moreover, is not necessarily the best mechanism to reflect the views of all, as the opinions of individual constituents can become marginalised. Therefore, an independent Panel is, in our view, the best approach to achieving the objectives of the SEC.

Independent Panel

It is important that the workings of the SEC Panel are open, transparent and inclusive. Panel meetings should offer a suitable forum for frank and honest debate to ensure good governance, and the chair, however he/she is appointed, should encourage rounded consideration of all of the arguments ahead of any voting. We believe an independent Panel to be more likely to deliver on these requirements.

Question 29: Do you agree that the proposed SEC Panel composition set out in Box 12C is appropriate? Please give reasons for your answer. Alternative proposals for the panel composition are welcome.

We broadly agree with the proposed SEC Panel composition as set out in the consultation document.

However, while we are satisfied with the principle of the chair being appointed by the Authority, we do not believe that the chair should be afforded voting rights (including a casting vote). This will allow Ofgem to choose from a wider field of candidates, with less risk that their independence would be called into question. It would also avoid the situation where a party may be prevented from appealing a modification decision to the CC solely as a result of the chairman's casting vote².

We note the proposal to leave the appointment of the 'Other User' category of Panel member to the discretion of the chair. While not opposed to such an approach, we would wish to see clear guidelines put in place to provide assurance that only suitably qualified individuals would be considered for such a role.

We are not persuaded that the Government should be afforded a seat on the SEC Panel but in the event that it is, would agree that any such representative should have no voting rights.

Question 30: Do you agree with the proposed division of voting and non-voting members, and in particular do you believe that the DCC should be a non-voting member in respect of any or all aspects of panel business?

We broadly agree with the proposed division of voting and non-voting members and with the proposals concerning the DCC's non-voting role on the SEC Panel. However, as explained in our response to Question 29, we do not agree that the chair should have voting rights.

Question 31: Do you agree that the proposals for the independence, appointment and term of office of the panel chair are appropriate? Please give reasons for your answer.

We are satisfied with the principle of the chair being appointed by the Authority, with a term of office not exceeding 3 years. However, as explained in our response to Question 29, we do not agree that the chair should have voting rights. But if they do have voting rights, their terms of appointment should be clear that they are expected to vote on an entirely independent basis.

Question 32: Do you agree with the proposed arrangements for panel member elections and appointments?

We are largely supportive of the Government's proposals for panel member elections and appointments and accept the requirement for an approach that limits the influence of any individual corporation by restricting voting rights to one vote per corporate group. As noted in our response to Question 29, clear guidelines should be put in place to give assurance that only suitably qualified individuals can be appointed as a panel member in the 'Other User' category.

² Parties cannot normally appeal a code modification proposal which has been approved by both Ofgem and the code panel.

We are also less persuaded of the argument for maintaining continuity by staggering the election or appointment of individuals, which could be perceived to be both unwieldy and likely to result in disengagement.

There may be a case for allowing the Panel to remove persistent non-attenders.

Question 33: Do you agree with the proposed rules in respect of proceedings and decision making at SEC Panel meetings?

We think the proposals regarding SEC Panel meetings appear sensible. In particular, we support an approach that ensures Panel members act independently and impartially. We would welcome full publication of the votes cast by the individuals concerned, along with supporting rationale, to enable transparency and scrutiny.

Question 34: Which of the two options for remuneration of panel members do you prefer, and why? In particular which of these options do you believe would be most aligned with each of the options for the panel to be either an independent or a representative body as a whole?

We are supportive of Option 1.

While panel members should not receive payment, we recognise that costs associated with individuals attending meetings will need to be reimbursed.

Chapter 13 - Code Administrator and Secretariat

Question 35: Do you think the Code Administrator and Secretariat chosen by the SEC Panel should be contracted through the DCC or through a SECCo?

In our view the Code Administrator and Secretariat should be contracted by the DCC.

Question 36: If a SECCo was established what should its funding arrangements, legal structure, ownership and constitutional arrangements be?

If a separate SECCo were to be established in the code, we suggest it should

- be a wholly owned subsidiary of the DCC,
- be funded via cost recovery,
- have the SEC Panel as its board,
- provide secretariat services (possibly including procuring the services of a separate code administrator).

The DCC would be incentivised to secure reasonable performance levels from its subsidiary. Day to day oversight of the secretariat would rest with the SEC Panel, which could then escalate any concerns with its performance to either the DCC or the Authority. (This latter escalation route would offer the Authority an opportunity to consider its performance in setting any subsequent DCC price controls.)

Like the DCC, the secretariat could be a thin organisation, which then contracts with a third party to provide 'hands on' code administration services. In this way, it is in the DCC's interests to ensure the performance of the secretariat and the secretariat's interest to ensure

the performance of the code administrator. Meanwhile the code administrator will be subject to normal competitive pressure to perform against its contract and the user community is able to gain assurance from the oversight of the SEC Panel.

An alternative could see the SECCo as a separate commercial organisation, perhaps providing secretarial and code administration services, but we do not think that this would lend itself to sufficiently rigorous Panel oversight.

In neither case do we envisage the SECCo being an entity owned collectively by the SEC Parties, as this would require yet another complex governance model, involving a panel or board with complicated voting rights for all SEC Parties, of which there could be a significant number.

Chapter 14 - Modification process

Question 37: Do you have any views on the proposals regarding which parties should be entitled to raise SEC modification proposals?

The objectives proposed for the SEC are being imposed on certain market participants via licence conditions. It is important, therefore, that modification of the SEC be restricted to furthering these 'relevant objectives', in order to reduce the level of regulatory risk.

DCC

DCC will have a considerable investment in the activities governed by the SEC and we, therefore, agree that it should also have a right to propose code modifications, although its Service Providers should simply rely on their contractual relationship with the DCC to progress any such matters on their behalf.

SEC Parties

We consider it appropriate for all SEC Parties to have the right to raise modifications to the code.

Other bodies designated by Ofgem

The consultation proposes that the Authority should also be permitted to designate other bodies for the purpose of raising code modifications. However we consider that the Authority already has sufficient means through which it can promote code modification and that this additional, and seemingly unrestricted, power will simply serve to increase regulatory risk and, potentially, hamper investment.

Consumer Bodies

We note the proposal that any appropriate body that represents the interests of consumers will be given the right to raise modifications to the code. However, in the absence of a consumer based code objective, we would suggest that the right to raise code modifications should be restricted to those consumer groups entitled to nominate a consumer Panel member. We believe such Panel nomination should be restricted to those consumer groups operating under statutory provisions.

SEC Panel

We agree that the SEC Panel should have the right to raise modifications but we believe this right should be restricted to modifications raised in accordance with the sixth Relevant SEC Objective (i.e. to facilitate the efficient and transparent administration and implementation of the SEC). We agree that there should be no other restriction on the areas of the code that may be subject to a modification that has been duly raised by any party granted modification raising powers under the SEC.

We suggest that DECC should further consider the rights to propose change to such aspects of the code that are subsidiary to the main document (e.g. agreed procedures etc.)

Question 38: Do you have any comments on the proposed standard progression paths for different categories of modification?

We broadly agree with the standard progression paths proposed in the consultation document, although we would have liked to see further explanation of the proposed 'Authority Directed' path.

We would suggest that the progression path for Authority Directed modifications should mirror that applied to those for Authority Approval.

Question 39: Do you have any comments on proposed criteria that the panel would apply to judge whether a proposal is non-material and so to determine which path should be followed?

We believe it is imperative that the Panel also gives some consideration to the materiality of any impact on SEC Parties (including the DCC), as we consider this is the likeliest cause of any appeal against a modification decision. It would also be potentially damaging to the reputation of the SEC Panel if a self-governance modification was overturned on this basis.

Furthermore we would note that a modification must satisfy all of the criteria listed before it can be considered for the self-governance path.

It may be useful to consider whether correction of manifest and technical errors is a separate category of modification that can be dealt with by self-governance. In some cases, the erroneous provision could have material impacts, if taken literally.

Question 40: Do you think it is for the panel or for the Authority to decide whether a modification proposal should be considered urgent and determine its timetable?

We consider it should be the responsibility of the Authority to determine the priority of a Modification following consultation with the SEC Panel.

Urgent treatment of any modification needs to be carefully thought through, as it will almost certainly mean a shortening of the assessment timetable, resulting in a possible curtailment of the analysis undertaken.

Question 41: Do you have any views on whether any non-standard modification rules and procedures should apply to any particular parts of the SEC?

While we do not consider it necessary to introduce additional means (i.e. beyond the urgent arrangements discussed above) by which security standards modifications may be progressed, we do recognise that a greater degree of specialist knowledge than is generally at the disposal of the SEC Panel membership may sometimes be required. It may be more effective to delegate such matters to a standing security committee made up of recognised security experts.

However, we would not consider it appropriate for such a committee to make decisions on modifications to the SEC itself. We believe any code changes should be the responsibility of the SEC Panel, and where relevant, take account of recommendations from the security committee.

Question 42: Do you agree with the proposal that responsibility for making final decisions or recommendations on SEC modification proposals should always rest with the SEC Panel and that this power should not be capable of delegation?

Yes. While we do consider it appropriate to delegate responsibility for determinations on code subsidiary matters to relevant sub-committees, we are of the opinion that responsibility for making decisions or recommendations on modifications to the SEC itself, should rest with the SEC Panel.

Question 43: Are there any further matters relating to the modification process which you would like to comment on?

We agree that non-SEC Parties should be able to raise issues where the SEC has a material impact on them.

We would also suggest that membership of any standing sub-committee of the Panel should be by Panel appointment, but based on nomination by one or more SEC Parties. This is because engaging the full breadth of SEC Parties in an election process for such a purpose is likely to prove difficult.

We would also support the principle that such sub-committees be afforded decision making powers over subsidiary matters (e.g. proposals to change business process level documents), provided that this offers an appeal route to the SEC Panel and, ultimately, the Authority. For code modifications, however, the SEC Panel should make any decisions or recommendations.

Chapter 15 - Reporting

Question 44: Do you agree that that the SEC should place certain obligations on the SEC Panel and, possibly, SEC Parties with regard to the production, provision and publication of certain information and reports? If so, what do you believe these should be?

It would appear reasonable for the SEC to be able to place some reporting obligations on the SEC Panel, though we are not in favour of unnecessary reports. In terms of SEC Parties, we think there could be benefits, especially as non-licensed Parties will not be subject to Ofgem's normal information powers. Any such requirements need however to be rigorously justified against their benefits and "better regulation" criteria.

Chapter 16 – Compliance and assurance

Question 45: Are there any particular areas of risk that you believe should be addressed by appropriate compliance/assurance techniques under the SEC?

We consider the inclusion of a Compliance/Assurance regime to be central to the successful operation of the SEC arrangements. In considering the main areas for inclusion in the scope

of such a regime, we have identified the following areas (although we do not consider this exhaustive):

- Certification
- Interoperability / Interchangeability
- Data Access and Privacy
- Security Standards
- Technical Assurance

We believe the requirements for **interoperability** and **interchangeability**, as defined in the SMIP's Interoperability Testing Working Group's findings document, to be of paramount importance to the competitive retail energy market, in that interoperability will enable a smoother customer switching experience, while interchangeability will ensure that the commercial contracts of one supplier do not impinge on those of another. We also think that **certification** will promote greater stakeholder confidence that the market will not encounter subsequent problems with the interoperability of smart metering systems, which might otherwise emerge during competitive activity in the retail energy market.

As a requisite for effective certification, we believe that ongoing **technical assurance** is needed to give the market comfort that certificates, which have been awarded, continue to be relevant through the maintenance of agreed standards.

Similarly, **security standards** also need to be set down in the SEC. However, we believe monitoring of these should be the responsibility of a standing security committee, which should be part of the wider assurance/compliance framework.

We note the separate consultation on **Data Access and Privacy**, which runs alongside this consultation on the SEC and to which we have responded separately. We are of the opinion that the SEC is the right vehicle for the purpose of reinforcing market participants' obligations with regard to third party data access and data privacy.

Escalation

The SEC will offer a suitably operational view of market activities, with the proposed assurance/compliance framework providing a mechanism for escalation that is appropriate to the level of breach. In the case of unlicensed parties, the escalation route would stop at the SEC Panel and for licensed parties, such escalation would end with an Authority determination, by way of the SEC Panel. In either case, we regard the ultimate sanction as expulsion from the SEC.

Question 46: Do you have any views on the most appropriate governance arrangements for any compliance/assurance framework under the SEC?

We think such governance may best be addressed through the establishment of a single compliance committee, comprised of members drawn from SEC Parties (please also see our response to Question 43). However, there may be specialist areas that require a narrower skill set than might ordinarily be found among SEC Parties (e.g. security), requiring the establishment of committees with specific responsibilities for such niche areas.

Given the possible complexity of matters such as security, delegating decisions to a relevant committee of security experts may be required whilst remaining under the overall control of the SEC Panel.

Chapter 17 – Obligations and liabilities

Question 47: Do you have views on the options for the creation and enforcement of liabilities between the DCC and service users described in this chapter?

We remain broadly in favour of the existing measures established in other codes, where the relevant framework agreements limit parties' exposure to liabilities incurred through their interactions with one another. However, the establishment of an extensive, complex and unwieldy process of managing liquidated damages would be unwelcome.

The limitation of liabilities would appear to be particularly applicable in the interactions between individual users and the DCC itself, most especially from a security breach or a loss of service. However, we disagree with the view expressed in the consultation document regarding the DCC's role in the certification/assurance of smart metering systems, which we would expect to be the responsibility of the SEC Panel.

Question 48: Do you agree that there should be a cap on liability for specific types of breach between the DCC and service users (including security breaches and physical damage)? If so, what do you believe the appropriate level of these caps to be?

As explained in our response to Question 47, we are amenable to the introduction of a cap on liability for specific types of breach between the DCC and service users and would agree that these should include security breaches and physical damage.

With regard to the appropriate level for such a cap, we believe it is too early to set such a value, but recognise that it will need to be in place before the SEC goes live.

Question 49: Are there any other specific types of liability between the DCC and service users that should be addressed in the SEC? If so, how should these be treated?

No. We cannot identify any further liability types.

Question 50: Do you have views on the options for the creation and enforcement of obligations and liabilities between SEC Parties (excluding the DCC) described in this chapter?

Considering the proposed options for addressing matters between SEC Parties, we would make the following observations / comments at this time:

Option 1 (Exclusion of liability)

Broadly, we take the view that duplicating existing statutory, regulatory or contractual sanctions in the SEC would offer little value. We would therefore, be wary of incorporating obligations and liabilities that potentially overlap with, for example, the Data Protection Act or Consumer Protection Act.

Option 2 (Direct enforceability between SEC parties)

We believe it is more efficient to incorporate enforceable obligations within the SEC rather than in Licences, given escalation routes at a code level can offer a more proportionate response to address minor or technical breaches.

In such cases, we agree with the principle of introducing exclusions alongside contractual obligations such that parties can seek redress through the SEC only up to a capped value. We also note the concerns over parties being individually able to meet large scale losses incurred by other parties, such as might arise from a security breach. However, we are less persuaded of the idea that the DCC could meet such liabilities and then simply socialise any costs it cannot recover directly from the offending party. We think it is central to a party's credit worthiness that they have sufficient cover (perhaps liability insurance) to meet losses to the value of the cap, and would suggest this is addressed through credit cover arrangements.

Option 3 (Enforce obligations through a compliance/assurance framework)

Although we strongly support the establishment of a compliance/assurance framework, we do not believe this would be an appropriate use of such a framework. We think this would lead to a costly and disproportionate reporting burden being placed on parties.

Given the limited scope for direct interaction between parties under the SEC, we would prefer to see the disputes mechanism used in circumstances where the perceived non-compliance of one party has resulted in a material impact on another.

Option 4 (Cost recovery arrangements)

We have no particular comments at this time and await the Government's more detailed proposals.

Question 51: In your view, do any of the potential matters between parties described in this chapter (or any other such matters that you are aware of) merit the inclusion of obligations or liabilities that are directly enforceable between parties under the SEC?

In our view, obligations concerning the interoperability and interchangeability of smart metering systems could greatly improve the prospects of successful customer switching and limit the ongoing costs of the smart arrangements over the medium to long term. In principle, we would welcome the inclusion of directly enforceable obligations and liabilities in this area.

Question 52: Do you agree that it would generally be preferable to enforce party obligations "centrally", for example through an appropriate compliance or assurance framework under the SEC?

We agree that this would be appropriate for most of the obligations discussed in Chapter 17. However, we consider that a dispute resolution framework may be more appropriate than a compliance/assurance framework in this context.

Question 53: Are there any scenarios where you believe that it would be appropriate to allow for cost recovery between parties under the SEC? If so, what form should these arrangements take?

In general, we think that the best mechanism for recovering such costs is via the DCC. However, we look forward to considering any specific proposals from the Government in this area.

Chapter 18 - Disputes

Question 54: What types of dispute do you believe might arise under the SEC?

We broadly agree with the Government's view that disputes are likely to fall into commercial, technical and financial categories as described in the consultation document.

However, we would add the scenario where costs are directly recovered between SEC parties. While we recognise that the Government's position on such direct cost recovery has yet to be fully developed, we would caution that recovery other than through the DCC will likely lead to a greater number of disputes.

Question 55: Do you agree with the proposed framework for resolving various different categories of dispute, as outlined in this chapter?

Yes. We agree with the proposed framework.

Chapter 19 - Default

Question 56: Do you have any views on the suggested framework for dealing with defaults under the SEC, including the events, consequences and procedures described? In particular, do you agree with the proposed role for the SEC Panel and have any view on what SEC rights or services it would be appropriate to suspend in the event of a default?

We broadly support the proposed approach to managing defaults under the SEC and the role anticipated for the SEC Panel. We would propose that the definition of a material breach is extended to include cumulative breaches where parties that persistently find themselves in material breach of the SEC, are subject to some form of escalation to Ofgem.

Chapter 20 – Ceasing to be a party to the SEC

Question 57: Do you agree with the proposed rules and procedures governing withdrawal and expulsion from the SEC described in this chapter?

Yes. We agree with the proposed rules and procedures governing withdrawal and expulsion of parties from the SEC.

Chapter 21 – Intellectual property rights

Question 58: In addition to the proposals above relating to the suggested intellectual property provisions to be included in the SEC, are there any other intellectual property provisions which should be considered for inclusion within the SEC?

We have no additional points to add.

Chapter 22 – Confidentiality

Question 59: What information should be classified as confidential under the SEC?

We consider that all commercially sensitive information that is provided by or to SEC Parties, or that is about SEC Parties or their representatives or affiliates, should be treated as confidential unless otherwise explicitly stated in the SEC.

Question 60: How should a balance be struck between transparency and data publication under the SEC, whilst maintaining confidentiality?

We believe this would need to be assessed on a case by case basis. We would propose that it may be possible to render data anonymous to protect confidentiality, which would then permit its publication. However, such an approach might not be sufficiently effective in masking the data source, making it necessary to limit publication to aggregated data.

Chapter 23 – Unforeseen events

Question 61: Please detail those events which you believe would warrant the force majeure provisions being exercised and indicate who should declare a force majeure event.

We agree that the list of Force Majeure events cannot be considered exhaustive, as other events, not considered at the time of the code's establishment, could occur. We believe, where possible, the SEC Panel should declare a force majeure event to the Authority.

Question 62: Please provide your thoughts on the proposal that the SEC should define a set of contingency business process arrangements and associated service levels/obligations which will apply in the event of a major service failure.

We fully support the proposed approach to contingency arrangements.

Chapter 24 – Transfer of the DCC Licence

Question 63: Please provide your comments on the proposals outlined for the DCC transfer and whether there are any other specific provisions that you suggest need to be covered within the SEC, in addition to the proposed novation agreement for the SEC.

We are in broad agreement with the proposals. No further provisions are required.

ScottishPower
6 July 2012