

# Consultation Response

By email to [dccg@decc.gov.uk](mailto:dccg@decc.gov.uk)

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1 June 2012

Smart Metering Implementation Programme – Regulation Team  
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## **ELEXON's response to the Smart Energy Code (SEC) consultation**

We welcome the opportunity to comment on the draft content for the Smart Energy Code. Our response draws on our extensive experience of managing one of the largest and most complex of the existing industry Codes, the Balancing and Settlement Code (BSC). We supported Ofgem in its Code Governance Review in 2008-2009 and were instrumental in the development of the Code Administration Code of Practice. We were therefore pleased to see many of the common processes and principles established through the governance review contained in the Smart Energy Code.

In the Smart Programme working group discussions with Ofgem during 2011 there was a desire from the group that the SEC be drafted with the reader in mind. We would hope that the 'legal' version of the SEC produced later this year is drafted with this objective and avoids some of the complex legal and technical nature of the existing codes.

Our response to the consultation is set out by question below. However we feel that the following areas require further development to give the SEC proper effect and highlight some key considerations:

### **Assurance Framework**

We note the consultation proposes the introduction of an assurance/compliance framework. We wholeheartedly agree that a robust assurance framework will go some way to ensuring that the SEC Panel can adapt and manage the potential unforeseen risks to the new arrangements. It is important to ensure this framework is considered in its widest form such that it encompasses all the aspects of the SEC where there is the potential for uncertainty and failure of Parties to meet obligations. As well as seeking to address compliance with smart equipment requirements the SEC assurance framework should be applied to processes where there are hand offs between users and allow for flexibility to audit processes from time to time. In particular, ongoing assurance around measures related to privacy and security will be critical to the success of the smart programme and the SEC and it is important that the SEC Panel can act to address non compliance. We provide further comment in our response below.



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## Data Access for BSC purposes & joint working arrangements

We have responded separately to the privacy and data access consultation on the requirements of Settlement to access consumption data. We note however that there may be circumstances where the SEC and BSC will need to interact and that information may need to be made available to the BSC Panel and ELEXON. This is due to the metering and data retrieval requirements of the 'meter to bank' process currently managed under the BSC shifting to the SEC. Interaction is likely to be required to support the assurance processes, disputes and profiling arrangements. It may be necessary to keep the BSC Panel/ELEXON informed of issues relating to defaults under the SEC or any actions taken that restrict a supplier's ability to meet its obligations under the BSC.

## Nature of Code Admin/Secretariat functions

The consultation document states that the Code Administrator and Secretariat roles are "functionally distinct" in that:

- The Secretariat is responsible for facilitating SEC Panel meetings and related operations; and
- The Code Administrator is responsible for managing the day-to-day governance of the SEC.

The consultation recognises these functions could be procured together. We believe they should and can see no benefit in running separate or parallel award processes when all these functions can be delivered by a single organisation. Secretariat support should be a simple extension of the Code Administrator's role under the SEC, especially given the critically close working nature of the functions required to support the Panel.

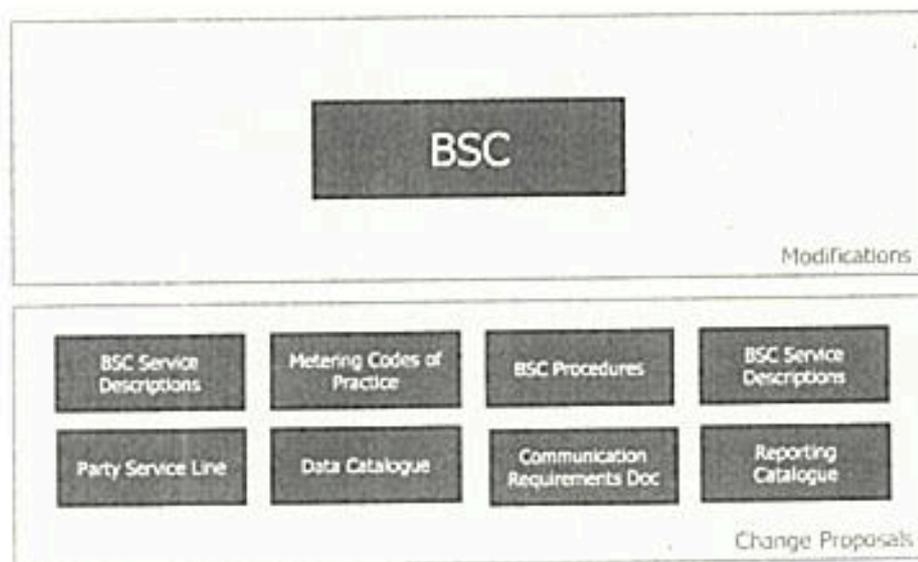
Secretariat	Administrator
Panel & Committee (x7) Secretary	Accession
Develop & Maintain ToR for committees	Entry Process
Meeting Management & Facilities	Change Management
Minute taking, action management, correspondence, record keeping	FXE
Produce & publish reports	Credit Monitoring & Default management
Maintain Committee membership & indemnification	Reporting
Manage Election process <sup>1</sup>	Manage Audit <sup>1</sup>
Facilitate liaison with industry Panels & Regulator	Manage Assurance <sup>1</sup>
Liaise with Code Administrator	Website management <sup>1</sup>
Consultation response drafting <sup>1</sup>	Helpdesk response
	Consultation response drafting
	Configuration Management <sup>1</sup>
	Manage change implementation <sup>1</sup>
	Budget preparation <sup>1</sup>
	Education & Advice
	Liaison with Secretariat & ECC
	Compliance Monitoring
	Business Hour
	Facilitate liaison with industry Panels, Regulator & Code bodies

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The table above provides an example of the types of activity that may be undertaken by a Secretariat and Code Administrator. We suspect that the Code Administrator will be a relatively 'thick' function given the potential areas for support required for both the Panel and industry. Just managing the change process is likely to be resource intensive in the early period as the arrangements bed down and operational/procedural matters are refined.

## Content of Code versus subsidiary/supporting documents

The consultation recognises the likelihood of subsidiary documents that will support the SEC. We would agree with creating an appropriate architecture for the SEC to ensure that the SEC Panel can manage the arrangements efficiently. The separation of the technical and procedural documents into lower level governance under the SEC will allow for these to be managed in an appropriate manner. It is important however that each subsidiary document is directly related to a clear obligation or requirement in the SEC. It will also allow for the documents to be designed to suit their purpose (e.g. to contain process steps and forms as opposed to being weighty legal tomes). The BSC is supported by a number of subsidiary documents, the change process for which reflects their more technical or process driven nature. Therefore the BSC Panel uses industry committees to assess and approve changes for most of these subsidiary documents. We have illustrated the suite of documents that support the BSC below as an example for reference.



If you would like to discuss any areas of our response, please contact me or

by email at:

Yours sincerely

## A consultation on the Smart Energy Code

### Chapter 1

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

We believe this is a sensible list of Party classification that captures the key licensed users and a broader category of 'other users'. This in turn allows the SEC to allocate appropriate rights, obligations and responsibilities to users by 'type'.

### Chapter 4

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

We believe the requirements for both MAPs and MOPs are adequately captured.

#### **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?**

We agree that the use of the Registration systems to confirm the Meter Operator is permitted to act as the supplier's 'nominated agent' is the correct solution. The registration system information ensures that the industry works to a consistent view of which supplier/agent combinations should be responsible for metering systems and therefore which supplier/agent must meet their obligations across all Codes.

#### **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 would propose that meter operators need not have any formal participation rights relating to governance defined in the SEC. Meter operators act under the instruction of the licensed supplier and



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the supplier should remain the Party responsible for its agents actions and obligations. There would not need to be any voting on Panel membership or other matters unless the meter operators were paying directly for the maintenance of the SEC arrangements or acting as a Party in their own right.

However the SEC change process should ensure that there is a channel through which meter operators (and other non SEC Parties) may contribute to any impact assessments and consultation responses relating to changes to the SEC that may have an impact on their services, systems and processes.

The SEC Panel may wish to create a forum through which meter operators (and other interested bodies) can discuss issues and feedback their views. ELEXON has facilitated such engagement under the BSC to allow supplier agents to discuss their issues and feedback to the Panel and its committees. This has been effective in engaging the agent community and bringing potential change to the fore.

## **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. Having the ability to track their assets should lead to accurate cost allocation across suppliers that use their assets.

## **Chapter 5**

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

Yes, we note that the process described is largely consistent with existing codes, in particular the BSC.

To elaborate on the process utilised by the BSC:

- The BSC requires two copies of the agreement, one is retained by ELEXON and one by the Party. ELEXON's company secretary countersigns the BSC Accession Agreements.
- No checking of financial accounts or credit checking agency reporting is undertaken, however a check is made to confirm that the name, address and company number match details held by companies house (we note that there is no rigorous financial checking of licences by the Authority either)
- You can accede prior to a license being awarded by the Authority, however we do ask for confirmation that a particular licence is being sought. It is unclear whether the SEC will require 'licensed users' to already have the licence in place or simply be in the process.
- Accession forms are processed by ELEXON, as this is largely a box checking exercise the Panel delegated authority to the Panel chairman to approve extensions to accessions. This allows the accession process to be completed as soon as possible.
- Only non-licensed Parties are affected by the 6 month rule that permits the Panel to remove



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accession for non participation in BSC services (however the Panel has used its discretion and has granted extensions where a participant has demonstrated good reasons for their delays).

The way ELEXON manages accession is not defined in the BSC but we have a dedicated resource that manages entrants through the accession and market entry process as part of our supporting role as a code administrator.

An alternative to the proposed requirement to financially assess new entrants, the SEC could require robust credit monitoring by the code administrator/DCC to limit any potential financial liabilities.

Alternatively, payment in advance of services being taken could prevent any liabilities being accrued.

**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 agree that once accession is complete a party should be entitled to participate in all governance activities under the SEC.

**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?**

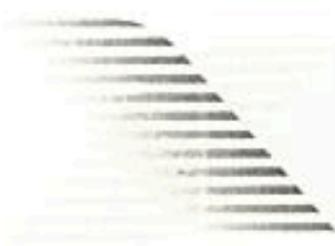
Please see our response to question 6.

### Chapter 6

**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: The proposed solution of inviting DSP bidders to specify the DCC User Gateway solution maximises the opportunity for DSP bidders to explore the options whilst allowing bidders the option of extending existing systems. We support the Government's approach to an Open Standards interface for the DCC User Gateway. This will ensure the solution design implementation can be tested for compliance against known best-practices.

The complexity of any proposed DCC User Gateway solutions must be carefully considered in the context of security. A more complex gateway solution has the potential for greater security risks, which could increase the overall risk profile of the DCC. These would need to be accredited against the appropriate security standards and tested for compliance prior to linking DCC and DCC User networks. Considering



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new proposals for the DCC User Gateway presents an opportunity to qualify any new security risks and, if necessary, further develop the requirements for ensuring the security of the end-to-end solution. Any solution should also be flexible to change and allow for the SEC Panel to ensure change is in a position to agree changes without deferring to other governance.

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

No.

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

Yes. The principle of completing entry process testing/requirements is consistent with the approach applied for participation in existing industry processes, as described in industry codes.

The testing for the initial set of Parties who will need to operate under the SEC from DCC Go-Live will need to be completed well in advance of Go-Live. DCC will therefore need to commission its systems and establish testing facilities to enable all SEC participants to test communications in an orderly way. The Programme will also need to establish test requirements and scripts well in advance to enable testing (this was done in the long lead up to the introduction of NETA/BETTA and ELEXON maintains testing facilities that can be used by Parties).

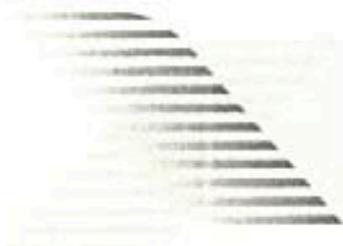
New parties entering after the DCC has been established will need their entry process co-ordinated. It is suggested that this would require the SEC Administrator to work closely with new Parties and DCC to manage the process.

## **Chapter 7**

## **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.**

Yes, we agree that Suppliers should be able to enrol meters subject to meeting the technical criteria and DCC being able to complete commissioning.

We presume the intent of the obligation for DCC to notify other SEC Parties that an MPAN/MPRN has been enrolled in the DCC is to ensure that the associated network operator/gas transporter can identify where data may be available and for incoming Suppliers to understand if there is a smart meter installed at a site where they are picking up an MPAN?



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**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, the supplier must grant the DCC the right to access its smart metering system otherwise the DCC is unable to fulfil its obligation to deliver the necessary services to that supplier.

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

Yes, we believe that the DCC should be notified when a supplier wishes to withdraw a smart metering system. The process to support this will need to consider what options are available to networks or third parties in the event that they are notified by DCC that the supplier will withdraw the metering system. If the customer is receiving third party services this will impact the service provided to that consumer, presumably the supplier will be obliged to notify the customer that they may lose such services?

## Chapter 8

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

Yes, it is sensible to define rights to core services by user type. This will allow DCC to begin to understand how its costs can be allocated across the user community. However the full list of core services and therefore the associated rights and obligations has yet to be confirmed.

**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?**

Yes, we are aware of two possible scenarios where the BSC arrangements allow two or more importing suppliers in relation to a single Metering System. Both apply only when the Metering System is settled Half Hourly:

- 1) BSC Procedure BSCP550 ('Shared SVA Meter Arrangement of Half Hourly Import and Export Active Energy') allows two or more Suppliers to supply a single Metering System (e.g. one supplying base load, and the other supplying top-up or spill). The procedure relies on the Suppliers appointing the same Half Hourly Data Collector (HHDC), who then apportions the energy recorded by the Metering System between the Suppliers in accordance with an agreed Allocation Schedule. Anecdotally we believe that the number of sites using this arrangement is



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- 1) very low, and that most of these are export rather than import. It also seems likely that users of these arrangements will be larger Half Hourly customers outside the scope of the smart metering arrangements.
- 2) Difference metering is an approach to settlement that allows one or more customers on a private network to choose their own suppliers ('third party suppliers'), while the remainder of the customers on the network are supplied by the private network operator, using power that he generates himself and/or purchases from a supplier (the 'boundary supplier') at the boundary of the network. The settlement meter readings for the boundary Supplier are calculated by subtracting the third party suppliers' half hourly meter readings from the settlement meter readings at the boundary. This means that meter readings from the third party suppliers' Metering Systems are used to determine both their own settlement liabilities, and those of the boundary Supplier. Historically this arrangement has been little-used, but we have seen a sharp increase in customer interest since the Gas and Electricity (Internal Markets) Regulations 2011 came into force last year. As a result we are now working with industry parties to improve the process and ensure that it is robust to an increased volume of usage (see linked SVG paper [SVG133/07](#)).

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

Yes, this is critical to ensuring there is full transparency to users and Ofgem and allows for a robust process to ensure impacts to systems, services and charging is understood prior to adding to or removing elements from a core set of services.

### **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?**

Yes, SEC parties should be permitted to request elective services on a bilateral or multilateral basis.

The provision of elective services ought not to affect services provided at the date of the request, or restrict the development of future communications services. The DCC should be permitted to decline to implement a new elective communications service if, in its opinion those services will, or might have the effect of, constraining the development of future communications services. Similarly any new elective service which places unreasonable risks to security should not be implemented. The change and Impact Assessment process should identify any risks.

Unless capacity exists to accommodate an elective service the service requester should pay for the



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development and implementation of any capacity required to deliver an elective service.

**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, in principle the SEC requirements relating to privacy, technical security, entry process, financial security and dispute should apply.

The privacy requirements are backed up by requirements in the Act so little further clarification should be required. There should be some flexibility to how the SEC requirements are applied based on the perceived risk associated with any particular elective service.

**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?**

The SEC should set out an enabling framework which imposes on the DCC an obligation to provide an Impact Assessment and, subject to that impact assessment, the ability to refuse to provide an elective communications service or an offer to provide such services within a reasonable time, where the test of reasonableness is based on the complexity of the request. In normal circumstances the DCC should complete its Impact Assessment and either reject or make an offer for the elective services with 20 working days, or such longer period as may be agreed between DCC and the party requesting such services.

A standard period of 28 days from offer, or such other period as the DCC might agree, would seem suitable.

**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?**



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Yes, this is a matter of commercial confidence between the parties. If a service becomes suitable for all parties this could be defined as a core service through a modification to the SEC and it would then be subject to the same transparency as the other core services.

## **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. Changes to the system may very well require system outages and it would be impracticable not to notify parties that this will happen. The gas and electricity industry has traditionally operated through three change releases per annum that allows of batching up of changes. A similar approach should be considered for DCC changes.

Whilst it would make sense to apply the same approach to DCC changes we observe that it would become quite clear that an elective service is being introduced if there were a change notified but the precise nature of changes not communicated.

The DCC should not be obliged to implement an elective change within a particular period, unless it feels it can do so without affecting core services. Instead changes should be batched up as part of the next schedule. We suggest that systems maintenance and core services should take priority over elective changes.

## **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?**

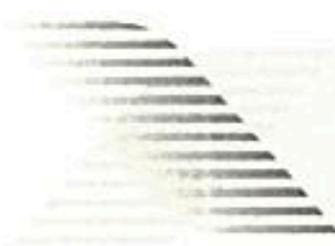
Yes, this should allow DCC to ensure that its core services have been established and operate in the live environment, without the distraction of adapting those systems for non-core services. We suspect that the first twelve months of operation will see a number of 'bedding in' changes raised by DCC and Parties (as has been the case with other industry codes) which would occupy the DCC.

Instead of setting a firm date, it may be more sensible to allow the Authority to agree that elective services should be able to be offered, subject to certain criteria (e.g. DCC having met its service levels for a defined period) or simply from a statement of readiness on behalf of DCC.

## **Chapter 9**

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

Yes, the approach is designed to ensure that charges are reflective of services taken and reduces the



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potential for DCC exposure to unreasonable cash flow issues.

**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.**

Yes. The balance of convenience and the need to ensure secure services to the industry suggest "pay now, dispute later" is a reasonable approach. This is akin to the existing arrangements for the provision of other central services to industry. This reduces the unreasonable risk of DCC being faced with a cash flow issue through non-payment, particularly when it is establishing the services and facilitating the rollout of smart meters.

**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.**

Yes. This should be subject to the conditions that DCC would be expected to manage bad debt and therefore reduce the risk of exposure for other SEC Parties. The use of a credit mechanism would ensure that Party liabilities can be met in the event of a sudden failure and the DCC/Sec Administrator could monitor the exposure. The SEC should set out whether there would be an obligation to lodge credit and if so, what is required (the BSC does not oblige Parties to lodge credit but the nature of trading is such that without any credit in place a Party may quickly find itself liable for costs and if payment is not made become subject to default processes).

In the event of liabilities remaining unsettled it is appropriate to socialise these across the user community. If funds are later recovered these may be reallocated to parties.

We note that DECC is proposing an Energy Supply Company Administration regime, we assume that this would apply across all relevant codes including the SEC.

### Chapter 12

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

Yes, these appear appropriate and broadly consistent with other codes.

One of the proposed responsibilities of the SEC Panel is to establish joint working arrangements with other relevant industry panels and committees. This is consistent with similar requirements under the



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existing codes. In practice, most Code Administrators fulfil this role on their panel's behalf. For example, ELEXON attends other industry code panel/workgroup meetings and provides a monthly report to the BSC Panel on any potential cross-code issues and changes. The existing BSC requirement is that the BSC Panel shall establish joint working arrangements with the owners of Core Industry Documents<sup>1</sup> (as defined in the Transmission Licence) and the System Operator-Transmission Owner Code (STC) Committee (see BSC F1.6).

We are unclear whether the SEC will be a Core Industry Document and therefore covered by this existing requirement. If not, the BSC could be amended to specifically reference the SEC (in the same way that it was amended to reference the STC at BETTA Go-Live). Alternatively, if the SEC falls within the Transmission Licence's definition of an "industry code"<sup>2</sup>, the BSC could be amended to include a more general requirement for joint working arrangements between all industry codes. In practice, ELEXON operates joint working arrangements with all key energy codes (and would therefore do so with the SEC) regardless of whether these are Core Industry Documents or covered by the explicit BSC provision.

We note that the Code Administrator is likely to be responsible for supporting delivery of a number of the Panel obligations (e.g. production of annual report). There may be activities that can be undertaken by the Code Administrator directly (e.g. approval of accession application, if this is simply a tick box exercise). Alternatively the SEC should make clear those things that the Panel may delegate and those it may not.

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

The existing industry codes offer a variety of potential models for panel governance and constitution. We do not have a view on which model is most appropriate for the SEC. However, we believe that an independent Panel has worked well under the BSC and CUSC in promoting a focus on the applicable objectives rather than the interests of individual companies or types of Party. Indeed, assuming that changes and other business is conducted to ensure it meets the applicable objectives we cannot understand why the Panel would not be independent?

<sup>1</sup> These include (a) the Balancing and Settlement Code; (b) the Connection and Use of System Code; (c) the Distribution Code; (d) the Distribution Connection and Use of System Agreement; (e) the Grid Code; and (f) the Master Registration Agreement.

<sup>2</sup> "A multilateral code or agreement created and maintained pursuant to a licence granted by the Authority under section 6 of the Act or under sections 7, 7ZA or 7A of the Gas Act 1986".



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**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 agree that, even if Panel members are required to act impartially, it is important that the SEC Panel contains an appropriate cross-section of expertise and experience in order to promote informed and balanced decision-making. The proposed composition of the SEC Panel appears to achieve this.

However, we are unclear on the intention of the proposed constituency voting and whether this fits with the requirement on Panel members to act impartially. For example, should small suppliers vote for the candidate they believe best understands their concerns, even though that candidate is explicitly required not to unduly represent those concerns once elected? Or should they vote for the candidate they believe is best for the industry overall (in which case why have constituencies)? We note that the BSC and the CUSC do not divide the voting for the impartial Industry Panel Members in this way, although there is nothing to prevent BSC and CUSC Parties from exercising their votes tactically.

**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 note the proposed restriction that the DCC should not vote on modification business. This is similar to that which the BSC imposes on the Transmission Company. However, we note that under the CUSC the Transmission Company is able to both raise and vote on modification proposals.

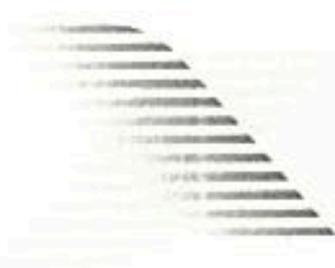
**Question 31: Do you agree that the proposals for the independence, appointment and term of office of the panel chair are appropriate? Please give reasons for your answer.**

Yes, these appear consistent with the conclusions of Ofgem's Governance Review.

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

We offer the following observations.

We note that the proposed 'one vote per corporate group' approach is similar to the 'one vote per Trading Party Group' rule under the BSC. However, the BSC does not divide the votes for Industry Panel Members by constituency – with the result that the votes of large and small Parties have exactly equal weight. Under the proposed constituency voting for SEC Panel members, this would not be the case as (for example) there would be four 'Large supplier' and only one 'Small supplier' seats. The 'one vote per corporate group' approach would therefore give equal weight to votes within, but not between, constituencies.



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We note that the consultation proposes a term of office of 1-2 years for SEC Panel members. We suggest that a 1-year term is unnecessarily short, and note that 2 years is the normal term of office under most existing codes. The administrative effort (for candidates, voting Parties and the Code Administrator) in conducting a Panel election is not insignificant, and requiring this to be undertaken each year offers no obvious benefits to Parties.

The consultation also proposes that there should be "a mechanism in place for ensuring that not all members change at the same time". We are unsure as to the benefits and practicalities of this, particularly if the term of office is to be one year. We note that the normal approach under existing codes is that all members have the same term of office and retire automatically at the end of this term (notwithstanding their right to stand for re-election).

One way that consistency can be maintained across any change of Panel is to ensure that the appointment of the Chair and the appointment of the Code Administrator should not coincide with a change in Panel. This way, key knowledge is retained by the two for the benefit of advising the Panel if a fully new set of members is returned.

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

Yes, these appear appropriate and consistent with other codes.

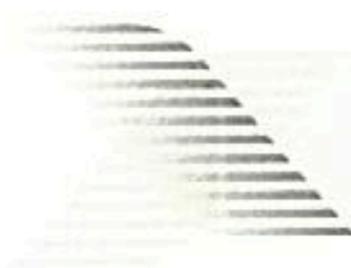
### **Question 34: Which of the two options for remuneration of panel members do you prefer, and why? In particular which of these options do you believe would be most aligned with each of the options for the panel to be either an independent or a representative body as a whole?**

If SEC Panel members are required to act impartially, then it is appropriate that they are remunerated for their reasonable travel and accommodation expenses in attending Panel meetings. This is consistent with the BSC's provisions, and is also in the process of being adopted by the CUSC. However, if Panel members were to act on behalf of their individual companies or for constituencies then we believe it would be inappropriate for all SEC Parties to collectively fund each Panel member's expenses.

The other option suggested in the consultation is that SEC Panel members receive some form of payment (and potentially benefits) for acting as a Panel member, over and above their reasonable costs and expenses. We are not sure how this would be managed, this approach seems inconsistent with the approach taken under most existing codes. However, the BSC does allow for 'independent' (non industry elected) Panel members to be paid.

## **Chapter 13**

### **Question 35: Do you think the Code Administrator and Secretariat chosen by the SEC Panel**



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## **should be contracted through the DCC or through a SECCo?**

We have consistently proposed that the DCC should be the contract vehicle through which the services described under the SEC should be managed. The additional cost and administration required to create a special purpose vehicle for one particular service required under the SEC is unnecessary. There would appear to be no clear benefit to establishing a special purpose vehicle given the SEC would clearly set out the process for the appointment, obligations, rights and activities for the services that support the Panel in delivering the SEC. In this way costs associated with these services, as budgeted for and agreed by the Panel, can be dealt with alongside the DCC charging regime without the need for separate invoicing and payment arrangements.

We have previously stated that we believe the SEC should retain the option for the DCC to deliver such services, where it is efficient for it to do so. This may be of particular use if the Panel is not established until after the DCC is awarded as this will allow DCC to establish support to the Panel until the Panel makes its own appointment and recover the costs of those services. The alternative may be that DECC has to fulfil that role, although it is not clear how costs would be recovered.

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

We refer to the response to question 35. We see no benefit in establishing a special purpose vehicle, simply to deliver this particular element of the services required under the SEC. The Programme can therefore save industry the costs and time of creating additional complexity through another new legal entity with its associated structure, ownership, funding arrangements and constitution.

## **Chapter 14**

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

The proposals appear appropriate and in line with other codes.

The consultation invites views on the limited circumstances in which the SEC Panel should be able to collectively raise modification proposals. Under the BSC, the BSC Panel is able to raise a Modification Proposal in the following circumstances (set out in BSC F2.1.1(d)):

- Upon the recommendation of some (but not all) of its Panel subcommittees; or
- Upon the recommendation of the Code Administrator:
  - To progress consequential BSC changes arising from a change to another Core Industry Document or to the STC;



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- Where the Code Administrator becomes aware of a change in circumstances affecting the feasibility or cost of implementing an approved modification proposal;
- To rectify manifest errors, or to correct minor inconsistencies, in the BSC;
- To support the introduction of the Euro as a lawful UK currency; or
- Where the Code Administrator recommends the raising of a modification proposal which, in the Code Administrator's opinion, would better facilitate the achievement of Applicable BSC Objective (d)<sup>3</sup> (the equivalent of the proposed sixth Relevant SEC Objective).

These rules work well. However, the restriction to certain Panel committees means that it can be difficult to find a Party to raise changes recommended by other technical subcommittees or 'pre-change' Workgroups where there is no direct benefit to that individual Party. A wider ability for the Panel to raise a modification proposal on the recommendation of any subgroup (including 'pre-change' workgroups) could therefore be beneficial.

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

We assume that this question refers to the proposed 'Authority-directed', 'Authority approval' and 'Self-governance' progression paths. We agree that these paths are in line with the conclusions of Ofgem's Governance Review.

**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?**

The proposed self-governance criteria are similar to those used by other codes. Our experience of progressing self-governance modification proposals under the BSC is that "unlikely to have a material effect" is a subjective and relative criterion which can be interpreted differently by different Parties. However, since the introduction of the self-governance process to the BSC in December 2010, the BSC Panel has successfully progressed four self-governance modification proposals using these criteria. Therefore we believe the proposed criteria can be managed by an industry Panel.

**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 note that different industry codes offer different models in this respect. Under the BSC, the Proposer, the Transmission Company and/or the Code Administrator can recommend urgency. The BSC Panel then makes a recommendation to the Authority as to whether the modification proposal should be urgent, and the Authority makes the final decision (including approving or amending the urgent

<sup>3</sup> 'Promoting efficiency in the implementation and administration of the balancing and settlement arrangements'. SEC consultation



# Consultation Response

timetable proposed by the Panel). We believe that this model sets an expectation that urgency will only be granted by exception for time-critical issues requiring deviation from the normal process, since the Panel already has flexibility to set the length of any workgroup phase. Under the BSC, the Authority has the right to object to any non-urgent modification proposal progression timetable (BSC F1.4.3 and F2.2.9); it is therefore appropriate that for the SEC, the Authority should approve any urgent timetable using the criteria it has consistently applied across other codes.

## **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?**

### **SEC Subsidiary documents**

We expect that the SEC will be supported by a suite of subsidiary documents that describe technical requirements or processes for delivering obligations (e.g. SMETS, entry process requirements and forms). Consideration should be given to whether a lighter 'modification' (change process) is required to manage these (as a minimum not requiring authority approval, allowing the Panel (or its committees) full rights to raise changes against these). Any such process should contain the necessary consultation and impact assessment to ensure such changes are robustly developed and meet the relevant SEC objectives.

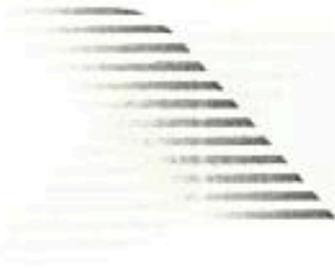
### **Matters relating to Security of DCC infrastructure**

We note in our response to question 43 that consideration needs to be given to how to manage security impacts. In particular, where there is a security impact of a change which cannot be mitigated for through a reasonable cost (or where the security may be unreasonably compromised) there may need to be some sort of veto on those changes. Such a veto could be exercised by the SEC Panel, DCC, the Authority, DECC or whoever is managing the security governance under smart.

## **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?**

This would be consistent with the majority of other industry codes. As noted in your consultation, the Panel would already be able to delegate the bulk of assessment tasks to workgroups and delegating all of its modification decision-making powers would significantly narrow its role in SEC governance. To further delegate responsibility for 'Modifications' would remove some of the checks and balances that the Panel would bring to the process.

Referring to the proposals we make in response to question 41 for a lighter change process for SEC subsidiary documents, we would suggest that the SEC Panel may delegate decision-making to Panel subcommittees to avoid overburdening the Panel. To address any challenge associated with



# Consultation Response

contentious changes, the SEC Panel could apply similar criteria to that under the BSC, where the decision of committee must be unanimous. Where unanimity is not reached then the decision is escalated to the Panel.

Members of Panel subcommittees are likely to be appointed by the Panel rather than elected by Parties. However any change should still have to prove that it achieves the applicable objectives. If any change is significantly material this could still be addressed directly by the Panel (although any material obligation/requirement should arguably be clearly set out in the SEC itself and therefore require a 'modification' to be raised).

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

Yes, we believe the following areas require further consideration to ensure the end to end change process is robust:

### **Security**

Further consideration is required regarding how any assessment of security impacts may influence the modification process. The Programme has yet to conclude on the security governance and the roles and responsibilities for SEC Users, Panel and the DCC. We have previously shared some thinking on this with DECC in our thought piece.<sup>4</sup>

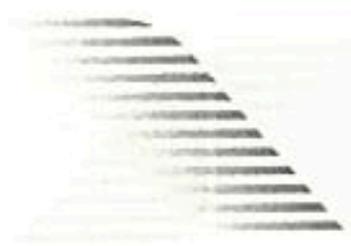
Security can be assessed alongside other impacts as part of the normal impact assessment process. Inevitably, if there is an impact identified there will be a cost of providing assurance against or mitigating for that risk. However, there may be circumstances where the DCC (or any advisory body, or CESG) believes the risk is too great for the DCC to manage (particularly if it may compromise the DCC as critical national infrastructure). In these circumstances would the SEC contain any special provisions that would allow for DCC (or another body, e.g. the Authority or DECC) to veto a change? In these circumstances it may be necessary to veto a change but it may not be prudent to identify the exact reasons for rejecting such a change.

We see the interaction of any activity of security advisors/groups (whether they be under SEC Panel, DCC or government) and the change process to be a critical one that should be clearly understood by all Parties and in particular the DCC in advance of any system development.

### **Implementation**

The consultation suggests that the SEC Panel will produce an implementation timetable for an approved modification proposal (consistent with the approved implementation date), and that the SEC Panel will be responsible for ensuring that all implementation actions are undertaken in line with this timetable. We suggest that some of these responsibilities could be delegated to the Code Administrator. For

<sup>4</sup> <http://www.elexon.co.uk/wp-content/uploads/2011/10/Smart-Security-Governance.pdf>  
SEC consultation



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example, under the BSC the Code Administrator is responsible for producing a proposed implementation timetable to meet the implementation date agreed by the panel. The Code Administrator is also responsible for ensuring that an approved modification is implemented in accordance with this timetable, and for promptly reporting any delay or issues to the panel (BSC F2.11).

Additionally the implementation of change requires careful co-ordination between DCC and industry, as system changes need to be tested, documentation updated and processes amended or defined. It should be clear how this will be managed the SEC Panel (we suggest via the SEC Administrator).

### **Configuration Management**

It will be necessary to ensure that SEC and systems documentation (and system software) is maintained to facilitate the change process. Careful management of code and code subsidiary documentation is no easy task, given the potential for numerous and often competing changes to be raised, progressed or awaiting to be implemented. The SEC will need to establish clear obligations on the responsibility for configuration management activity and the SEC Panel may need to consider whether it (or the SEC Administrator) should retain legal and technical experts to provide consistent drafting for code changes.

### **Allocation of roles and responsibilities**

The changes process will need to be managed carefully to ensure the most efficient outcome. Whilst the consultation highlights certain activities that should be undertaken by the Code Administrator (drafting and presenting reports), there are other activities that could fall unto the SEC Administrator. Whilst the Panel should retain the flexibility to manage the process as they see fit, it may be worth setting out the additional activities required and set an expectation that the SEC Administrator is likely to be undertaking a 'thick' or 'thin' role. For example should the SEC Administrator be required to act as independent chair for the groups, will they be required to undertake cost benefit analysis, will they undertake legal drafting or technical drafting for the changes?

## **Chapter 15**

**Question 44: Do you agree 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?**

Yes, there are obligations relating to reporting in almost all industry Codes. It may be prudent to list any standard reports and data (information) provision requirements separately in the Code or a subsidiary document. It would also be necessary to set out who should be entitled to those reports and whether reports can be in the public domain or are subject to any confidentiality provisions. Typical reporting is likely to include:



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## **Modification Reports**

A series of documents that meet the different needs of the change process including; modification reports, consultation documents, impact assessments, cost benefit analysis, monthly progress reports, urgency timetables, release schedules, 'pre-change' discussion reports. The BSc goes as far as describing what should, as a minimum, be contained within those reports.

## **Panel reports**

Panel & Committee minutes and actions, Committee reports to the Panel, SEC Panel annual report, DCC service performance reports, SEC Strategy and Budget, Credit monitoring reports, Panel election outcomes, Entry Process outcome reports, Assurance & compliance reports, Accession/Exit reports (list of SEC Parties), SEC Code reviews (of obliged to undertake periodic reviews of the SEC), procurement approach, Registration reports

## **Code Administrator reporting**

The Code Administrator should publish reports identifying its performance against the Code Administrator Code of Practice.

## **Party Reporting obligations**

There should be a general obligation on Parties to assist the Panel/Code Administrator by providing information necessary to help them deliver the SEC, upon request.

## **Report production & Management**

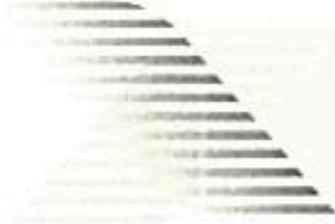
Any report production which is the responsibility of the Panel, may be best delivered through the Code Administrator/Secretariat.

## **Chapter 16**

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

Yes, we believe that a compliance/assurance framework is an excellent feature of any new arrangements. The key areas of risk identified before go-live might not be the same as those encountered once the SEC is in operation. Therefore, such a regime can be applied flexibly by the SEC Panel to any risk that materialises to provide a better level of assurance to parties.

The absence of a compliance/assurance framework is likely to lead to significant constraints on the SEC Panel to address issues as they arise. This could lead to minor complications in operating the new



## Consultation Response

arrangements, or at worst, a breakdown in arrangements if there is no way to identify issues and seek the right to rectify. The alternative to establishing a flexible regime at the outset is the development of a piecemeal approach, probably through targeted modifications. This is not very cost effective.

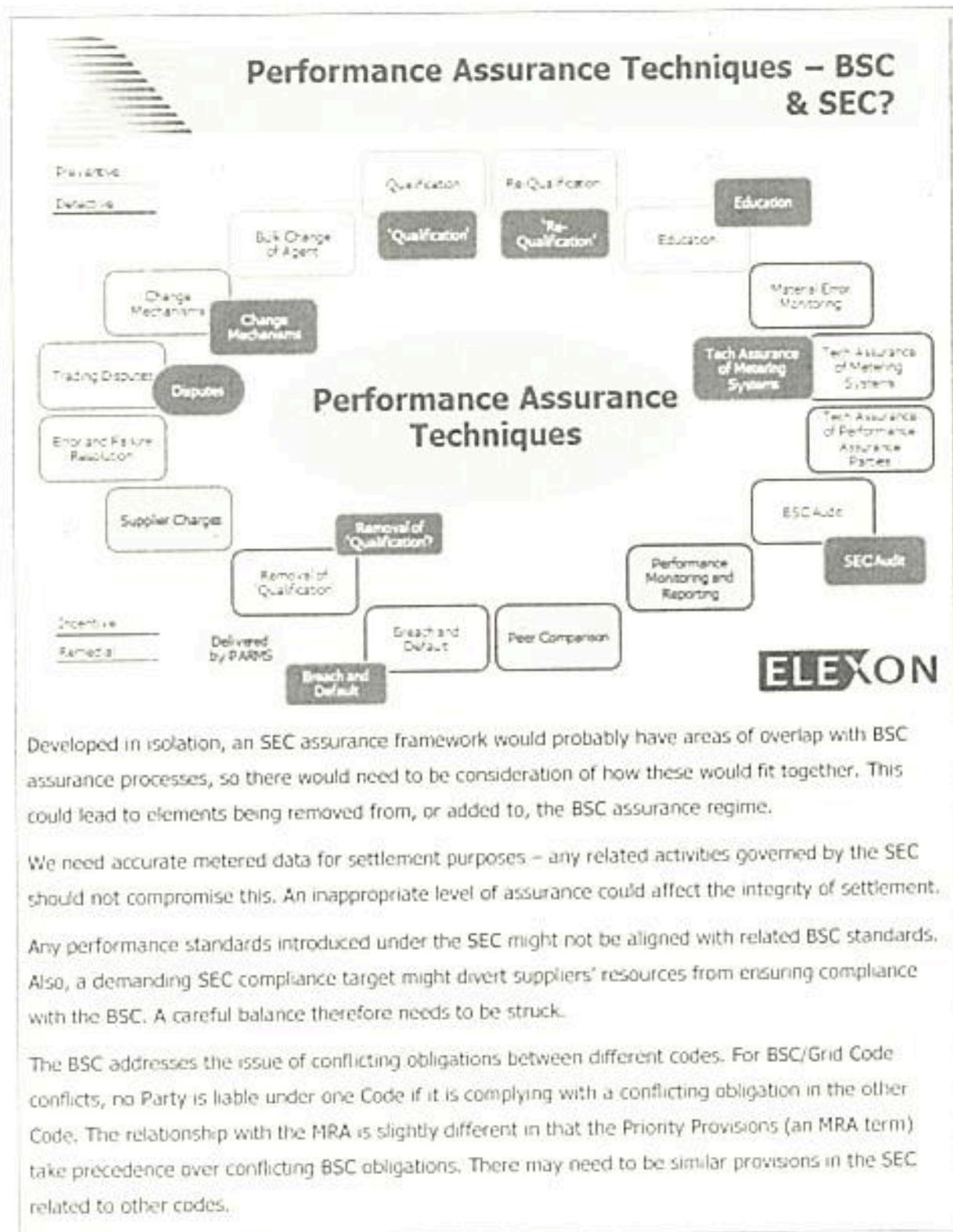
In the early days such a regime may extend to conducting checks on a Party's systems and processes to ensure they meet the ongoing requirements when such systems are changed. There may be risks related to faulty metering equipment that emerge after a period of operation, despite passing initial compliance testing. There may be a need to conduct periodic audits on how third Parties are maintaining records for which metering systems they have consumer permission to access.

We have seen with the BSC that the issues considered most important will change over time as the arrangements bed in.

### ***Overlap with existing assurance regimes***

The BSC Assurance regime is designed to assure the full 'meter to bank' process and contains a suite of techniques that are designed to be 'Preventative, Detective or Corrective' in nature. We have previously shared with DECC the following diagram which highlights the BSC assurance framework and where similar techniques (shown in blue), could apply under a SEC Regime (although the full SEC regime has yet to be defined so this is illustrative).

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As the BSC disputes process relies on accurate metering, there will need to be clear working arrangements between any dispute processes under the SEC and the BSC. As a minimum, it is critical that the BSC Panel and its committees can access information from metering systems, where there is a perceived impact on Settlement.

We note the reference to liquidated damages. It is important that, where a liquidated damage is identified, this does not introduce double charging across different codes.

### **Supplier of Last Resort**

Although not directly appropriate under this question, there is a further area where the SEC will need to provide 'assurance' to the market. The existing codes have had to be adapted over the years to account for reallocating liabilities and obligations arising from extreme events of supplier failure. In the event of a supplier failure a sale may be agreed, however in some circumstances Ofgem may need to reallocate customers to other suppliers. In either event the SEC must ensure its rules and processes can robustly address the transfer in responsibility and allocation of charges and not override the requirements of other codes.

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

Yes, we believe that a centralised compliance/assurance framework, enshrined in the SEC will provide the most robust protection for SEC Parties. If the assurance is fragmented it will become more difficult for the SEC Panel to have proper oversight of the arrangements and to be able to act to address non-compliances and issues (for example it would be inappropriate if lower level non-compliance could only be addressed by the Authority under licence obligation).

This compliance/assurance framework must be brought together under the SEC and work in conjunction with other governance (e.g. change process and security).

A compliance/assurance regime must be able to be flexed by the SEC Panel and have a suite of tools at its disposal to manage a range of non-compliances based on the materiality of those non-compliances and the effect on other SEC Parties (and ultimately consumers). The alternative would probably be the introduction of series of techniques on a piecemeal basis to address issues after they have arisen, through the Modification process. This would be an inefficient outcome.

We would be happy to discuss the design of the Assurance framework that is applied to risks to the 'meter to bank' process managed under the BSC.



# Consultation Response

## Chapter 17

### **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 have no strong views on the enforcement of liabilities but share the following with regards to how this works under the BSC. In general, BSC Parties cannot bring claims against BSCCo, however claims can be brought against BSCCo for actionable breaches – where one Party has been unfairly and particularly prejudiced by a breach. Claims have to be over £50,000 but the total amount payable in a year is capped at £3 million. If such a clause was included in the SEC it should sensibly include a cap to limit SEC Parties' liabilities (including DCC).

#### ***Wider impacts of multiple liabilities across codes***

Licensed Parties will be exposed to additional financial risk because of new liabilities under the SEC. Perhaps BSC Parties (and other code signatories) would seek to reduce their levels of Credit Cover in order to keep their overall liabilities across all codes to an appropriate level? Lower levels of Credit Cover could, in turn, increase the possibility of Parties entering Credit Default.

### **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?**

Yes we believe liabilities should be capped but do not have a view on the size of the cap.

### **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?**

We are not aware of any other specific types of liability.

### **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?**

No

### **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?**



# Consultation Response

No

**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?**

Yes, see the response to questions 45 and 46.

**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?**

We are not aware of any scenarios to allow for cost recovery between parties under the SEC.

## Chapter 18

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

We agree that, in principle, the SEC could address disputes related to financial losses associated with failures against obligations under the SEC (whether they be technical, commercial or a failure of defined processes). It would be prudent to establish a limit for costs of disputes or tie the process to defined criteria against which disputes can be raised.

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

The consultation describes a number of mechanisms that could be utilised to address disputes. We would agree that where these can be addressed bilaterally or without the need to involve formal processes, this should be done. Additionally, failures against obligations may be addressed through the wider assurance framework or a liquidated damage, in which case this may prohibit the use of a formal dispute mechanism.

It is sensible to at least provide for a dispute process in the SEC, such that Parties have a channel to address issues without the need to resort to litigation. In establishing such a regime it is important to put in place criteria and rules around a dispute process which may include:

- Rights to raise
- Burden of proof associated with identifying perceived non compliance
- Potential thresholds of associated materiality before a dispute can be raised

# Consultation Response

- Withdrawal mechanisms
- Confidentiality provisions
- Rights for representation
- Rectification provisions
- Appeal process

## Disputes under the BSC

There are a number of 'dispute resolution' procedures under the BSC. These are listed below and, although this might look unwieldy and expensive to manage, only 'Trading Disputes' are raised with any frequency. Trading disputes are heard by a Panel committee (the Trading Disputes Committee (TDC)), with the Panel acting as the appeal body for TDC decisions. TDC members are drawn from industry nominations, approved by Panel.

Procedure	Number raised since go-live (2001)	Ruling body
Trading Disputes	467	TDC (can be escalated to Panel then arbitration)
Manifest Errors	32	TDC
Section Q8 Compensation Claims (compensation for outages)	11	Q8 Committee (same membership as TDC)
Warm Homes Reconciliation Disputes	None to date	WHRD Committee (same membership as TDC)
supplier Charge Queries	1	PAB
Past Notification Errors	45	PNE Committee (disbanded)
Black Start and Fuel Security Claims	None to date	Claims Committee (will be formed in the event of a claim)
General disputes not covered by a designated process	None to date	Electricity Arbitration Association
Third Party Claims	None to date	Same court as the original legal proceedings

We have found that, irrespective of whether a dispute is upheld or not, a number of disputes have led to Parties raising subsequent modifications to the BSC to provide clarity to processes or correct manifest errors. In the last few years the TDC has obtained the right to recommend that the Panel raises a modification due to its unique position in assessing potential uncertainty in the BSC rules.



# Consultation Response

## **Disputes under the SEC?**

We suggest a single sub-committee should be capable of ruling on different types of dispute although it might not be feasible for one sub-committee to rule on all types of technical dispute under the SEC.

The consultation refers to disputes sub-committees dealing with certain technical disputes and regulatory/competitive matters being referred to the Authority. Other disputes would, after attempts to resolve using good faith or mediation, go to arbitration. Arbitration could potentially be a costly and time-consuming process. If there is likely to be a high number of a particular non-technical disputes there would be merit in having a specific process and committee to rule on them, instead of referring all cases to arbitration.

## **Interaction between BSC and SEC disputes?**

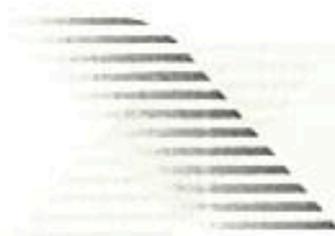
We believe, as a general principle, a particular issue should only be disputable under one process and one industry code – although a decision made under one code might have relevance under another code. There may well be circumstances however where a failure to meet an obligation under the SEC, causes a loss to other Parties and may have an impact for Settlement. In this case there may be some interdependence between codes.

For example, under the MRA, retrospective changes to supplier Volume Allocation Metering registration data cannot be made further back than 14 months without an upheld Trading Dispute under the BSC. Therefore, any SEC dispute which has the potential to affect settlement data (particularly if it affects data beyond the point that Settlement has completed) should be coordinated with the BSC disputes processes or perhaps should only be disputable through the BSC (depending on the trigger for the dispute).

There might need to be extra provisions explicitly stating that certain issues cannot be raised as Trading Disputes under the BSC, even if they would have the potential to affect Trading Charges. For example at present no Trading Dispute can be raised in relation to whether a supplier is wrongly recorded as the Registrant of an SVA Metering System.

## **Electricity Arbitration Association**

The proposals include the potential to use an arbitration service, using the example of the Electricity Arbitration Association. The EAA is funded by ELEXON (despite currently being used to resolve non-BSC issues), although the costs involved in any given arbitration are paid by the parties involved in the case. If the EAA is used to resolve SEC issues it would make sense to apportion the funding costs across the two codes.



# Consultation Response

## Chapter 19

**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?**

The categories of default are very similar to those in the BSC, mirroring those described in Section H of the BSC.

### **Application of credit arrangements**

The consultation contains proposals for the use of credit arrangements to mitigate against financial defaults. We have operated credit arrangements for many years under the BSC and would note that the credit rules need to be carefully constructed to avoid any 'gaming' by Parties (Parties will operate at the fringe of the credit arrangements which can create a lot of work for the Panel and monitoring body, Parties have been known to withdraw their credit just in advance of their business failing). The credit regime needs to:

- Ensure sufficient credit in place and have robust controls to prevent the credit being withdrawn leaving the market exposed (recognising this needs to be balanced against ensuring small players can join the Market);
- Work in parallel with mechanisms to initiate a winding up order causing either a quicker revocation of the licences or Authority intervention to address extreme cases; and
- Adopt any arrangements emerging from current discussions regarding managing large energy industry participant failure Service Providers.

### **Cross Code Impacts of Defaulting licensed Parties**

A party being in default for financial difficulties under the SEC might be an indicator that a BSC (and other industry codes) default is imminent.

Were a party (for example licensed electricity supplier) to be expelled from the SEC, then it would be unable to meet certain obligations under the BSC. Suspension of certain rights of the defaulting party could have similar consequences.

## Chapter 20

**Question 57: Do you agree with the proposed rules and procedures governing withdrawal**



# Consultation Response

## and expulsion from the SEC described in this chapter?

Yes, the rules and procedures seem sensible.

We note that under the BSC no timeframes are set for notification of Party withdrawal, ELEXON normally notifies other Parties via a circular the day before a withdrawal. After withdrawal BSC Parties are still liable for any charges associated with reconciliation runs and Extra Settlement Determinations (this is typically for 14 months but may be up to 28 months). We would expect SEC Parties to have resolved their liabilities much quicker under the SEC regime.

## Chapter 21

### **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 believe there is a need for clarity around work done in relation to non mandatory services. The IP in any work carried out by or on behalf of the DCC in relation to non mandatory services should remain vested in the DCC. However an outgoing DCC may wish to be entitled to retain the right to use IPR for non mandatory services?

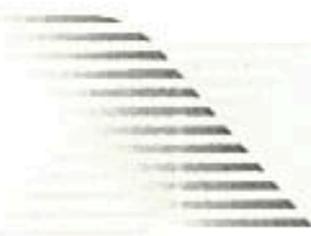
## Chapter 22

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

We suggest the following types of information should be confidential (restricted) under the SEC:

- Commercial agreements for new services
- Entry Process (until Party has qualified)
- Exit (until immediately prior to Exit)
- Assurance breaches (i.e. non compliances), until such time as naming is appropriate
- Credit positions and credit defaults (until such time as naming is necessary, dictated by the SEC)
- Minutes and Actions from closed sessions the Panel or Panel committee meetings

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



# Consultation Response

The DCC should respect the commercial confidentiality of SEC parties and keep all things defined as confidential in the SEC secure. All other material should be made available, through appropriate communication channels (so long as doing so does not incur disproportionate costs).

## Chapter 23

**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.**

As the SEC pertains to governance around smart meters, the communications infrastructure and services/obligations for SEC Parties then the following things should be considered:

- Force majeure to cover situations that affect the DCC Services (e.g. collection of meter readings, configuration services to different users, plus obligations on Parties that in turn rely on those services)
- Requirements for the DCC (and service providers) to have robust business continuity plans in place
- Provisions to deal with widespread loss of power supply (Black Start), civil emergencies and fuel security scenarios
- Consequences arising from force majeure of services provided to DCC (e.g. provision of meter registration information)

The following references may be useful for comparison: Section 5 of the BSC defines a number of scenarios under which force majeure may be declared. Section G of the BSC describes other contingent events that affect the electricity market arrangements.

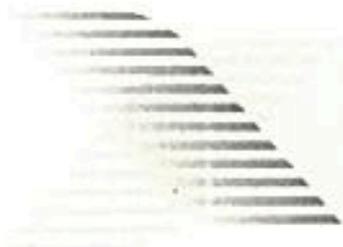
**Question 62: Please provide your thoughts on the proposal that the SEC should define a set of contingency business process arrangements and associated service levels/obligations which will apply in the event of a major service failure.**

The SEC should set out the rights and obligations (or exemption from those rights and obligations) that would occur in the event of force majeure for all Parties to the SEC, whether these apply to DCC or other signatories.

We would expect the DCC licence and its contracts with its service providers to contain provisions relating to force majeure and business continuity.

## Chapter 24

**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.**



## Consultation Response

We agree that there should be the obligation on the existing DCC to have a handover plan, to retain any obligations for the term of its licence and to assist with an orderly handover. The existing DCC should novate all relevant contracts across to the incoming DCC. There may also be potential TUPE arrangements that need to be considered.

For more information on our response, please contact:

