

DECC Consultation – Smart Metering Implementation Programme – Smart Energy Code

Response from E.ON

General Comments

We are in support of the development of a Smart Energy Code (SEC) to act as the governance for the technical requirements, business processes and DCC service levels for smart meters. The general structure of the proposed document and the content proposed seems comprehensive and well thought through.

We have 2 significant concerns with the proposals within the consultation, the constituency and role of the SEC Panel in managing changes to the SEC, and the role that metering agents (MOP and MAP) are proposed to have.

SEC Panel

The suggestions in the consultation regarding the SEC Panel is of greatest concern to us as we believe that it will have serious unintended consequences for the implementation and future success of the SEC.

The proposal for the SEC Panel and the SEC change process seems to be modelled upon that used in the Balancing and Settlement Code (BSC). We believe that this approach is fundamentally flawed and not appropriate for the needs of the SEC. The structure of the BSC Panel and the BSC change modification process was designed to consider significant commercial issues between parties to the code.

The SEC is not a code that will govern similar significant commercial issues between parties but instead is a code that will manage technical issues (e.g. the SMETS), business processes and service levels that can be expected from the DCC. This type of code is more akin to the Master Registration Agreement (MRA) in electricity or the Supply Point Administration Agreement (SPAA) in gas.

The change process is the part of the SEC governance that interests stakeholders and parties the most. This is because change to the SEC is the aspect that will have greatest commercial implication for SEC Parties.

There is such a diverse range of stakeholders involved in the SEC that attempting to find a representative panel to oversee and make judgements upon change proposals will be impossible. The result will be that nearly all stakeholders will feel disenfranchised and alienated by the SEC change process.

The consequences will be that SEC parties will not engage with the development of code. This may not be considered relevant as the notion of 'elective' services may mean that SEC parties simply avoid the standard change approach to 'core' services and go directly to the DCC. But it will certainly result in the SEC not developing as envisaged by Ofgem in their recent Smarter Markets consultation as a home for wider retail governance.

For industry governance to work effectively it requires stakeholders to be involved in and have confidence that the principles of better regulation of inclusiveness, openness and transparency are adhered to. These were considered in some detail by the industry when developing the DCUSA (the latest industry code to be established) change control process and would act as a good basis for consideration of what would be appropriate for the SEC. We believe it is vital to the success of the SEC that every party to the agreement is given the option of being involved in the change control process and not simply a few.

The delegation of change control governance to a dedicated sub-committee and the development of an appropriate mechanism to ensure all users can be involved in the change control process is vital if the SEC is going to succeed. Although this approach may take sometime to develop initially it is worth the effort and will deliver better long term results.

This approach will also allow the SEC Panel to get on with delivering the significant other activities that it is suggested that it be tasked with (e.g. oversight of the assurance regime, establishment of the SEC Code administrator). For these reasons the option of delegation of change powers should be implemented rather than that favoured within the consultation.

We do not support the notion that the SEC Panel should be made up of 'independent experts' as we believe this principle is also seriously flawed. A SEC Panel made up of salaried independent members would seem to be a consultant's charter that risks the SEC governance being seriously undermined. These people would not be independent but instead would have opaque vested interests which would almost certainly not be aligned with those of the SEC Parties or consumers.

It is far better to have transparency in the interests of individuals in industry code governance and to seek to ensure that all constituents are represented. We therefore prefer a representative approach to the SEC Panel as opposed to that suggested in the consultation.

We do not support the concept of the SEC Panel being able to propose changes to the SEC. If there is a belief from some members of the SEC Panel that the SEC warrants amendment, that in some way this would be to the benefit of parties, then it should be straight forward for them to persuade one to raise or 'sponsor' the change.

We do not support the notion that Ofgem should appoint an independent chair for the SEC Panel. SEC Panel decisions should be made by simple majority and any SEC Party should have the right to appeal a SEC Panel decision to Ofgem if they believe that it in some way unfairly prejudices them. This removes the need for a voting independent chairperson. The chair could be either a member of SEC Panel elected by other members or if none were willing to volunteer it could be provided by the SEC Code Secretariat. Both these options are used in other existing codes and has worked well. It is not a good use of Ofgem's resource to act as a recruitment service for the SEC Panel. It also creates questions of impartiality with regard to the chosen chair's view on issues which is not helpful for them when they are conducting their role.

Smart meter operators and asset managers (MOP and MAP)

The proposal in the consultation for MOPs to be recognised within the SEC and for MAPs not to be until 2017 or later is wrong. This risks resulting in greater costs for the roll out of smart metering and is based upon flawed logic derived from the operation of 'dumb' electricity meters today.

Having deployed thousands of smart meters acting in the role of Supplier, Meter Operator and Meter Asset Provider we are well placed to understand what these roles will involve in the future and who it is important to include within the SEC governance.

The industry role for meter operator for smart meters is very different to that for existing 'dumb' electricity meters. The meter operator does not configure the meters settings and nor is it required for a meter operator to visit a site to undertake diagnostic activity on a meter. Both these functions can be undertaken by suppliers directly via the WAN. Whom a supplier has appointed to act as their MOP is therefore not relevant to other industry parties including the DCC. Therefore there is no reason for this role to be recognised by the DCC and for the introduction of convoluted industry business processes to update and store their identity.

The role of MAP with their relationship with a Supplier or customer will endure during Change of Supplier (CoS) and Change of Tenancy (CoT) events. It is therefore beneficial for multiple parties to be made aware of the MAP identity and for this to be a recognised role within the smart industry processes. This will help to mitigate risks for parties and ensure that excessive additional costs are not included in meter rental incomes which would be passed onto consumers. There may also be future benefits for the DCC from an access control and security perspective in knowing the identity of MAPs.

The proposal within the consultation to recognise the MOP role within the SEC and not the MAP is wrong and that instead the opposite should be true and that this should occur from the outset of the SEC and not in 2017 or later.

Our responses to the consultation questions:

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

No additional comments to submit, we support the classifications proposed in the consultation.

- 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.

No, E.ON currently operates as a supplier, meter operator (MOP) and meter asset provider (MAP) for smart meters. From this experience we can see the value of explicitly recognising the role of MAP in the SEC but do not see any value in recognising the role of MOP.

The roles of both MOP and MAP within the context of the Supplier Hub principle should be for a Supplier to determine. Regulatory obligations regarding smart metering fall upon the suppliers who can choose to discharge these via contractual arrangements with agents. It is therefore inappropriate to try and confuse and undermine these arrangements within the SEC.

There are strong drivers for the formal recognition of MAPs within the SEC processes due to the enduring nature of the service that they provide during a Change of Supplier event. A Supplier will acquire a customer with an in-situ meter in place and therefore it is in the suppliers interest to understand who it should enter into a commercial relationship with to continue to rent the use of the metering asset.

From experience as a MAP there are many instances following a change of supplier event where no contractual arrangement exists with the new Supplier. This may present problems for the DCC in delivering requirements within the SEC if the Supplier involved is unable to deliver these via its commercial arrangement.

Leaving the requirement to identify the MAP to the DCC until it takes on registration services in 2016/7 seems like an unnecessary risk to the successful delivery of smart metering services. We believe that it would be better for the Supplier to capture and to provide the identity of the MAP to the DCC at the point a smart meter is installed and enrolled.

The identity of the MOP is not relevant to the DCC in the provision of its services. The enrolment and configuration of a smart meter is an obligation upon Suppliers and will be delivered by them. It is

not relevant to the DCC what sub-contracted agent the Supplier uses and this should be a commercial decision for that Supplier to make.

Building additional complexity into the DCC processes to hold and store MOP information simply increases costs for it and therefore for all customers from the roll out of smart meters. These costs are more appropriately targeted at Suppliers and MOPs in their commercial arrangements. This will provide the correct incentives for these costs to be reduced and managed.

- 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?**

No. We support Option A.

We agree that Option C undermines the current Supplier Hub principle for metering in Great Britain and would potentially have far reaching consequences for the market.

Option B does not offer any benefits over Option A and would result in complex administration costs for the SEC and the DCC. These costs would purely be introduced to support the business model suggested by some existing MOP but would be spread amongst all suppliers and customers. This cross subsidy to support some MOP is unwarranted, inappropriate and unnecessarily increases the cost of smart metering roll out for customers.

Within the consultation there a number of inferred benefits of Option B over Option A. We dispute that these are benefits and in fact see these as potential major concerns and costs:

- a. *Meter operator is uniquely identifiable:* The electricity MOP role of today is fundamentally changed in the future smart metering world. The role is important today as the MOP performs a number of important settlement roles including the configuration of the meter. In a smart metering world this role becomes the accountability of the supplier to manage directly and therefore the importance of storing the MOP role in the DCC systems is undermined. The role of the MOP in the future is limited to simply the physical work of installing metering equipment. The commercial MOP arrangement that a Supplier has for undertaking physical work on a particular meter is not relevant to the operation of the DCC. Requiring this information to be stored by the DCC will require significant extra investment by the DCC and by all Suppliers. The commercial MOP arrangement that a Supplier has for a particular meter may change frequently over time depending upon the commercial model that it utilises which will add to the ongoing administration costs for Suppliers and the DCC.

This additional cost may have unintended consequences for decision making by Suppliers and affect the competitive operation of the MOP market.

- b. *Allows single hand held terminal:* This implies the costs of the complexity of developing a solution for some commercial MOP, to help reduce costs for their activities, should be borne by all suppliers and customers rather than being targeted specifically at the MOP that it benefits. We can not see the justification for the socialisation of these costs instead of allowing the competitive Supplier and MOP commercial arrangements to drive the most cost effective solutions.
- c. *Regulatory enforcement on SEC party:* The potential for contractual negotiation and financial arrangements directly between the DCC and meter operators undermines the Supplier hub principle and will set the scene for future protracted contractual disputes between parties.

Electricity meter operators are formally recognised under the BSC arrangements because they fulfil a necessary settlement role in configuring electricity settlement meter registers. This role is no longer relevant in a smart metering environment where a Supplier will undertake the configuration of a meter. The correlation referenced in the consultation is therefore misleading and not relevant.

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?*

No, the potential for contractual negotiation and financial arrangements directly between the DCC and meter operators undermines the Supplier hub principle and will set the scene for future protracted contractual disputes between parties which will add cost to the roll out of smart meters and issues of poor customer service.

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, the visibility of MAPs in the current industry processes is a significant issue and one that if not addressed may create unnecessary costs for consumers from the roll out of smart meters. We agree that the best way of addressing this issue is by the recognition and tracking of this information on the industry registration systems.

6. *Do you agree with the process proposed for accession and the accession time limit?*

The proposed accession process seems acceptable for non-licensed entities (i.e. those within the proposed 'Other User' category).

However the process does not seem appropriate for licenced entities (electricity suppliers, gas suppliers, electricity distribution network operators, gas transporters). For these it would be a requirement of their licence to sign to the SEC.

It should therefore not be possible for the SEC Panel to expel them from the SEC for simply not using DCC services for six months. They should remain parties to the SEC for as long as Ofgem maintains their relevant licence to operate.

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?

Yes, although it should be remembered that the principle reason for an entity to accede to the SEC will be to utilise DCC services rather than to gain access to the governance process of the SEC.

If there is a belief that some parties may wish simply to be involved, or to be kept informed, about the SEC governance process then this can be catered for in other ways. For example the MRA has a recognised role of an Interested Industry Party (IIP) that allows them access to information about debates and for them to provide input regarding change.

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

No, although this will primarily be driven by the financial requirements of the DCC and the potential liabilities that parties may incur upon it.

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, this would seem pragmatic, ensuring that the most cost effective solution is chosen to support the deployment of smart meters.

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

No, we believe the Government's proposal is reasonable.

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

Yes, we agree and believe the Government's proposal is acceptable.

12. Do you agree with the proposed rights and obligations relating to smart metering system enrolment set out in this chapter?

Yes, we support the proposed SEC obligations proposed for the enrolment of smart meters with the DCC.

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 proposal in the consultation.

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

Yes, we agree with the proposal in the consultation.

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

Yes, we agree with the proposal in the consultation.

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?

No, we are only aware of these situations in relation to complex supply arrangements to large users of electricity or gas. Neither of these types of customer is covered by the mandated requirement for smart meters and therefore should not be an initial issue for the SEC.

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

Yes, this will provide a good framework for change control and provide visibility to all DCC Users.

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, although we believe that the timing and detail of how this function would operate needs greater consideration.

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, this will ensure that all DCC Users will have confidence that their services will not be affected.

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, this will ensure that DCC Users can be confident in the processes that will be followed by a monopoly service provider that they have no choice but to use.

We believe that to allow Ofgem to fulfil its obligations around monitoring the DCC's revenue restriction licence condition it will have to be made aware as a matter of course about any 'elective' DCC service and this should be built into the process from the outset. This level of regulatory oversight will ensure the market has faith in the process and that the correct behaviours are adhered to by the DCC.

The timescales set out in the consultation for the DCC to provide terms seem reasonable but it is perhaps best to wait until the DCC is appointed before defining these to allow for their input into the debate.

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?

No, we believe that these should be disclosed as a matter of course to Ofgem. Disclosure of them to other DCC Users is not appropriate.

However there remains a question as to how other users proposing a similar 'elective' service would know about those in existence and how it would then be made clear to all DCC Users that it would be more efficient for the service to become a new 'core' service.

The proposed model of DCC service provision and the associated governance of these arrangements will require a different level and style of regulatory oversight by Ofgem than they are currently used to providing for monopoly network service providers.

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 have experience of monopoly industry service providers implementing system changes without notice to users that have had material affects upon our business and customers. We would not wish to see this situation repeated with the DCC and therefore agree that this would be a useful requirement.

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 would seem a prudent way to introduce the DCC services. At what point the DCC service would be sufficiently established to accept 'elective' service requests is unclear at this stage.

As we describe in more detail in our response to question 43 an unintended consequence of the establishment of a flawed SEC change governance process is likely to be an increase in the number of 'elective' services from users. It would therefore seem appropriate to plan for these to be provided from very soon after outset of the DCC, when the DCC data services are established and WAN coverage is considered adequate.

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

Yes, although we do not support the proposal for "pay now, dispute later" approach and that the bad debts should be socialised across all types of DCC User.

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.

No, our experience of payments disputes with monopoly service providers is that they only respond to queries from users of their services if there is an ability to withhold payments in dispute. Without this requirement the monopoly service provider has no incentive to respond to a user dispute or resolve the dispute within a reasonable timescale.

Although we appreciate the sentiment of the proposal in the consultation the implications for the DCC Users and their customers should also be taken into consideration. The DCC will be providing monopoly services and therefore will be in a strong negotiating position with SEC Parties in a

payment dispute. This position will be exasperated by the inclusion of a requirement to "pay now and dispute later" approach.

If this approach is thought necessary to ensure the financial viability of the DCC then there will need to be a very robust dispute management process, perhaps with financial penalties for response times. It will also have to include an arbitration service that would need to be overseen and managed by Ofgem considering the only real sanctions available against the DCC would be in relation to its licence.

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.

No, we agree that costs for bad debt should be socialised across DCC Users rather than the DCC bearing the financial risk but this should be allocated to only those in the relevant class where the bad debt was incurred.

It would be inappropriate for example for the financial failure of a major ESCO to result in additional costs for all electricity or gas customers, many of whom may have chosen not use the services of this ESCO. Similarly it would seem inappropriate for customers who only have an electricity supply to pay for the costs of a failed gas supply business.

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

No, many of the proposals seems reasonable but we believe that some of the proposed objectives are not appropriate. With regards to the proposed Functions and Powers of the SEC Panel we do not believe that there is a need for the following:

I Developing, consulting upon and publishing a three-year panel business plan

The key function of the SEC Panel should be to ensure the delivery of functions A-G in the proposals. If the delivery of these would be facilitated by the creation of a business plan then the Panel should make this decision; we do not see that there is a need for this to be an absolute requirement of the panel.

J. Publishing an annual report covering progress against business plan and providing or arranging for the provision of other reports and other information to SEC Parties and the Authority

Any reports regarding the provision of services governed under the SEC should be specified within the SEC to allow visibility of these to users of the DCC service. This would better meet the stated objectives of the SEC to promote inclusive, accessible and effective consultation.

As we are opposed to the mandatory provision of a need for business plan it logically follows that we are not in support of the provision of an annual report covering its progress. This seems an unnecessary cost for SEC parties to incur and we do not understand what value it would provide to them.

L. Periodically reviewing the SEC and operations under it in order to evaluate whether these continue to meet the Relevant SEC Objectives, and undertaking a review of such parts of the SEC as the Authority may specify

We believe that the activities of the SEC panel should be focused on delivery of functions A-G in the consultation. Parties to the SEC should determine whether they believe that operations governed by it need review and they should be free to raise changes to these services within the SEC.

Codes that include such mandatory regular reviews (e.g. only the BSC) simply end up as administration exercises that do not have the support of stakeholders and incur unnecessary administration costs for signatories to the code.

We believe that it is right for the SEC Panel to have a set of prescribed functions within the SEC. This should set out what they are expected to deliver and with the exception of those mentioned above those suggested within the consultation seem to provide an appropriate balance between clarity and flexibility.

The proposed 'Objectives' for the SEC Panel seem reasonable although we assume that their only real relevance would be where a SEC party appeals a decision of the SEC Panel to Ofgem as they believed that it unfairly affected them. The right of any party to appeal a decision of the SEC Panel is not explicitly mentioned within the consultation but is certainly something we believe is required to ensure that SEC parties have appropriate checks and balances over the power of the SEC Panel.

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

No, the concept of 'independent experts' acting impartially in the best interests of all parties is fundamentally flawed and from experience of codes where this arrangement is adopted simply acts as a consultants charter where the interests of SEC Parties and consumers are marginalised and ignored.

It is contradictory for individuals to be both independent and expert in the technical issues that are to be described within the SEC. True independence would require a person not to be employed by or be receiving financial gain from a signatory party of the SEC. However without the knowledge that comes from being a signatory SEC Party it is not truly possible to understand the implications of the SEC.

Evidence of the failure of this approach to governance is clear from those codes that have adopted it. Here workgroups and panels have discussed issues that have commercial consequences for organisations and their consumers with no true understanding of the implications of their decisions.

Adoption of this approach in the SEC will ultimately lead to prolonged timescales to implement change and will significantly increase the risk of decisions being appealed to Ofgem as a matter of course.

An 'Independent' Panel can not meet the stated objective for the SEC to be inclusive and accessible as signatories to the code will not believe that it will represent their interests.

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.

The size and composition of the SEC Panel is dependent upon the functions that it directly undertakes and those that it proposes to delegate to sub-committees. The more functions that are delegated to sub-committees then the more likely it can be achieved by a smaller group of individuals, representing constituencies, and more easily meet the objectives of being transparent and inclusive for Code signatories.

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?

Yes, the DCC should deliver the services that are defined within the SEC and should not be able to unduly influence the strategic direction of those services. That should be left to the SEC Parties who will ultimately pay the costs of services provided by the DCC.

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.

No, we believe the costs of providing an independent Chair for the SEC Panel are unwarranted. The SEC Panel chair could simply be chosen from the members of the Panel or, should it be felt

necessary, provided by the SEC Code Secretariat. If the chair is provided by the SEC Code Secretariat then they should not have the ability to vote upon any SEC Panel decision.

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

Yes, appointing representative panel members from relevant constituencies of SEC signatories for periods of 1 or 2 years is a good suggestion. Rotating the periods when their tenure expires is also logical as this will ensure consistency in SEC panel membership over election times and helps with its smooth operation.

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

No, SEC Panel decisions should be made by simple majority and not require the vote of a Chair to resolve deadlock. Decisions made by the SEC Panel should be administrative in nature and in line with the 'objectives' suggested in the consultation. In these instances there should very few times where difficult decisions would require the need for a casting vote.

Any issues of commercial significance should involve a change to the SEC itself and be subject to an appropriate change control process that involves all signatories.

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 not in support of Option B, the remuneration of panel members, this combined with the proposal for parties to be independent of SEC parties would result in a SEC Panel made up of consultants with interests not aligned with those of SEC parties or consumers.

We do not support Option A either where SEC Panel members are reimbursed their costs of travel and accommodation. This is an unnecessary administration cost for all parties to the SEC to incur and instead these costs should be borne by the party who proposes a representative to be part of the SEC Panel. There are proven alternative ways to ensure that this does not act as a barrier to participation (e.g. the use of teleconferencing etc).

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

We do not have strong views with regard to which option should be used as both are viable. However we believe that from experience of being involved in *all* the existing industry code

arrangements that the establishment of SECCo does offer some potential options and flexibility for the SEC that make it the more attractive proposition.

It provides the option for the SEC to directly contract for services from 3rd parties without having to need to use the DCC. Within the consultation there are several potential uses described which might suite this type of arrangement and we would not dispute that these may be used in the future.

What is clear from the administration of other codes is that a number of initially unexpected developments will occur over time and it is for this reason that we believe that the flexibility presented by the SECCo option is preferable.

We do not believe that the creation of SECCo is an excessive administrative burden. For example a requirement for ownership shares being limited to discrete categories of user (e.g. Licence Suppliers) would significantly reduce the administrative costs involved.

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

It would be desirable to establish SECCo in a way which reduced and mitigated administration costs as much as possible.

It would therefore be sensible for the ownership of SECCo to be held by all licenced signatories (or perhaps a subset of these) of the SEC (in a similar way to MRASCO and the MRA). This would limit the shareholders to a manageable number and make the consequential administration costs in line with the limited costs this incurs for other codes.

Funding costs for SECCo should be recovered via the DCC from all DCC users as part of the fixed element of DCC services. This will significantly reduce the administrative cost for SECCo in recovering costs and for SEC parties in paying for them.

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

Yes, all parties to the SEC should be able to raise a change to it. This is in-line with the stated objectives of the SEC and ensures that users of DCC services feel enfranchised with the governance process.

Due to the impact that smart meters have upon consumers we are comfortable with the suggestion that a designated Consumer Representative organisation (assumed initially to be Consumer Focus) can also raise changes to the SEC.

It is not appropriate for the SEC Panel to be given any powers to raise modifications or changes to the SEC. If the SEC Panel believes that a change should be made to the SEC then it should be sufficiently easy for them to persuade a SEC Party of the need for the change and for them to raise or 'sponsor' the change proposal.

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

Yes, the proposed progression paths were designed for Codes that are in principle designed to manage commercial issues between industry counterparties, where changes are assumed to be infrequent and the commercial consequences for parties and consumers significant.

Codes that have adopted these processes also have different change control procedures for amendments to technical matters and business processes (e.g. BSC CP or UNC UK Link Committee).

The majority of issues governed under the SEC are proposed to be technical in nature or be business processes that define how Users will interact with the DCC.

The proposed progression paths for change seem therefore not to be relevant for the majority of changes that will be expected to the SEC and if they were used would quickly be found not to be workable.

We therefore believe that more work is required by the programme to understand what the change mechanism would be for these technical and business process types of change and therefore what type of change control process would be appropriate for the SEC. The programme should use as a basis for analysis the MRA, DCUSA and SPAA and not use the BSC.

We would suggest a similar process be adopted to that used currently in the DCUSA but with specific change sub-committees and processes established for the more technical schedules of the SEC.

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?

No, although it should be noted that different types of code change process, that used in the MRA, DCUSA or SPAA for example, operate within a timescale that in practice does not create the frequent need for modifications to be raised with an 'urgent' status. Adoption of such a change process for the SEC would make the requirement for 'urgent' modifications less relevant.

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?

Preferably it would be for the SEC Panel to decide this. However the proposed structure and nature of the SEC Panel may result in their decision being appealed to Ofgem by a SEC Party raising the urgent change anyway. It is therefore sensible for this decision to rest with Ofgem from the outset as it would reduce the time for the decision to be made which is critical in the case of an 'urgent' modification.

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

Yes, non-standard modification rules will probably end up applying to most parts of the SEC particularly when it can be envisaged that many commercial services from the DCC may end up being 'elective' in nature. It is therefore important that the change process for these is assessed in detail before the SEC is established.

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?

No, it is not only smaller scale participants that will be feel excluded by the proposed SEC change process, as described as a potential consequence in the consultation, but also larger organisation such as ourselves.

Our experience from the BSC, where the proposed change governance appears to be derived, is that users, large and small organisations feel disenfranchised and alienated.

Change proposals to industry codes are often the most contentious element of industry governance. Change, by its nature, alters the commercial arrangements for parties. It can incur costs on some or derive benefit for others at the expense of their competitors. It is therefore the aspect of governance that all parties will have an interest in.

The proposal to have the decision making process on change restricted to the SEC Panel will therefore undermine the key aspects of inclusivity and transparency in the SEC governance that are set out as key objectives.

For example, we would envisage that any changes to the SEC that we raise would not be supported by the 'large supplier' SEC Panel member who would be from one of our competitors and this would require us to have to appeal the change to Ofgem for determination.

This additional cost and effort in managing the change process will act as a deterrent to ourselves, and we would imagine most small organisations, to suggest changes that would be aimed at improving services for our customers.

Adoption of a more inclusive approach to change will ensure that all users of the process are enfranchised in the governance of the SEC and are not excluded. It will take greater time at the outset to establish the change control process but this will result in significantly less time being spent in the future on managing change to the SEC.

It will narrow significantly the role of the SEC Panel but from our experience of being involved in all the other industry codes panels it will make it significantly more productive in delivering its functions.

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

Yes, the flawed proposals for change governance of the SEC will encourage parties to seek amendments to their service offerings via the 'elective' route directly from the DCC. Although perhaps not an explicit objective this unintended consequence suggests that there is a need for the DCC to be able to offer these services from the outset to meet the needs of SEC Parties rather than a later date.

Ofgem's 'smarter markets' team have recently consulted on the proposal to merge together a number of the existing retail codes in an effort to save the industry administrative burden and to ease the industry change process. It had been envisioned that the SEC could form the basis for this rationalised retail industry governance.

We would only be willing to support such a move where we believed it would be successful and we were confident that the governance regime was sufficiently robust and fulfilled the objectives of better regulation. We do not see this in the proposals suggested in this consultation for the governance of SEC and therefore we would not be able to support the proposal for it be future home of retail industry governance.

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?

No, we do not believe at this stage that the SEC should place obligations on SEC parties to provide information as it is not clear what information is required to fulfil these obligations.

Any reporting requirements can be developed as part of the drafting of the SEC or as part of a future modification process.

We understand the requirement for the DCC to provide reporting on its performance and are happy to see these included within its Licence obligations. No doubt additional reporting requirements will evolve for the DCC and these can be included within the SEC as part of its development.

We do not understand the value of placing specific obligations on the SEC Panel at this stage to undertake reporting as its not clear what reports would be required and for what parties.

Ofgem already has powers to request information from Licence holders and therefore replication of this within the SEC is not necessary. It is perhaps worth considering a requirement within the SEC for non-licenced entities to provide information, if required, although the scope of this would have to be limited to issues pertinent to the services that they receive via the SEC and DCC.

An obligation on the SEC Panel to provide reports to Ofgem is reasonable although they would only be able to provide information which is available to them (e.g. activity regarding the Code administrator, performance of the SEC change progress etc) and would not be able to provide information with regard to SEC parties. Ofgem would have to obtain this information directly from these organisations.

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

The two most obvious areas for compliance/assurance for the SEC to govern are 1) the technical assurance of the smart metering system to ensure that interoperability can function and 2) data security and privacy. What nature the arrangements for the compliance and assurance regimes take requires further detailed consideration once the requirements are more clearly understood.

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

The obligation to provide the compliance/assurance framework solution should reside with the SEC Panel. The details of what the compliance/assurance framework will actually involve should be detailed in a specific schedule or part of the SEC.

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?

The options suggested in the consultation for addressing the liabilities between the DCC and service users seem sensible and consistent with other industry codes. As these have proved acceptable we have no reason to suggest that they would not equally apply in this instance. However as noted within the consultation the issue of smart metering security requirements and compliance are under

development and may eventually suggest that a different set of liability arrangements would be warranted.

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, it would seem sensible to include a cap on the liability appropriate to the different types of potential breach.

What these caps are is difficult to judge at this stage as the potential risks have not been made clear to us.

As the security regime requirements become clearer and the ownership of the shared communication hub is confirmed it should become clearer as to how much liability the DCC should be accountable for.

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 that haven't been considered in the consultation.

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?

As a starting point Option 1 would seem the most appropriate although we recognise that there are additional risks that smart metering may place upon parties.

Option 2 would seem to create significant risks to potential SEC Parties and hence why this type of arrangement is limited in other codes to cover only physical damage to property. It is probably therefore only appropriate to include a similar requirement within the SEC.

Options 3 and 4 may both be appropriate, especially with regard to managing the risk to parties from security breaches. The nature of the cost recovery arrangements should be linked to the assurance regime that is eventually developed.

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?

Potentially although this will become clearer once the issues of security, technical assurance and the ownership of the communication module are resolved.

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, this would be preferable as it increases visibility of activity for all parties and reduces the risk of incurring excessive administrative costs by individual parties for managing disputes. For licenced entities it also reduces the regulatory risk if there is a clearly defined mechanism for managing potential breaches of obligations.

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?

There maybe although we would envisage that this would form part of a central assurance framework. The question of what liabilities could be recovered this way and whether these warranted certain caps needs further investigation.

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

The two types of dispute that we believe are most likely to arise under the SEC would be 1) technical disputes between parties regarding interoperability capability of equipment and 2) commercial disputes between the DCC and service users.

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

Yes, the proposed framework seems appropriate for the types of dispute that will arise and should be the most efficient way to ensure their timely resolution.

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?

Yes, the proposed framework and role for the SEC Panel in dealing with SEC Party defaults is appropriate.

The sanction of suspension of DCC services should be included in the options for the SEC Panel to consider. This option would be particularly useful for the SEC Panel when managing the potential breach of non-licenced entities.

It is likely that the provision of 'core' and 'elective' DCC services to licenced entities will be fundamental to their ability to continue to discharge some of their licence obligations. Therefore the decision of the SEC Panel to suspend services for these types of SEC Party will have to be made in conjunction with reference to Ofgem due to the potential consequences.

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

Yes, the proposed procedures and rules to govern the withdrawal and expulsion from the SEC seem appropriate.

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 are not aware of any other provisions that were not included within the consultation document.

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

Any information that is obviously of a confidential nature or that a SEC Party has requested is kept confidential.

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

By explicitly including reference to the information and data that will be made public within the SEC it allows visibility and transparency to all SEC Parties. It then allows these to be debated by all interested stakeholders and amended if felt appropriate.

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.

A force majeure event will be called by the SEC Party who was unable to deliver its obligations under the SEC. This may be the DCC for services that it provides or a Supplier who may have obligations with regard to the provision of smart metering equipment.

As in all contracts disputes may arise where certain SEC Parties challenge another who has called a force majeure event. In these circumstances we believe the SEC dispute resolution mechanism would apply.

- 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.**

This would seem a clear requirement to ensure that services, of a sort, were continued to be offered to SEC Parties. Those that are critical in nature should be identified and suitable service levels determined that would not cause serious commercial implications for SEC parties or consequences for energy consumers.

- 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.**

The proposed provisions within the SEC covering the transfer of the DCC seem robust and we would agree with their inclusion.

We would expect the details of the schedule of the SEC to evolve over time as the functions of the DCC change and it becomes clearer to SEC Parties what additional requirements there may be in the process.

It would be appropriate to task the SEC Panel with ensuring that this schedule was always up to date. It is likely that this would be a service that would be provided by the SEC Code Administrator.