



Department  
of Energy &  
Climate Change

# Smart Meter Implementation Programme

Smart Energy Code Governance Set-up Arrangements – Nomination and  
Election for the initial SEC Panel

April 2013

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## Introduction

This document follows the Smart Energy Code (SEC) Governance Set-up Arrangements document published on 8 April 2013 and provides further detail on the next stage of the governance set-up arrangements that the Department of Energy and Climate Change (DECC) is undertaking for the nomination and election for the first SEC Panel, and inviting nominations for the Panel Membership.

This document sets out in chronological order, a process to appoint by way of election the first eight Industry Elected Members<sup>1</sup> of the SEC Panel. This is required so that the Panel can be in place from the time that the SEC is designated.

### Appointment of the initial SEC Panel

1. In facilitating the nominations process, DECC's intention is to mirror, as far as practicable, the enduring appointment processes in the SEC, with DECC taking a purely administrative role. See Annex C for the SEC legal drafting.
2. The request for nominations for Elected Members commences on 18 April 2013 and ends 10 May 2013.

### Who can nominate

3. Any person may submit a nomination for an individual/s to become an Elected Panel Member within the Party Categories listed below:
  - Large Suppliers Parties;
  - Small Suppliers Parties;
  - Electricity Network Parties;
  - Gas Network Parties; and
  - Other SEC Parties.
4. The person may nominate themselves or a third Party.
5. It is expected that the nominee will have agree to their nomination.
6. The nomination form (Annex A) should be submitted to [secgovernance@decc.gsi.gov.uk](mailto:secgovernance@decc.gsi.gov.uk) by 10 May 2013.

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<sup>1</sup> The eight industry members of the Panel will be elected by Party Categories as follows: a) two are elected by Large Suppliers Parties; b) two are elected by Small Suppliers Parties; c) one is elected by Electricity Network Parties; d) one is elected by Gas Network Parties; and e) two are elected by Other SEC Parties.

## Nominee requirements

7. As set out in the SEC, the nominee should be a person who (at the time of their nomination) is capable of becoming and remaining a Panel Member in accordance with Sections C3.2 and C4.6 (See Annex C for the SEC legal drafting).
8. The nominee should as part their role be able to fulfil the requirements under section C3.7 'Duties of Panel Members' (See Annex C for the SEC legal drafting).

## Accession Application Form deadline and associated processes

9. As set out in the SEC Governance set-up arrangements document published on 8 April, DECC has requested the submission of completed Accession Application Forms and Power of Attorney forms by the 10 May to enable DECC to compile a list of "Prospective Parties". The Prospective Parties will be able to vote in the election of the first Elected Members of the SEC Panel. The information requested on the Accession Application Forms will enable DECC to compile a list of all the Voting Groups<sup>2</sup> in each Party Category. Each Voting Group is able to cast one vote for an Elected Member.

## The initial SEC Panel election process

10. The outcome of the election will be decided as follows:

- Where there is the same number of candidates nominated for a Party Category as there are positions to be filled for that Party Category all of the candidates will be elected as Elected Members.
- Where there are more candidates nominated for a Party Category than there are positions to be filled for that Party Category, DECC will invite the Prospective Parties in that Party Category to vote for their preferred candidate (one vote will be allowed per Voting Group).

### Voting

11. Each Voting Group will be asked to complete the election form provided by DECC. DECC will count votes and confirm Elected Members of the first SEC Panel. The candidate(s) receiving the most votes will be elected as Elected Members. In the event of a tie, lots will be drawn to determine the results. The nominees will be notified of the process should this scenario arise.

12. Prospective Parties and Elected Members will be informed of the outcome by DECC.

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<sup>2</sup> Voting Group means, in respect of each Party Category, each Party that falls into that Party Category collectively with that Party's Affiliates (if any) who also fall into that Party Category.

## **Other processes**

13. When confirming the first Elected Members the Secretary of State will also specify which of them will be appointed for a period of 12 months and which for a period of 24 months. This is intended to provide continuity in panel membership over time, and it is envisaged that it will follow agreement amongst the Panel members

## **Next steps**

14. Complete the Panel member nomination form at Annex A and submit by 10 May.

## **Contacts**

If you have any question in relation to these processes please contact:

Saleha Dani on 0300 068 5195 or

Rob Thornes on 0300 068 5128

Alternatively please email at [secgovernance@decc.gsi.gov.uk](mailto:secgovernance@decc.gsi.gov.uk)

## Annex A: Panel member nomination form

The Nomination form below need to be completed by 10 May. This form needs to be completed in conjunction with the guidance set out above. If there is any incomplete information, DECC reserves the right to disregard a nomination and therefore not allowing the nomination to continue to the election stage of the process.

The completed from can be submitted in electronic form to [secgovernance@decc.gsi.gov.uk](mailto:secgovernance@decc.gsi.gov.uk) or in hard copy to Saleha Dani, Smart Meters Programme, Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW.

1.	Nominator's full name and contact details	Click here to enter text
2.	Name of Nominee/s	Click here to enter text
3.	Position of Nominee/s, i.e. current employer	Click here to enter text
4.	Which Party Category the Nominee/s are being put forward for.	Click here to enter text

## Annex B: Nomination and Election timetable

### Timetable and key activities

The table below is a reminder of the key activities in the timetable for the identification of Prospective Parties, appointment of the first Panel and Accession of Initial Parties<sup>3</sup>. Stakeholders will want to note the key deadlines in the rows shaded red.

Date	Action
8 April	<b>DECC issues notice to stakeholders with invitation to submit Accession Application forms</b>
8 April to <b>10 May</b>	<p><b>Prospective SEC Parties submit completed application form and Power of Attorney</b></p> <p>Those wishing to accede at the SEC commencement AND take part in election for first SEC Panel should submit completed Accession Application Forms <b>by 10 May</b> to become Prospective Parties.</p> <p>Applications received after 10 May, will still be able to accede at SEC commencement (subject to the final deadline below), but will not be eligible to vote in the election for the first SEC Panel.</p>
17 April	<b>DECC issues notice inviting the nomination of candidates for the role of Elected Member.</b>
17 April to <b>10 May</b>	<b>Period for submission of nominations for Elected Member positions.</b>
29 May	<p><b>DECC Initiates election process for Elected Members as follows:</b></p> <p>Where there is the same number of candidates nominated for a Party Category as there are positions to be filled for that Party Category all of the candidates will be</p>

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<sup>3</sup> That is they will accede at SEC commencement

	<p>elected as Elected Members.</p> <p>Where there are more candidates nominated for a Party Category than there are positions to be filled for that Party Category, DECC will invite the Prospective Parties in that Party Category to vote for their preferred candidate (one vote per Voting Group).</p>
29 May to 11 June	<b>Voting Groups cast votes for preferred candidate</b>
12 June to early July	<p><b>DECC counts votes and confirms Elected Members of the first Panel</b></p> <p>This period includes: assurance and verification of election results, informing Elected Panel Members and Prospective Parties, and publishing names of Elected Panel Members on website.</p>
28 June 2013	<p><b>Final deadline for submission of Accession Application Forms and Powers of Attorney</b> (for those who did not become Prospective Parties).</p> <p>Applications received after 28 June date can still accede, but not as Initial Parties. Such applications will be passed to the SEC Panel.</p>



## Annex C - Updated draft of Sections C3 and C4 of the SEC

### C3 PANEL MEMBERS

#### Panel Composition

C3.1 The Panel shall be composed of the following categories of persons (each a **Panel Member**, and the Panel Members referred to in Sections C3.1(a) to (e) being the **Elected Members**):

- (a) two persons elected by the Large Supplier Parties;
- (b) two persons elected by the Small Supplier Parties;
- (c) one person elected by the Electricity Network Parties;
- (d) one person elected by the Gas Network Parties;
- (e) two persons elected by the Other SEC Parties;
- (f) one person nominated by the DCC in accordance with Section C3.3 (the **DCC Member**);
- (g) two persons nominated in accordance with Section C3.4 (the **Consumer Members**);
- (h) one person appointed in accordance with Section C3.5 (the **Panel Chair**); and
- (i) any additional person appointed by the Panel Chair in accordance with Section

C3.2 Each Panel Member must be an individual (and cannot be a body corporate, association or partnership). No one person can hold more than one office as a Panel Member.

#### DCC Member

C3.3 The DCC Member shall be one person nominated by the DCC by notice to the Secretariat. The DCC may replace such person from time to time by prior notice to the Secretariat.

### **Consumer Members**

C3.4 The Consumer Members shall be two persons nominated by the National Consumer Council by notice to the Secretariat from time to time. The National Consumer Council may replace each such person from time to time by prior notice to the Secretariat.

### **Appointment of the Panel Chair**

C3.5 The first Panel Chair to be appointed following the designation of this Code shall be appointed in accordance with the appointment process developed in accordance with Section X (Transition). Thereafter, each Panel Chair shall be appointed in accordance with the same process, as modified from time to time by the Panel; provided that such process as modified must be designed to ensure that:

- (a) the candidate selected is sufficiently independent of any particular Party or class of Parties;
- (b) the appointment is conditional on the Authority approving the candidate;
- (c) the Panel Chair is appointed for a three-year term (following which he or she can apply to be re-appointed);
- (d) the Panel Chair is remunerated at a reasonable rate;
- (e) the Panel Chair's appointment is subject to Section C3.8 and terms equivalent to those set out in Section C4.6; and
- (f) provision is made for the Panel Chair to continue in office for a reasonable period following the end of his or her term of office in the event of any delay in appointing his or her successor.

### **Panel Chair Appointee**

C3.6 Where at any time:

- (a) no person is currently appointed as a Panel Member pursuant to this Section C3.6; and

- (b) the Panel Chair (having consulted with the other Panel Members) considers that there is a class or category of person having an interest in the SEC Arrangements whose interests are not adequately represented in the composition of the Panel at that time, and whose interests would be better represented if a particular person were appointed as an additional Panel Member,

the Panel Chair may (having consulted with the other Panel Members) appoint that particular person as a Panel Member by notice to the Secretariat. The Panel Chair may, at any time thereafter by notice to the Secretariat, remove that person from the office of Panel Member.

### **Duties of Panel Members**

C3.7 A person appointed as Panel Member, when acting in that capacity, shall:

- (a) act independently, not as a delegate, and without undue regard to the interests, of any Related Person;
- (b) exercise reasonable skill and care to the standard reasonably expected of a director of a company under the Companies Act 2006; and
- (c) act in a manner designed to facilitate the performance by the Panel of its duties under this Code.

### **Panel Member Confirmation**

C3.8 Each Panel Member must confirm in writing to SECCo (for the benefit of itself and each Party) that that person:

- (a) agrees to act as a Panel Member in accordance with this Code, including the requirements of Section C3.7; and
- (b) agrees to accept appointment as a director of SECCo, and to act in such capacity in accordance with this Code; and
- (c) will be available as reasonably required throughout his or her term of office, both to attend Panel meetings and to undertake work outside of those meetings as may reasonably be required.

C3.9 The appointment of a person who would otherwise be a Panel Member shall lapse (and the relevant office shall become vacant) if that person does not comply with the requirements of Section C3.8 within 20 Working Days after a request from the Secretariat to do so.

#### **Notification of Related Persons**

C3.10 Each Panel Member shall, at the time of his appointment and upon any relevant change in circumstance, disclose, in writing to the Panel, the name of each Related Person who is a Party, a DCC Service Provider or is otherwise likely to be materially affected by the SEC Arrangements (other than in the capacity of Energy Consumer).

C3.11 Without prejudice to the generality of Section C3.10, where a Panel Member changes employer, the Panel Member shall, as soon as reasonably practicable after such change, notify the Secretariat of such change in writing. The Secretariat shall then notify the Parties of such change in employer.

#### **Protections for Panel Members and Others**

C3.12 SECCo shall indemnify, and keep indemnified:

- (a) each Panel Member (whether as a Panel Member or as a director of SECCo);
- (b) each Reserve (whether acting as an Alternate or otherwise);
- (c) each person who serves on a Sub-Committee or Working Group; and
- (d) each Party, or an Affiliate of a Party, as employer of any person referred to in Sections C3.12(a) to (c),

from and against any and all costs (including legal costs), charges, expenses, damages or other liabilities properly incurred or suffered by that person or employer in relation to the exercise of the person's powers, duties or responsibilities under this Code, including where such powers duties or responsibilities are exercised negligently. The persons and employers shall be entitled to enforce their rights under this Section C3.12 pursuant to Section M11.5.

C3.13 The indemnity set out in Section C3.12 shall not apply to any costs, charges, expenses, damages or other liabilities that are:

- (a) costs and expenses expressly stated to be incapable of recovery by the Panel under Section C8 (Panel Costs and Budgets); or
- (b) suffered or incurred or occasioned by the wilful default, fraud or bad faith of, or breach of contract by, the relevant person.

## **C4 ELECTED MEMBERS**

### **Elected Members**

C4.1 The first Elected Members to be appointed on the designation of this Code shall be appointed in accordance with Section X (Transition). All other Elected Members shall be elected in accordance with the process set out in Section C4.2. Each Elected Member shall serve as a Panel Member until his or her retirement in accordance with Section C4.4, or until he or she is removed from office in accordance with Section C3.9, C4.5 or C4.6.

### **Election of Elected Members**

C4.2 The process set out in this Section C4.2 shall apply in respect of the election of each Elected Member. This process shall apply in respect of Elected Member vacancies arising by virtue of a Panel Member's retirement in accordance with Section C4.4 (a Scheduled Election), or a Panel Member being removed from office in accordance with Section C3.9, C4.5 or C4.6 (an Interim Election). In each case, the following process shall apply:

- (a) each Elected Member is to be elected by a Party Category as described in Section C3.1;
- (b) each Voting Group within a Party Category is entitled to cast one vote in the election of the Panel Member(s) to be elected by that Party Category;
- (c) the Secretariat shall publish on the Website and send to each Party within the relevant Party Category an invitation for nominations for candidates for the role of Elected Member;
- (d) in the case of Scheduled Elections, the invitation for nomination of candidates shall be published and sent by the Secretariat at least 35 Working Days ahead of the date on which the relevant Panel Member's term of office expires;
- (e) in the case of Interim Elections, the invitation for nomination of candidates shall be

- published and sent by the Secretariat by no later than 5 Working Days after the date on which the relevant Panel Member was removed from office;
- (f) the invitation for nomination of candidates shall request nominations within 15 Working Days after the date of the invitation;
  - (g) the eligible candidates for election shall be those persons who are (at the time of their nomination) capable of becoming and remaining Panel Members in accordance with Sections C3.2 and C4.6, and whose nominations (whether nominated by themselves or a third party) are received by the Secretariat within the period of time set out in the request for nominations;
  - (h) where the Secretariat receives a nomination for a candidate that the Secretariat does not consider to be an eligible candidate in accordance with Section C4.2(g), the Secretariat shall notify that person that this is the case as soon as reasonably practicable after receipt of the nomination (and, in any event, by no later than 2 Working Days following the expiry of the period of time set out in the request for nominations);
  - (i) where a candidate disputes the Secretariat's notification under Section C4.2(h), the candidate shall have 2 Working Days following receipt of such notification to refer the matter to the Panel Chair for final determination, which determination shall be made by the Panel Chair by no later than 5 Working Days following the expiry of the period of time set out in the request for nominations;
  - (j) 6 Working Days following the expiry of the period of time set out in the request for nominations, the Secretariat shall give notice to each Party within the relevant Party Category of the names of each eligible candidate (together with any supporting information provided to the Secretariat with his or her nomination);
  - (k) at the same time as the Secretariat issues such notice, where there are more eligible candidates for a Party Category than there are positions to be filled as Elected Members for that Party Category, the Secretariat shall invite the Voting Groups comprising that Party Category to vote for their preferred eligible candidate;
  - (l) each such Voting Group shall be entitled to cast one vote, and shall cast such vote by means of a system established by the Panel which ensures that each Voting Group casts only one vote, and which allows 10 Working Days following the invitation pursuant to Section C4.2(k) for such vote to be cast;

- (m) the successful candidate or candidates elected as a result of the votes cast in accordance with this Section C4.2 shall be determined in accordance with Section C4.3;
- (n) the Secretariat shall not publish details of the votes cast by each Voting Group, but shall disclose such details to the Panel Chair for scrutiny;
- (o) as soon as reasonably practicable following the election of an Elected Member in accordance with this Section C4.2, the Secretariat shall publish on the Website and notify each Party of the identity of the person who has been so elected; and
- (p) each person elected as a Panel Member in accordance with this Section C4.2 shall commence his or her office as a Panel Member: (i) in the case of Scheduled Elections, simultaneously with the retirement of the relevant Panel Member; or (ii) in the case of Interim Elections, simultaneously with the notification by the Secretariat pursuant to Section C4.2(o).

C4.3 The person or persons elected as an Elected Member as a result of the process set out in Section C4.2 shall be:

- (a) where there are the same number of eligible candidates for a Party Category as there are positions to be filled as Elected Members for that Party Category, all of the eligible candidates shall be elected as Elected Members;
- (b) where there are more eligible candidates for a Party Category than there are positions to be filled as Elected Members for that Party Category, the eligible candidate(s) that received the most votes in accordance with Section C4.2(l) shall be elected as Elected Members (and, in the case of a tie, the Secretariat shall determine the Elected Member by drawing lots, to be witnessed by the Panel Chair); or
- (c) where there are less eligible candidates for a Party Category than there are positions to be filled as Elected Members for that Party Category (including where there are no eligible candidates), the Authority will (at its discretion) be entitled to nominate an Elected Member for that Party Category. Where this Section C4.3(c) applies, the Panel shall be entitled (at any time thereafter) to determine that a further election should be held in accordance with Section C4.2 in respect of that Party Category.

#### **Retirement of Elected Members**

C4.4 Subject to earlier removal from office of an Elected Member in accordance with Section C3.9,

C4.5 or C4.6 and without prejudice to his or her ability to stand for re-election, each Elected Member shall retire (at which point his or her office shall become vacant) as follows:

- (a) the Elected Members elected in accordance with Section X (Transition) shall retire in accordance with that Section;
- (b) the Elected Members elected in accordance with this Section C4.2, shall retire two years after the date on which they first took office; and
- (c) any Elected Member nominated by the Authority pursuant to Section C4.3(c), shall retire on the Authority determining (at its discretion) that such person should be removed from office, or on the successful election of a replacement Elected Member in an election pursuant to Section C4.3(c).

### **Removal of Elected Members**

C4.5 An Elected Member may:

- (a) resign his or her office by 10 Working Days' notice in writing to the Panel Chair;
- (b) be removed from office by the Panel Chair on notice to the Panel if the Elected Member fails to attend (either in person or via his or her Alternate) at least 50% of the Panel meetings held in any period of 12 months; or
- (c) be removed from office by the other Panel Members (acting unanimously) if such other Panel Members consider that the Elected Member is in breach of the confirmation given by that Elected Member pursuant to Section C3.8 (Panel Member Confirmation).

C4.6 An Elected Member shall automatically be removed from office if he or she:

- (a) dies;
- (b) is admitted to hospital in pursuance of an application under the Mental Health Act 1983 or the Mental Health (Care and Treatment) (Scotland) Act 2003, or an order is made by a court with competent jurisdiction in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person with respect to his property or affairs;
- (c) becomes bankrupt or makes any arrangement or composition with his creditors;



- (d) becomes prohibited by law from being a director of a company under the Companies Act 2006; and/or
- (e) is convicted of an indictable criminal offence.

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