



Department
of Energy &
Climate Change

Smart Metering Implementation Programme

Stage 1 of the Smart Energy Code

A Government response and supplementary consultation on updated draft legal text

29 April 2013

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The consultation can be found on DECC's website:
<https://www.gov.uk/government/consultations/smart-energy-code-stage-1>

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1. Executive Summary

Smart meters are the next generation of gas and electricity meters. They will offer a range of intelligent functions and provide consumers with more accurate information, bringing an end to estimated billing. Consumers will have real time information on their energy consumption to help them control and manage their energy use, save money and reduce emissions.

A central body, the Data and Communications Company (DCC), is being established to provide a smart meter communications service. The DCC will offer the means by which energy suppliers, energy network operators and energy efficiency or energy services companies can communicate remotely with smart meters in domestic premises in Great Britain. Accordingly, the rollout of smart meters across Great Britain will require changes to the regulatory framework governing energy industry participants, including a new licence for the DCC and a new industry code, the 'Smart Energy Code' (SEC). The SEC will be a new multiparty agreement which will set out the terms for the provision of the DCC's smart meter communications service and specify other provisions to govern the end-to-end management of smart metering. The SEC needs to be read alongside the DCC Licence, which sets out the high-level obligations for this new licensed entity. The DCC, energy suppliers and network operators will be required through new conditions in their licences to become parties to the SEC.

This document fulfils three primary purposes: it sets out the Government's response to comments received on the November 2012 consultation on the draft legal text of Stage 1 of the SEC¹; it updates the draft legal text and explains the changes; and it invites further comments on some elements of the legal text.

Updates to the draft legal text of Stage 1 of the SEC

Following analysis of comments received in response to the November Consultation and further consideration, some revisions have been made to the draft legal text of Stage 1 of the SEC. The revised legal text focuses on the key provisions that shall have effect when the DCC Licence comes into force and the SEC is designated. Some legal provisions that were consulted on in November, but which do not need to be in effect immediately, have been removed and will be introduced at a later stage. Key changes to the legal text include:

- In **Section C (Governance)** the Panel composition has been changed so that each Party Category may each elect Panel members. The number of Consumer Members on the Panel has been increased from one to two.
- In **Section D (Modifications)** the duties of the Change Board have been expanded so that it may facilitate the development, refinement and discussion of potential variations to the SEC prior to their formal submission as modification proposals. Additionally, in **Section X**, the transitional provisions have been changed so that the Panel shall establish the Change Board as soon as reasonably practicable (previously, provisions did not allow the Change Board to be established until a date designated by the Secretary of State).

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43075/6908-stage-1-smart-energy-code-cons.pdf

- In **Section E (Registration Data)** the list of registration data items provided to the DCC in respect of each gas and electricity meter point number (MPAN/MPRN) has been updated, and the obligations to provide data have been refined to reflect developments in understanding of industry processes and requirements.
- In **Section H (DCC Services)** provisions dealing with enrolment and withdrawal of smart metering systems have been removed because changes to the security procedures required to support smart metering have meant that amendments are needed to the enrolment and withdrawal processes. The updated provisions will be consulted on and introduced in a future version of the SEC.
- In **Section H (DCC Services)** the Government proposes that a description of each elective communication service is published six months after it was first provided. This consultation invites views on this change.
- In **Section I (Data Privacy)** audit provisions have been removed and will be revised and reintroduced in a future version of the SEC. This is to enable consideration of these audit provisions with any requirements for security audits, which will be introduced into a future version of the SEC.
- In **Section J (Charges)** provisions have been added requiring the DCC to publish a working model that allows users to calculate indicative charges.
- In **Section K (Charging Methodology)** an additional threshold has been added for first comer/second comer payments for elective services (10 years where relevant costs are more than £500,000). Additional text has also been included to provide for recovery of net liability costs in proportion to a Party's charges over the preceding 12 months
- In **Section M (General)** each party's liability for loss of or damage to physical property as a result of breach of the SEC is limited to £1,000,000 in respect of each incident or series of related incidents.
- In **Section M (General)** provisions have also been added to make sure that DCC data is to be treated as confidential, but only when it is clearly marked as such.
- **Transition** provisions have been moved to a new **Section X**. Only Subsections X2 and X4 are addressed in this consultation. The other provisions are subject to a separate supplementary consultation (described below).

The updated legal text of Stage 1 of the SEC is at Annex B of this document. Annex C contains the updated legal text in change-marked form to show all the insertions, deletions and movements of text since it was first published alongside the November Consultation.

Legal text related to or contained in Section X which is subject to a separate supplementary consultation is included in Annex B (greyed out) and Annex C.

Annex D sets out the draft **core communication services** the DCC must provide to its users on request and the associated explicit charging metrics. The information contained in this schedule has been published separately as a notification.

Annex E sets out the **licence conditions** that will be introduced to require energy suppliers and energy networks to accede to and comply with the SEC.

Designating the SEC

The Government has published a number of notifications and supplementary consultations regarding topics that are covered in the legal text of Stage 1 of the SEC. These are:

- Notification of core communication services the DCC must provide to its users on request (and invitation to request 'day one' elective services) (published 8 April)²
- Notification of arrangements for SEC governance set-up (published 8 April) and nomination and election for the initial SEC Panel (published 19 April)³
- Publication of SEC supplementary consultation on transition (published 18th April)⁴

Additionally, the revised draft DCC Licence was published in November 2012⁵ and continues to be developed in light of other smart metering consultations and the DCC licensing competition. The detail of the SEC legal text may evolve as a result of the DCC competitive process, the consultation on transition and further policy development. As the draft legal text evolves the Government will continue to engage with stakeholders on the relevant issues through stakeholder working groups and consultation where appropriate.

Once the Government considers that the legal text for Stage 1 of the SEC has been finalised it will designate the SEC. Condition 22 of the DCC Licence grants the Secretary of State the ability to designate the SEC through a direction under the licence condition. It states that, before designating the SEC, the Secretary of State must consult relevant parties for a period of at least 28 days. The Government will undertake this formal consultation exercise before the DCC Licence comes into force with the intention that the SEC will be designated to have effect at that point.

² Available at <https://www.gov.uk/government/publications/notification-of-core-communication-services-schedule-and-invitation-for-elective-communication-service-requests>

³ Available at <https://www.gov.uk/smart-energy-code-sec-governance>

⁴ Available at <https://www.gov.uk/government/consultations/stage-1-of-the-smart-energy-code>

⁵ Available at <https://www.gov.uk/government/consultations/smart-meter-data-and-communications-company-dcc-licence-conditions-and-licence-application-regulations-data-and-communications-company-dcc-licence-conditions-and-licence-application-regulations>

2. General information

Territorial extent

This document applies to the gas and electricity markets in Great Britain. Responsibility for energy markets in Northern Ireland lies with the Northern Ireland Executive's Department of Enterprise, Trade and Investment.

How to respond

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. Responses to this consultation should be sent to smartmetering@decc.gsi.gov.uk. The consultation closes on **27 May 2013**.

Responses should be clearly marked Smart Metering Programme: Stage 1 of the Smart Energy Code – supplementary consultation on updated draft legal text. Responses and any enquiries related to the consultation should be addressed to:

Smart Metering Implementation Programme – Regulation Team
Department of Energy & Climate Change,
3 Whitehall Place,
London
SW1A 2AW

Tel: 0300 068 5163
Email: smartmetering@decc.gsi.gov.uk
Consultation reference: 13D/101

Additional copies

You may make copies of this document without seeking permission. An electronic version can be found at <https://www.gov.uk/government/consultations/smart-energy-code-stage-1>. Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on our website at https://www.gov.uk/government/publications?publication_filter_option=consultations. This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the Government's consultation principles, which can be found here: <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator
3 Whitehall Place
London SW1A 2AW
Email: consultation.coordinator@decc.gsi.gov.uk

3. Developing the Smart Energy Code

3.1 The consultation process

1. In April 2012 the Government consulted on the scope and content of Stage 1 of the SEC. This was followed in November 2012 by a Government response and consultation on draft legal text. A supplementary SEC consultation on proposed transitional provisions was published in April 2013.
2. The publication of the updated draft legal text in this document represents the last phase in the consultation process for Stage 1 of the SEC. This consultation invites comments on two areas where the legal drafting has been updated. The questions are set out in Sections 4.2.6 and 4.2.9 and reproduced here for reference:

Elective communications services	
1.	Do you agree with the approach to publishing a description of each elective service six months after it was first provided? Please provide a supporting rationale for your views.
Liabilities	
2.	The Government has refined the legal drafting in relation to liability for breaches of confidentiality and intellectual property obligations and has proposed specific liability caps for inclusion in the SEC in relation to breaches of obligations giving rise to physical damage. The Government would welcome further comments on these proposals, together with the rationale for your views

3. The Government will respond to comments and explain any changes to the legal text when the Secretary of State proposes to designate the SEC.

3.2 Contents of Stage 1 of the SEC

4. Stage 1 of the SEC contains the provisions necessary to support the operation of the DCC from the point at which the DCC Licence comes into force. It also contains certain provisions that will eventually support the DCC's provision of smart meter communications services that are ready for inclusion in the SEC. The table below lists the contents of Stage 1 of the SEC.

Section	Elements of the SEC covered in Stage 1
Section A	Definitions & Interpretation
Section B	Accession
Section C	Governance

Section D	Modifications
Section E	Provision of registration data
Section H	High level provisions regarding the user entry process, meter operator agents, the user gateway, core communication services, and elective communication services
Section I	Data privacy and access to data
Section J	Charges
Section K	Charging methodology
Section M	Liabilities between SEC Parties, disputes, defaults, ceasing to be a Party to the SEC, intellectual property rights, confidentiality, unforeseen events and transfers of the DCC Licence
Section X	Effective provisions at designation, governance set-up arrangements. Further transitional arrangements (subject to consultation)
Schedules	Specimen Accession Agreement, Pro Forma Bilateral Agreement, Framework Agreement, Form of Letter of Credit, SECCo Schedule

5. Some of the content of Section X is subject to a supplementary consultation on transition, so that text is not described in this document. If the Government concludes that the Section X content consulted on separately should be included in Stage 1 of the SEC then it will be published as part of the final text designated by the Secretary of State.

3.3 Future versions of the SEC

6. Set out below are the anticipated contents of future versions of the SEC to be introduced at various stages prior to the DCC's services becoming operational.

Section	Overview of contents
Section A	Any updates required as a consequence of further SEC drafting
Section C	Provisions supporting subcommittees to be provided for in the SEC, for example a technical subcommittee and a security subcommittee
Section D	Provisions supporting modifications to the Smart Metering Equipment Technical Specification (SMETS), the Communications Hub Technical Specification (CHTS) and the security requirements
Section E	Further details supporting the technical interface between DCC and the registration bodies and procedural rules governing the submission of

	data
Section F	Compliance with the SMETS, compliance with CHTS, testing arrangements
Section G	Provisions setting out security requirements for DCC and DCC Users, security assurance processes, key exchange processes, encryption requirements
Section H	Supplemental provisions relating to use of the DCC User Gateway (e.g. codes of connection), supplemental provisions relating to procedures supporting user entry processes, communication hub services (forecasting, ordering, delivering, installing, maintain and removing), process for enrolling and withdrawing smart metering systems and replacing devices, arrangements supporting incident management, including business continuity and disaster recovery, performance standards and reporting
Section I	Audit provisions supporting obligations to obtain consumer consent and DCC data processing obligations
Section J	Any supplemental payment terms to support charging for communications hubs
Section K	Approach to charging for communications hubs and any other charges required to support additional SEC content
Section M	Any further updates to liability provisions if required to support introduction of new SEC content
Section X	Any further transitional provisions required to support achievement of the completion of implementation.
Schedules	Any further schedules regarded as necessary in relation to the Sections described above including a Core Communication Services Schedule
Subsidiary Documents	Specific subsidiary documents that have been identified as appropriate for inclusion in the SEC that include technical or procedural arrangements designed to support the discharge of principal rights and obligations in the Code.

3.3.1 Plan for Delivery

- The Government is finalising its approach to the delivery of further SEC content once Stage 1 of the SEC is in place. In doing so it is seeking to strike a balance between the need to provide certainty to stakeholders early in the process and the need to ensure that detailed rules and requirements are sufficiently developed to warrant their inclusion in the regulatory framework. An updated approach will be shared with stakeholders shortly.

4. Responses to the Smart Energy Code November 2012 Consultation

This chapter summarises stakeholder responses to questions asked in the November 2012 Consultation, sets out the Government's response and highlights where the draft legal text has been updated.

4.1 Consultation summary

8. The Government Response and Consultation on draft legal text for Stage 1 of the Smart Energy Code was published on 8 November 2012 and closed on 7 January 2013. It set out fourteen questions regarding topics covered in Stage 1 of the SEC, such as governance, change management, charging, and liabilities. A further five questions related to the introduction of the licence conditions that will be placed on electricity and gas suppliers and network operators. The questions asked in the November Consultation are set out in Annex A.
9. There were 22 responses to the consultation across a range of organisations, including:
 - Large and small energy suppliers (serving both domestic and non-domestic customers)
 - Electricity distribution networks and gas transportation networks
 - Consumer and business representatives
 - Energy data managers and code administrators
 - Other industry organisations
 - Ofgem.
10. All of the responses to the November Consultation can be found on the Government website⁶.

4.2 Summary of responses and changes to legal text

11. This summary is structured to follow the updated legal text of Stage 1 of the SEC (Annex B) to facilitate cross-reference. Annex C contains the updated legal text in change marked form, documenting all of the detailed insertions, deletions and movements of text since the legal text was published alongside the November Consultation.
12. **Question 1** of the November Consultation asked stakeholders to comment on whether the Government's policy conclusions were appropriately reflected in the legal drafting of Stage 1 of the SEC. Respondents generally agreed that they were. A number of respondents identified areas where they saw inconsistencies between policy conclusions and legal text or

⁶ <https://www.gov.uk/government/consultations/smart-energy-code-stage-1>

provided detailed comments on particular sections of SEC drafting. Many of these have resulted in small drafting changes to the legal text of the SEC (see Annexes B and C) but are not explicitly addressed in this summary because they do not represent material changes to the stated approach.

4.2.1 Section A: Definitions and interpretation

13. The Government has added some new defined terms and changed the definition of others to reflect developments in thinking since the November Consultation. These are highlighted in Annex C.
14. The definition of SEC subsidiary documents has also been amended so that individual subsidiary documents are not identified at this stage. It is stated that when introduced, subsidiary documents will identify the section(s) of the SEC that they relate to. Consequently, parts of the drafting of Stage 1 of the SEC refer to 'any applicable subsidiary document'. Individual subsidiary documents will be identified and referenced in subsequent versions of the SEC. They will be procedural or technical documents that support the discharge of principal rights and obligations under the SEC and with which Parties are required to comply.

4.2.2 Section B: Accession

15. The November Consultation set out the Government's position in relation to the rights of Parties upon accession to the SEC, the accession process, the information required for accession, and the proposed time limit within which acceding Parties should take up DCC services. A small number of respondents commented on this section with minor drafting suggestions. Consequently, small changes have been made to make clear that the application fee reflects reasonable costs incurred by the Panel and to ensure that the Panel executes accession agreements as soon as is reasonably practical.

Summary of changes between November 2012 draft and April 2013 text

Section B - Accession	<p>Text on the accession fee and Panel execution of accession agreements has been amended (see paragraph B1.5 & B1.11)</p> <p>Details of any unique identifiers provided on accession forms will be treated as confidential (See Schedule 5)</p>
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4.2.3 Section C: Governance

November 2012 Consultation

16. The November Consultation set out the functions, powers, and composition of the SEC Panel, as well as arrangements for the establishment and operation of the Code Administrator and Secretariat (SECAS) and Panel subcommittees. It also set out rules for SEC Panel proceedings, costs and budgets.
17. The Government put forward two potential approaches to the Panel composition. **Question 4** asked respondents to indicate whether they preferred a Panel with an equal number of members per Party Category or one with a set number of members to be nominated from and elected by all SEC Parties. In the consultation the Government recognised that both

models have advantages. Option A would ensure that the Panel benefits from the experience of all categories of market participant; Option B would place more emphasis on the qualities of the individuals being nominated.

18. In the November Consultation the Government proposed that the SEC Panel functions and powers it had set out in the April 2012 consultation were broadly right, but also recognised that a number of these may be delegated to the SECAS or to subcommittees of the Panel such as the Change Board. The Government recognised that the objectives, duties and powers of the Panel may need to be expanded as new content is added to the SEC.
19. The Government proposed that the SEC Panel shall establish joint working arrangements with the committees and panels responsible for other codes and agreements in order to facilitate robust interaction and coordination. It also noted that SEC Parties will need to have regard to the codes that interact with the SEC, to ensure that, where necessary, code changes are considered across the regulatory framework and that a change to one code does not adversely affect other codes. **Question 11** asked whether respondents agreed that the proposed legal drafting covering change coordination with other codes will achieve this.

Views of respondents

The SEC Panel

20. Of the 16 respondents to **Question 4**, a slight majority expressed a preference for a Panel consisting of members nominated and elected by each Party Category (Option A). Respondents in favour of Option A argued that it best ensures that all Party Categories are equitably represented, whereas Option B creates the potential for a panel whose members are not drawn from all Party Categories. In particular it was noted that Option B could lead to the creation of a panel that has no members elected by categories of Party who will be obliged to accede to the SEC (because they could be outvoted by other DCC users). Consequently, some respondents strongly opposed Option B. Additionally, some respondents found the voting arrangements for Option A to be less complex than Option B, and therefore easier for Parties to understand and for the SECAS to administer.
21. A significant minority of respondents preferred Option B. Some argued that it would be more responsive to the interests of Parties as they change over time, and noted that the population of DCC users has the potential to change significantly. One respondent suggested that it may be unreasonable to expect that one Panel member would be able to understand and communicate the priorities of an entire Party Category (especially given the potential for differences between large and small participants across gas and electricity).
22. A number of respondents commented on detailed elements of the draft legal text in Section C (Governance). Comments focussed on practical aspects of the Panel Proceedings and on Panel costs and expenses. Some respondents suggested that those serving on subcommittees or working groups should not be able to recover reasonable costs and expenses, and that expenses limits could be decided by the SEC Panel rather than set out in the SEC.

Ensuring coordination between the SEC and other industry codes

23. There was general support for the Government's proposal in relation to change coordination with other codes. There was a suggestion from some respondents that priority provisions should be used where there might otherwise be duplication of requirements across different

codes (for example in relation to registration data). One respondent asked how the arrangements for joint working extend beyond code changes, and whether the SEC is to be considered a core industry document. One respondent suggested that the SEC modifications process include a requirement to consider the impact on other codes.

Government conclusion and SEC text

The SEC Panel

24. Having originally considered that both approaches to creating a Panel are practical, the Government has concluded that it is better to guarantee that each Party Category is able to nominate Panel members. Whilst the interest of different Party Categories will change over time, some energy licence holders will always need to be party to the SEC, and will be subject to rights and obligations under it. It is right therefore that they are given certainty that they can elect a set number of Panel members. This change also has the added benefit of simplifying the Panel elections whilst providing a greater breadth of industry participation. The Government has therefore determined that Option A is more appropriate.
25. The Government has concluded that it is appropriate that each Party Category is able to elect two Panel members rather than one. This will better ensure that Panel members can understand issues which are important to a diversity of Parties within each category, while ensuring the Panel stays a manageable size. In line with this change the Government considers it is reasonable to allow for up to two consumer representatives to have a seat on the Panel.
26. As a consequence of the revised Panel composition the voting arrangements for the election of panel members have been amended so that each voting group within each Party Category will be entitled to cast one vote for its preferred candidate. The successful candidates will be those who receive most votes in the election.
27. In line with other codes, the two Consumer Members may be nominated by the National Consumer Council's successor body (currently Consumer Focus).
28. The Government notes that some stakeholders have suggested that any Panel decision should be appealable. The Government does not consider that it is appropriate for all Panel decisions to be appealed to Ofgem; nor does it consider it appropriate for any decision of the Panel (which is independent), to be appealed to an all-party forum (which is not). Providing an appeal right on all Panel decisions has the potential to frustrate the efficient operation of the Panel. Where the Panel is given decision making responsibilities in Stage 1 of the SEC, and the Government considers these could have a significant impact on Parties, these have been made appealable and are accompanied, in the legal text, by the relevant specific appeal mechanism. The Government intends to continue this approach as further content is added to the SEC over time.

Ensuring coordination between the SEC and other industry codes

29. Regarding code coordination the Government has refined the drafting in Section C to reflect that the joint working arrangements between codes should be, in relation to modification proposals across either or both sets of codes, consistent with the policy intention and the comments made by some respondents. Additionally, the drafting in Section D has been amended to include a requirement that modification proposals explicitly identify any impacts upon other codes or core industry documents.

30. The Government has made small changes throughout Section C in response to detailed comments and suggestions from respondents. A number of these are explained in the table below and detailed in Annex C.

Summary of changes between November 2012 draft and April 2013 text	
Section C - Governance	<p>The duties of the Panel have been limited to joint working in relation to the timely identification and implementation of changes to other energy codes as a consequence of modification proposals (see paragraph C2.3(l)). See also related changes in D1.7, D6.8 and D7.3</p> <p>The Panel composition has been changed so that Large Supplier Parties, Small Supplier Parties, Electricity Network Parties, Gas Network Parties and Other SEC Parties may each elect Panel Members (these are referred to as Elected Members) (see paragraph C3.1)</p> <p>The number of Consumer Members on the Panel has been increased from one to two. These shall be nominated by the National Consumer Council (see paragraphs C3.1 & C3.4)</p> <p>The election process has been changed so that 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 (see paragraphs C4.2-C4.4)</p> <p>Further small adjustments have been made throughout Section C, in particular to C2 (the Panel) C5 (Panel Proceedings) and C8 (Panel Costs and budgets).</p>

4.2.4 Section D: Modifications

November 2012 Consultation

31. In the November Consultation the Government set out how modifications to the SEC will be raised progressed and implemented. The Government proposed that the Panel will be responsible for the operation of the modification process but will delegate responsibility for making decisions regarding whether a modification proposal should be approved to a subcommittee called the Change Board. **Question 5** of the Consultation asked whether respondents supported the proposed composition of the Change Board and its decision making arrangements.
32. The Government recognises that in some circumstances it is necessary for Change Board decisions to be appealable. In the November Consultation the Government proposed that Parties and the consumer representative may appeal Path 3 (self-governance) modification decisions made by the Change Board. It proposed that appeals would be to the Panel in the first instance and then to Ofgem. **Question 6** asked whether the SEC should also provide for Parties and the Consumer Representative to be able to appeal Path 1 (Authority-led) and Path 2 (Authority-determined) modification decisions by the Change Board recommendation before they are submitted to Ofgem.

33. The Government also proposed bringing the SEC into line with other existing industry codes by allowing SEC Parties to appeal Ofgem modification decisions to the Competition Commission in certain circumstances, specifically where the Ofgem decision is contrary to the recommendation of the industry body that considered the modification proposal.

Question 7 asked for further comments on the governance and modification proposals and on the approach to appeal rights.

Views of respondents

34. Fifteen respondents commented on **Question 5** of the Consultation, expressing a wide range of views on both the composition and decision making arrangements of the Change Board. The majority of respondents that specifically addressed the Change Board composition expressed support, noting that it appears appropriate, pragmatic and workable. One respondent asked for more open and flexible Change Board membership rules so that any party may attend, and commented that limiting networks representation to three seats was inappropriate. Two respondents asked why the DCC was not a voting member of the Change Board, and suggested that granting the DCC a vote with an option to abstain in defined circumstances would be preferable. One respondent was concerned that the proposed composition could be unduly biased in favour of large suppliers; another respondent was uncomfortable with the proposal for a similar reason, and suggested large suppliers' representation should be limited to four.

35. Of those respondents that specifically addressed the Change Board's decision making arrangements, half were supportive. Other respondents proposed a range of alternative approaches. One supported a system where a decision to reject a modification proposal could be carried by any single Party Category. Two respondents were not convinced of the need for an industry recommendation at all and preferred a system where the Change Board collates the views of interested Parties and reports to the Authority, which bases its decision on analysis of that report. Another respondent suggested the Panel itself should make recommendations on proposed modifications, or put decisions to all-Party votes.

36. A number of other comments were made by respondents in relation to different aspects of the Change Board. Several respondents suggested that the board's scope was too narrow or that it should be involved earlier in the modification process. One respondent suggested finessing the quorum requirements for the Change Board by reducing the requirement for "small supplier" and "other DCC User" attendance from two to one, because of the difficulty smaller companies may have in participating in the modification process. A number of respondents expressed discomfort with the Panel's ability to indicate the Party Categories that it considers are likely to be affected by a modification proposal.

37. Thirteen respondents commented on **Question 6**, the majority of whom offered support for the creation of a process through which Change Board recommendations could be appealed before they are submitted to Ofgem. Most respondents who supported an appeals process commented that the period when appeals could be raised, and the appeals process itself, would need to be clearly time limited. Two respondents also commented that this appeals process should not in any way constrain the ability of Parties to appeal modification decisions later in the process. There was no consensus regarding who should hear the appeals: some respondents suggested that they should be heard by the Panel, others that they should be heard by an independent subcommittee, others still that they should be heard by an 'all party' subcommittee. One respondent suggested different appeal routes for different types of

appeals. Another respondent suggested appeals should only be heard in limited circumstances (such as where the Change Board has made a clear procedural error).

38. In response to **Question 7** no respondents objected to the Government's intention to make the SEC an appealable code in line with other industry codes. A number of respondents used their response to this question to comment on detailed elements of the modification process. One respondent queried whether it was appropriate that the Change Board decides on a recommendation even though it is not directly involved in developing the modification proposal. Several respondents commented on specific aspects of the modification process, particularly the provisions related to urgent modifications, alternative modifications and significant code reviews. Some respondents commented that socialising the costs of participation in working groups, SEC Panel, Change Board and subcommittee meetings would impose significant costs on Parties, and that these costs should instead be borne by individual Parties.

Government conclusion and SEC text

39. The Government has concluded that the composition and decision making arrangements of the Change Board proposed in the November Consultation are fit for purpose for the SEC modification process. Specifically, the Government does not consider it appropriate at this stage to change either the number of Change Board Members within each Party Category or the number of Party Categories who have a vote on Change Board decisions. While it recognises the wide range of views regarding representation of Parties on the Change Board, the Government considers that the composition proposed balances the interests of each Party Category, and provides for broad representation within them whilst ensuring the Change Board is a manageable size for discussion and decision making purposes.
40. The Government notes that some respondents have suggested the DCC should be a voting member of the Change Board. Given that changes to the SEC may relate to numerous aspects of DCC service delivery the Government considers that it is important for the DCC to be able to comment on the implications of modification proposals that affect it but should not be able to vote on those changes. This is because it is not appropriate for the DCC to vote on matters related to service delivery and service costs. Instead the legal text of the SEC provides for the DCC to provide information on modification proposals regarding their effect on its ability to discharge its duties and the extent to which changes would be required to DCC and user systems. The legal text also provides for the DCC to attend and speak at each meeting of the Change Board.
41. The Government has considered and discussed a range of decision making arrangements for the Change Board with stakeholders. A decision making arrangement that requires agreement from all Party Categories for a modification to be approved places a high threshold for change, potentially stifling the necessary development of the SEC. The Government has concluded that requiring agreement from the majority of Party Categories for a modification to be approved provides a more reasonable threshold for approving change. This means that, where all four Party Categories and the Consumer Member vote, the threshold for accepting a change is the same as the threshold for rejecting the change (requiring three votes in each case).
42. The Government recognises that it would be helpful for the Change Board to have early sight of modifications it will decide on. With this in mind it has expanded the function of the Change Board so that Parties may submit issues for development, refinement and

discussion in this forum before they are formally raised as modification proposals. This is a voluntary step that may make the modification process more efficient and may streamline particular steps. For example, the refinement process may require less time where the Change Board has facilitated the development and refinement of an issue before it is raised as a modification proposal.

43. Having received a number of comments regarding Change Board quorum and the Panel's ability to indicate the Party Categories that it considers are likely to be affected by a modification proposal, the Government has made some changes to these arrangements. The Panel will still indicate the Party Categories that it considers are likely to be affected by a modification proposal, but this is only used where a decision is needed regarding whether the Change Board is quorate or not. The Change Board rules require that, for the Change Board to be quorate, each Party Category must be represented except where (amongst other things) the Panel has indicated that a Party Category is not likely to be affected by the modification proposal in question. This protects against the absence of Party Categories with no interest in a modification stopping a decision on that modification being made. However, the Government has adjusted the duties of Change Board members so that they are entitled to vote or abstain without regard to the Panel's indication of which Party Categories the Panel considers to be affected by the modification proposal. Additionally, the Government has adjusted the quorum rules so attendance requirements from representatives of Small Supplier Parties and Other SEC Parties are less demanding (requiring one representative from each Party Category rather than two).
44. Whilst acknowledging that the majority of respondents were supportive of an 'internal appeals' process for Change Board recommendations, the Government has concluded that it is not appropriate to provide for one in the SEC from the outset. The provision of an internal appeals process from the outset risks making this a standard component of the modification process, which may clog the process unnecessarily. Although a process could be designed with tight time constraints it could, if used frequently, place a burden on Parties and cause a 'bottleneck' in the modification process. The Government recognises that an internal appeals process could be used to 'self-correct' procedural errors but does not regard it as efficient to provide for this before the modification process is operational in the SEC. Once the modification process is active, Parties will be able to review the arrangements and introduce an internal appeals process to address issues that arise regularly (procedural or otherwise) through a modification.
45. The Government has made a number of other changes to the modification provisions of the SEC following comments from respondents and further consideration of the drafting. In particular, it has adjusted the provisions relating to Significant Code Reviews, Urgent Modifications and Alternative Modifications. The requirement for Working Group members to act independently has been removed. Consequently, Working Group members' expenses will not be funded through the SEC.

The Appeals Order

46. Upon designation of SEC, the Government will lay in Parliament amendments to one of the Electricity and Gas Appeals (Designation and Exclusion) Orders to make the SEC an appealable code, meaning that certain decisions by Ofgem on proposed modifications to the SEC may be appealable to the Competition Commission. The order will be written so that Ofgem decisions will be appealable only if they are contrary to the recommendation made by

the Panel or Change Board (depending on which makes the recommendation for the particular modification).

Summary of changes between November 2012 draft and April 2013 text	
Section D - Modifications	<p>The list of examples of circumstances in which a modification may be given the status of Urgent Proposal has been removed as it duplicated published Ofgem guidance. A provision has been added to allow Urgent Proposals to be progressed subject to any deviations from the modification procedure that the Authority may direct (see paragraph D4.7)</p> <p>Provisions addressing Authority determination in respect of Significant Code Reviews have been added (see paragraphs D4.8 and D4.9)</p> <p>A person appointed to serve on a working group, when acting in that capacity, shall no longer be required to act independently (see paragraph D6.5)</p> <p>During the refinement process the working group may now agree and submit more than one alternative proposal (see paragraph D6.15)</p> <p>The functions of the Change Board have been expanded to facilitate the development, refinement and discussion of potential variations to the SEC prior to their formal submission as modification proposals (see paragraphs D8.2 and C9.2 (f))</p> <p>The duties of Change Board members have been changed to allow them to vote or abstain without regard to the Panel's indication of which Party Categories the Panel considers to be affected by the modification proposal (see paragraph D8.9)</p> <p>The quorum rules for the Change Board have been adjusted to require only one person appointed by the Small Supplier Parties and one by the Other SEC Parties (rather than two in each case) (see paragraph D8.12).</p>

4.2.5 Section E: Provision of registration data

November 2012 Consultation

47. The November Consultation proposed that certain SEC Parties should be obliged to provide registration data to the DCC. The provision of industry registration data to the DCC is essential to the effective operation of the DCC's smart metering communication service as it needs to be able to rely on this data to determine which Parties are eligible to receive specific services. **Question 12** asked respondents whether they thought that the Government's proposed legal drafting to create this obligation was appropriate.

Views of respondents

48. Nearly all respondents agreed with the Government's general approach, though many had specific suggestions for amending the drafting. These included a concern that the drafting

created circumstances where the DCC would not be liable for the accuracy of the data it provides back to the registration systems.

49. Respondents noted the need for data items to be included in the SEC and other codes such as the MRA and UNC, and suggested that referring from one code to the other would be a more favourable approach than duplicating the data items across both codes. Some respondents queried whether suppliers were the appropriate source of information for identifying whether a premises is domestic or non-domestic.

Government conclusion and SEC text

50. The Government has corrected some inaccuracies in the list of data items that will be provided to the DCC. The Government notes that some respondents' interpretation of the legal text and its meaning differs from its intended purpose, for example with regard to the liability over inaccurate data provision by the DCC, and has therefore sought to clarify these issues so that the text fulfils its intentions.
51. The Government has decided to retain the list of data items in the SEC, to ensure that the DCC's interest in the governance and management of those data items is protected. The Government considered two approaches to the changes required to the Uniform Network Code (UNC), the independent gas transporters UNC, the Master Registration Agreement (MRA) and the SEC drafting required to support the provision of registration data to the DCC. In the first approach, both codes (or agreements) would stipulate the data set that needed to be provided, meaning that any change to the requirements would need to be made to both codes or both agreements. The second approach involved stipulating the data items in one code only, and labelling such requirements as 'priority provisions' that could only be amended taking into account the specific interests of the Parties to the other code in such provisions. Were this approach adopted then, for example, the electricity registration data items would be listed in the MRA and labelled as priority provisions, requiring a consultation with SEC Parties, including the DCC, in considering any changes to them. However, for this approach to work effectively, the DCC would need to be able to protect and enforce its rights to be consulted upon changes by becoming a signatory to the MRA.
52. Both approaches were discussed and considered in the Government's consequential changes working group, where it was noted that accession to and participation in the MRA and the UNC by the DCC was considered unduly onerous. The Government supports this view and therefore does not support an approach whereby the registration data items are only listed in one code. The Government acknowledges concerns that repeating data items in other codes or agreements leads to duplication, but this can be managed effectively via proper co-ordination between code bodies and the ability to make 'housekeeping' changes should obvious errors arise. It is worth noting that this duplication will only occur for a limited period of time, as it is expected that the DCC will become the holder of registration data when it takes on responsibility for providing meter point registration services in gas and electricity.
53. The obligation on suppliers to notify DCC of their non-domestic smart metering systems has been amended to apply to electricity suppliers only. It is the Government's understanding that the market sector code information provided in gas registration data adequately identifies non-domestic gas smart metering systems. However in the case of electricity, profile class data contained within the registration data may not provide the best information on non-domestic smart metering systems. The Government will keep under review whether,

in the longer term, the DCC should use registration data provided by electricity distributors or alternative data notified by electricity suppliers to determine non-domestic meter points for charging purposes. This work will be carried out in tandem with industry participants, including the new DCC. However, for the purpose of calculating DCC charges at the point at which the SEC is introduced, the profile class information contained within the monthly electricity registration data provided to the DCC will be used to identify non-domestic premises.

54. Where the Panel requests registration data from the DCC in relation to the exercise of its powers, duties and functions, it may be more practical and useful for that data to be provided in an aggregated or anonymised form. The obligation on the DCC to provide data to the Panel has been extended accordingly.
55. Further minor changes to the drafting of Section E have been made to address drafting comments received, for example clarifying that Parties are only obliged to provide the registration data to DCC where that registration data is contained within the registration systems. It is worth noting that whether such items are listed in the main body of the code or a subsidiary document does not affect the process by which they may be amended. This is determined by the Path 1, 2 or 3 modification assessment set out in Section D.

Summary of changes between November 2012 draft and April 2013 text

Section E – Registration Data

The obligation on the DCC to provide data to the Panel has been extended to include aggregated or anonymised data (or similar), where the Panel requests it (see paragraph E1.4)

The list of data items the Electricity Distributor and Gas Transporter shall provide to the DCC in respect to each MPAN/MPRN, has been updated and applies insofar as that data is recorded in the relevant registration systems (see paragraphs E2.1 and E2.2)

The obligation on gas and electricity suppliers to identify whether a premises is domestic or non-domestic has been replaced with an obligation on electricity suppliers with an MPAN that is associated with a non-domestic premises to notify the DCC that this is the case (see paragraph E2.3)

4.2.6 Section H: The DCC's services

November 2012 Consultation

56. The November Consultation set out positions and legal drafting on a number of matters that related to using the DCC's services including:
- The entry processes that Parties will take before being able to take up the DCC's services (with legal drafting on User Entry covered in H1).
 - The process required for a supplier's meter operator (MOP) to be able to send and receive information to the DCC as a supplier nominated agent (with legal drafting in H2).

- The high level provisions relating to the maintenance and use of the DCC User Gateway (with legal drafting in H3).
- The processes for enrolling and withdrawing smart metering systems with the DCC's services (with legal drafting on Enrolment in H5, and on Withdrawal in H8)
- The DCC's provision of core and elective communications services (with legal drafting in H6 and H7)

Views of respondents

57. Some respondents commented on the disputes provisions in relation to User Entry (H1). In the November Consultation the Government proposed that a SEC Party can raise a dispute with the SEC Panel if it is not content with any aspect of the User Entry process. Where the Party is not content with the SEC Panel decision, the matter can be referred to the Authority, which would make a final and binding decision. One respondent commented that the Authority's decision should not be final and binding.
58. Some respondents commented on the involvement of the meter services community in the SEC. The Government had concluded that the SEC will provide for a supplier's Meter Operator – as identified through the registration systems – to have access to a subset of the core communication services that are available to its registered supplier related to diagnostics (as captured in H2). Work is currently underway on the mechanics for implementing this approach.
59. One respondent queried why a supplier nominated agent does not have to provide Credit Cover. This is because a supplier remains responsible for paying the charges incurred as a result of activity by its Meter Operator, who will not be subject to charges under the SEC and therefore does not need to provide credit cover.
60. Comments on other parts of Section H were limited. Several anticipated issues that will need to be addressed in future versions of the SEC rather than in Stage 1. In relation to enrolment (H5) and withdrawal (H8) some respondents highlighted that further detail on how processes would work needed to be undertaken.

Government conclusion and SEC text

The DCC User Gateway and Entry Processes for DCC Users and Meter Operators

61. Minor changes have been made to the legal drafting to allow flexibility for the detail of the DCC User Gateway and entry processes to be introduced into the SEC when they have been further developed. This has been achieved by requiring compliance, where relevant, with applicable SEC subsidiary documents. Similarly, adjustments have been made to the subset of services the supplier nominated agents can undertake on behalf of their suppliers. The legal text now points to a SEC subsidiary document that will be introduced in a future version of the SEC.
62. In relation to provisions for disputes over the DCC User Entry process, the Government remains of the view that, as the energy regulator, Ofgem is the most appropriate body to have this power, and this is the most expeditious mechanism to resolving such matters. The Government considers that an extended appeals process would expose the DCC and the disputing party to additional costs and time delays.

Enrolment and withdrawal

63. The legal text published in November was based on policy approaches that at the time were considered sufficient for the enrolment and withdrawal of smart metering systems with the DCC. However, changes to the security procedures required to support smart metering have meant that the requirements for enrolment and withdrawal are being amended. These requirements are being discussed and refined with stakeholders via industry working groups. Therefore, the Government believes it is appropriate not to include SEC provisions for enrolment and withdrawal of smart metering systems at this stage. Including text in Stage 1 of the SEC that is based on an outdated view of the enrolment and withdrawal process could lead to unnecessary confusion for stakeholders. The Government intends to consult upon appropriate SEC rights and obligations to support these procedures in a future iteration of the SEC.

Core and elective communications services

64. Since the November Consultation a change has been made to the requirement to publish details of elective services six months after the service has first been provided, following more detailed consideration of the nature of core and elective services. The draft text has been amended to require that a description of the service (rather than the size of the data message) is published. This is because the Government is of the view that publishing the data size would not provide any meaningful or useful information to stakeholders. Other than response times and performance standards, the only meaningful information that can be provided is the actual service that is being provided. This information will remain confidential for the first six months, however, allowing first mover advantages to be realised. The Government recognises that this is a change from the position outlined in the November Consultation and therefore welcomes any further views.

Consultation Question

- | | |
|-----------|--|
| 1. | Do you agree with the approach to publishing a description of each elective service six months after it was first provided? Please provide a supporting rationale for your views. |
|-----------|--|

The Core Communication Services Schedule

65. On 8 April 2013 the Government published a Notice⁷ setting out the schedule of core communication services to be incorporated into Stage 1 of the SEC. This notice sets out the services the DCC will provide to different categories of DCC Users upon request. In addition, the Notice invites stakeholders to submit their requirements for any elective service provision that they would require from the commencement of DCC service operations (called “day 1 elective services”).

⁷ Notification of Core Communication Services Schedule and invitation for Elective Communication Service Requests: <https://www.gov.uk/government/publications/notification-of-core-communication-services-schedule-and-invitation-for-elective-communication-service-requests>

66. The schedule of core services accompanying the aforementioned Notice has been amended to make it suitable for read across to the legal drafting and is annexed as a draft to this document (as **Annex D**). A number of terms in the core services schedule are defined in the draft of version 2 of the Smart Metering Equipment Technical Specifications (SMETS). The Government therefore intends to introduce the core services schedule into the SEC when this version of the SMETS is introduced into the regulatory framework, so that these definitions can be referenced in the legal documents.
67. The schedule sets out entitlements (volume limits) for those services where unlimited take-up poses the most risk to the DCC's service provision. These entitlements are applicable to a small number of communication services.
68. If a User wishes to make more service requests than are provided for under its entitlement, it may do so by requesting an elective service. As specified earlier, the Government has invited submissions for any day 1 elective service requests. Should such submissions be forthcoming, the Government will ensure that offers for such services are provided to those Parties requesting them by obliging the DCC to provide an offer of terms in the form of a confidential bilateral agreement as soon as practicable after its licence is awarded. To enable this to happen, additional obligations have been added to Stage 1 of the SEC in Section X.
69. In relation to entitlements and the management of DCC services the Government is considering whether DCC Users should be required to forecast their usage of the DCC's core communication provision. The emerging view is that, should it have forecasting information available, the DCC could assess the potential impact to its systems capacity and therefore its capability to manage the expected throughput of service requests. The DCC may be required to aggregate and anonymise the data it receives and report to the users, and possibly the SEC Panel, on any system impacts. The details of this policy will be consulted upon in due course.
70. A future version of the SEC will also include further details to set out the monitoring and reporting of performance against predetermined standards for the DCC's range of services, which will be set out in Section H. The Government is planning to bring forward this detail following the conclusion of the various competitions. This performance monitoring is also envisaged to link into the charging methodology in Section K such that targeted reductions in charges can be provided to DCC Users based on the services they receive.

Summary of changes between November 2012 draft and April 2013 text

Section H – DCC Services

Adjustments have been made to the text to make clear that the subset of services that supplier nominated agents can undertake on behalf of their Supplier will be set out in a SEC subsidiary document (See paragraph H2.11).

Text has been amended to make it clear that the role of the Panel in user entry disputes is only in relation to the process to become a user rather than, for example, disputes on whether the user has met the applicable security requirements (details of such disputes will be set out in Section G in a subsequent version of the SEC) (see paragraphs H1.9 and H3.5).

The text contained in H5 (Enrolment of Smart Metering Systems) has been

removed.
Adjustments have been made to H7 to state that the description of the elective communication service will be published six months after the provision of the service has commenced (see paragraph H7.18).
The text contained in H8 (Withdrawal of Smart Metering Systems) has been removed.
A new obligation has been added requiring the DCC to provide an offer of terms for any requested day one elective services (see paragraph X1.11).

4.2.7 Section I: Data Privacy

71. The Government consulted on a proposed framework for smart metering data access and privacy for smart meters in April 2012⁸, and set out its response to that consultation in December 2012⁹. The key conclusion at that stage was that there would be requirements in the SEC on certain parties (such as energy services companies and switching sites)¹⁰ wishing to access consumers' smart metering energy consumption data remotely via the DCC. In particular, the SEC would require such parties to:

- Take steps to verify the identity of the energy consumer requesting their services – although precisely what these arrangements should be was left open;
- Obtain explicit (opt-in) consent from consumers before requesting data via the DCC; and
- Provide reminders to consumers about the data that was being collected.

72. To ensure that these arrangements were complied with, it was decided that there would also be audit arrangements, arranged by the SEC Panel.

73. Draft legal text on data protection and access to data was included in Section I of the SEC when it was published for consultation in November 2012. This draft legal text covered each of the requirements set out above apart from those that applied to verification of the energy consumer.

Views of respondents

74. A small number of respondents commented on the draft data privacy requirements. Much of the debate about the underlying policy had been generated previously, in response to the

⁸ <http://www.decc.gov.uk/assets/decc/11/consultation/smart-metering-imp-prog/4933-data-access-privacy-con-doc-smart-meter.pdf>

⁹ DECC, Government response to consultation on smart metering data access and privacy https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf (December 2012)

¹⁰ Suppliers wishing to provide services to a consumer for whom they are not currently the registered supplier should also be considered to be a third party for these purposes.

consultation on the overall data access and privacy framework. Nevertheless, several comments were made on the draft data privacy requirements in SEC, including that:

- There should be tighter links between breach of the Data Protection Act and breach of the SEC;
- The requirement on the DCC to provide “reasonable assistance” to the User in complying with Subject Access Requests or enquiries made by the Information Commissioner was not sufficient;
- The DCC should be required to demonstrate that its systems and processes are compliant with the Data Protection Act; and
- Consequential amendments (for example to the DCUSA) may be required.

Government conclusion and SEC text

75. The majority of the data privacy requirements in the SEC remain unchanged from the consultation position.

Verification of the energy consumer

76. Precisely what the arrangements should be for verification of the identity of individual energy consumers requesting third party services was left open in the November Consultation. Having considered this further, the Government’s conclusion is that, rather than a specified method of verification, there should be a general requirement on Users to put in place and maintain appropriate arrangements to verify the energy consumer, in line with good industry practice. This will afford Users flexibility to develop cost-effective approaches that are consumer-friendly, and enable them to take account of developing best practice in ensuring that the arrangements are robust. It is important to avoid stifling the energy services market with unduly onerous barriers to entry, and to avoid placing tighter restrictions on unlicensed parties than are in place for licensed parties.

77. However, the Government recognises that the market will evolve, and will therefore monitor the situation over time and remain open to adjusting the position in future, if necessary.¹¹ In particular, the Government is keen to explore potential synergies with ongoing work on arrangements for the connection of Consumer Access Devices to the Home Area Network, which may present opportunities for alternative means of consumer verification.

78. The SEC requirement to verify the identity of the energy consumer will apply to the aforementioned Users of the DCC in relation to smart meters that are enrolled with the DCC, to the extent that the User needs to obtain permission from the consumer before accessing the consumer’s data.

79. It is also worth noting the intention that future versions of the SEC will require the DCC to offer an optional Customer Identification Number (CIN) service to third party users. This

¹¹ The Government has committed more generally to reviewing the overall framework for data access and privacy within three years of it coming into force.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43046/7225-gov-resp-sm-data-access-privacy.pdf

would involve the DCC sending, on request, the same random four-digit number to the requester and to the consumer's meter and/or in-home display unit. Checking that these numbers match may be one way for the third party user to verify the identity of the energy consumer, although there would be no obligation to use the CIN process, and the responsibility for meeting the verification requirement in the SEC would remain with the User.

Audit

80. The initial proposal was that the SEC Panel should be responsible for arranging audits to check compliance with the data privacy requirements at such frequency as it saw fit. In light of the decision in favour of a general requirement on consumer verification, and given that there will be no specific check made of whether consent has been obtained at the point that data is released by the DCC, the Government feels it is appropriate to tighten the proposals for audit.
81. The Government also recognises the parallels with the proposals for audit against the security requirements and is considering further whether there is a case for closer alignment of these two processes. Revised proposals for audit of the data privacy requirements will therefore be published alongside those for security in future versions of the SEC.

Other comments

82. In response to comments from stakeholders, it is worth reiterating that the Data Protection Act will continue to apply in conjunction with any data access and privacy requirements that the Government puts in place through licence or the SEC. It is the legal responsibility of all industry participants – including suppliers, third parties and the DCC – to ensure that they comply with the Data Protection Act (and any other relevant legislation). The Information Commissioner is responsible for monitoring and enforcing compliance with the Data Protection Act, according to established processes. Advice from the Information Commissioner's Office is that a breach of the SEC which is caused by the manner in which or the purposes for which personal data is being processed is in most cases likely also to constitute breach of the principles in the Data Protection Act.

Summary of changes between November 2012 draft and April 2013 text

Section I – Data Privacy	<p>A new provisions places a general requirement on Users to verify the identity of the energy consumer from whom they have obtained permission to access data, in line with good industry practice (see paragraph I1.3)</p> <p>Text on audit arrangements has been removed. Revised audit arrangements will be published in future versions of SEC</p>
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4.2.8 Sections J & K: Charges and Charging Methodology

November 2012 Consultation

83. The November Consultation proposed a charging regime designed to ensure that revenue can be recovered from DCC Users sufficient to fund the DCC (so that it can pay service providers and recover its own costs) and the SEC governance costs. This would include a

mixture of fixed charges and explicit variable payments based on usage (measured activity across all DCC Users). Flexibility and responsiveness to changing conditions will be provided by ensuring that the regime is subject to the standard SEC modification process. Any proposed changes will be measured against the SEC Charging Objectives set out in the DCC Licence. **Question 2** of the November Consultation asked respondents to comment on the format of the DCC's Charging Statement for Service Charges.

84. The DCC Licence provides for the reimbursement of earlier customers (the 'first comer') for particular elective services that are subsequently used by later customers (the 'second comer'). This prevents free-riding on previous development costs. For example, if an elective service request required new software development, the first comer would pay for that work. If a second comer requested a similar service using the 'new' software, the DCC would charge the second comer for a proportion of the costs incurred and reimburse the first comer. The November Consultation proposed the thresholds over which the DCC will consider 'first comer / second comer' re-imbursments, to avoid placing an unnecessary burden on the DCC to reallocate small costs over an unlimited time period, but at the same time offering a degree of protection of the first comer. **Question 3** of the November Consultation asked whether respondents agreed with the thresholds applied to the 'first comer / second comer' principle (five-year rule for costs over £20,000) and asked stakeholders to set out their preferred approach.

Views of respondents

DCC Charges

85. A number of respondents stressed the need for the format of the DCC's Charging Statement for Service Charges to provide clarity regarding DCC charges both for the year ahead and for future years, to allow their own price setting. It is important that the DCC's charges are easy to understand, and the reporting schedule within the SEC is intended to provide the required transparency.
86. In addition, a number of respondents provided more general comments on the charging methodology. Amongst stakeholders there is a strong desire to understand the likely quantum of DCC charges as well as the balance between fixed charges and explicit charges. Consistent with these comments, the Government has concluded that the SEC should contain a requirement for the DCC to provide an illustrative software model of the charging calculations for DCC Users to utilise within their own analysis.
87. A number of specific comments on individual elements of charging were made in individual responses. One respondent disagreed with the "pay now dispute later" principle and socialisation of bad debt as captured in sections J and K of the SEC. Another objected to the ability of the DCC to make within-year adjustments for the charging statement. However, it remains vital to protect the DCC from financial risks it is not able to manage, and thus these elements are integral to the charging arrangement as set out in the previous consultation. One respondent expressed concern that the fixed post-rollout charges will be calculated on the basis of enrolled meter market share. Specifically, the concern was that a supplier that fails to meet its licence obligation to roll out smart meters would be "rewarded" via a reduction in charges under the SEC. However, there is a range of regulatory measures and monitoring designed to ensure compliance with the licence obligation to roll out smart meters and this risk is not considered material at this point. The charging methodology will also be subject to regular review by the DCC and to the SEC modification process.

‘Second Comer’ contributions

88. In answer to Question 3, respondents supported the first comer / second comer principle and agreed that the time period and financial threshold should be included in the SEC to prevent free-riding. Many respondents noted the importance of ensuring that the administration of the process does not become a burden on the DCC. A few respondents also acknowledged that these arrangements could be reviewed based on experience and then amended if necessary via the SEC modification regime. Generally, the five-year period was considered appropriate for investments in the DCC’s business sector. There were a few suggestions that there should be longer time periods for more significant investments, for example more than £500,000, but this would introduce further complexity. There was a range of views on what the value of the threshold should be. Several respondents suggested the £20,000 level was appropriate, and no respondents suggested the threshold should be set lower than the £20,000 set out in the draft SEC. In addition, a number of respondents suggested that a £20,000 threshold was too low; £50,000, £100,000 and £1,000,000 were all suggested as alternatives. This spread demonstrates the relative materiality thresholds that different stakeholders would apply. It is important to note that a higher threshold would have a proportionately greater impact on smaller stakeholders.

Government conclusion and SEC text*DCC Charges*

89. The requested information on the likely quantum of DCC charges and the fixed / explicit allocations is dependent on the service provider procurement and the competition for the DCC Licence, so it is not presently possible to make it public. However, stakeholder engagement on these matters is on-going as the various competitions progress and the revised SEC drafting provides further clarity on the determination of fixed allocations. The draft core communications services schedule published in Annex D identifies the Explicit Charging Metrics to allow the DCC to reflect variable charges from service providers. The list of explicit charges will be further added to in subsequent SEC versions to reflect additional services provided by the DCC in those versions.

‘Second Comer’ contributions

90. Given the nature of the DCC’s business, the range of stakeholder views and the desire not to impose an undue regulatory burden on DCC, it would appear prudent for the initial version of the SEC to retain the thresholds at five years and £20,000 as previously drafted. Furthermore, reflecting the comments received by stakeholders and subsequent stakeholder engagement, the revised SEC drafting will also contain a ten year rule to be applied where the initial investment exceeds £500,000. This also recognises that these tiered thresholds will be a starting point, as the approach can be amended within the SEC modification process over time if considered prudent by stakeholders.

Other changes

91. Following concerns expressed by stakeholders that some DCC Users could be consistently late in paying their invoices, the provisions relating to credit cover have been enhanced to ensure that consistent late payment would lead to increased credit cover requirements.

92. The November Consultation set out that the DCC would invoice its Users promptly in arrears each month based on actual data (to minimise the need for data estimation and invoice

reconciliation) but the exact timescales would reflect information from the competitions for the DCC, DSP and CSPs. The revised SEC drafting now sets out that the DCC will issue monthly invoices on the third working day of the month for payment on the 8th working day. Furthermore, these charges will be based on the relevant meter data as per the 15th day of the month rather than the last day of the month.

Summary of changes between November 2012 draft and April 2013 text

Sections J & K – Charges & Charging Methodology

There is now a requirement to provide credit cover in full following a number of failures by a DCC User to make timely payments to the DCC (see paragraph J3.4)

The DCC is now required to publish a working model which allows Users to calculate indicative charges (see paragraph J4.6)

Text has been added to clarify the determination of charging group weighting factors (see paragraph K3.11)

A second tier of first comer / second comer contributions has been added (10 years / over £500,000) (see paragraphs K7.8 and K8.6)

Details have been added to specify that the DCC will issue invoices promptly in arrears (see paragraph J1.4)

Consequential text has been added to reflected the socialisation of net liabilities as discussed in Section M of this document (see paragraph K9.7)

4.2.9 Section M: General Provisions

November 2012 Consultation

93. Section M sets out general provisions for the treatment of liabilities between SEC Parties, for dispute resolution, for events of default, and for Parties to leave the SEC. It also sets out the rights and responsibilities of SEC Parties in relation to intellectual property rights, confidentiality, unforeseen events and a handover of the DCC Licence. In the November Consultation the Government asked specific questions about the liabilities and disputes provisions.
94. In the November Consultation the Government's proposed draft generally excluded liabilities from the SEC, with some notable exceptions. In addition to matters such as death and personal injury and other liabilities that cannot by law be excluded or limited, the draft provided for SEC Parties to be liable for:
- payment of charges;
 - capped liabilities in relation to breaches leading to damage to physical property, including loss of or damage to systems and loss or corruption of data, though the level of the proposed cap was not specified; and

- uncapped liabilities for breaches of SEC provisions on intellectual property and confidentiality.

95. In cases where Parties were liable for losses arising from a breach of the Code, the liabilities would not include losses which did not result directly from the breach or for losses that were not reasonably foreseeable as likely to occur in the ordinary course of events.
96. **Question 8** asked stakeholders whether they agreed that liability should be unlimited for breaches of the SEC in relation to intellectual property and confidentiality. **Question 9** asked stakeholders to indicate whether they agreed with the Government's proposal that, in instances where the DCC is exposed to liability payments to service providers that exceed what it can claim from the person causing the original breach, the net liabilities for the DCC will be recoverable from SEC Parties by way of an increase in the DCC's fixed charges. **Question 10** asked respondents whether they agreed with the Government's proposal that the DCC be given the right to link disputes under the SEC with service provider contracts in the arbitration process so that they can be heard simultaneously.

Views of respondents

Liability provisions on intellectual property and confidentiality

97. Among the 13 respondents to **Question 8**, all but one agreed that the proposed liability provisions for intellectual property rights and confidentiality should be included in the SEC, though not all thought that liabilities should be unlimited. Those in favour commented that the provisions would make the SEC more robust and comprehensive and should act as a strong deterrent against breaches of intellectual property and confidentiality provisions. It was argued that the inclusion of intellectual property rights is new to an industry code but justifiable because SEC Parties would include unlicensed parties. It was also noted that liabilities could be unlimited provided that comprehensive and robust assurance measures are included in the SEC, to limit the potential for an increase in the financial risk and insurance costs.
98. A number of respondents expressed views on the liability provisions in general. One suggested that SEC Parties should be able to make liability claims only through the DCC. Another was concerned that the liability provisions could have unintended consequences, especially if they are unlimited, and therefore suggested that such provisions be reviewed when the likelihood of exposure became clearer. There was a general request for the Government to ensure that SEC Parties are aware of the types of infringements that will trigger liabilities.

DCC's recovery of net liabilities

99. A minority of respondents agreed outright with the proposal to recover the DCC's net liabilities from SEC Parties, with one stating that the increase in each Party's fixed charges should be proportional to the share of the fixed charges already paid. One respondent suggested that associated liability costs be recovered according to market share, to avoid creating a barrier to entry. Some respondents expressed limited support for the proposals, while others expressed concern that they would expose Parties to unacceptable levels of risk. Respondents suggested ways of minimising this exposure by, amongst other things:
- ensuring that the DCC's liabilities are backed off in its supporting contracts;

- restricting circumstances where this proposal would apply;
- ensuring that the relevant performance assurance framework is robust, to allow a timely response to instances of non-compliance so as to minimise continued exposure to liability costs;
- designing the contractual regime so as to incentivise the DCC to behave responsibly and minimise misaligned liabilities; or
- further considering the proposal alongside other provisions, guarantees and service standards which are yet to be drafted.

Dispute Resolution

100. There was general agreement with the Government's proposal to allow the DCC to link the arbitration of service provider disputes and SEC disputes, and recognition that it seemed a sensible approach to dispute management that would make the process more effective and efficient. Respondents expected it to reduce administrative burdens, promote costs savings, speed up the resolution process and provide consistent approaches and outcomes for similar disputes and considered it to be consistent with the low-risk regime being established under the DCC Licence.
101. One respondent argued that the process should not be used to cover disputes arising from poorly designed contracts and suggested that the Government consider difficulties that may arise from disputes over intellectual property rights, which are often very technical and complex. One related view was that the Government should consider the ability of the courts to deal with such technical disputes. It was also suggested that the SEC Panel rather than the DCC should decide whether or not to link disputes. One respondent considered that provisions should be added to address timescales within which disputes had to be resolved and another respondent considered that Parties should, if in agreement, be able to vary the location of a dispute hearing from London.

Government conclusion and SEC text

General

102. The limitation of liability framework for Stage 1 of the SEC needs to be appropriate for the content at designation. The Government recognises the importance of clear drafting to identify the types of infringement that would trigger liability. It will be necessary to revisit this liability framework both as the SEC is further developed, for example in relation to matters such as security, communications hubs, performance standards and the provision of other services by the DCC, and as the principal service provider contracts are finalised. The Government's conclusions in relation to the initial liability provisions in the SEC set out in this section should be read against this background, that is, in light of the need for further future review.
103. Additionally, to mitigate the risk of liabilities arising, the Government recognises that the SEC should include robust performance assurance measures and has sought to include such measures in the appropriate parts of the SEC. The Government will also consider whether a wider performance assurance framework should be introduced in subsequent versions of the SEC.

Caps for damage to physical property

104. It is proposed that, in line with other industry codes, liability caps applying to all SEC Parties, including the DCC, for breaches causing damage to physical property (including loss of or damage to systems and loss or corruption of data) be set at £1,000,000 per incident or series of related incidents. In all other respects the treatment of liabilities for damage to physical property will remain as drafted in the November Consultation. In consideration of the fact that SEC Parties will waive their rights to claim outside the SEC for such physical damage caused by service providers or supplier nominated agents, the Government proposes that services providers and supplier nominated agents should, under their contracts with the DCC or a supplier (as the case may be), be required to waive their rights to similarly claim against SEC Parties. The revised SEC drafting includes an obligation on the DCC or a supplier (as appropriate) to ensure that these arrangements are in place.

Liability provisions on intellectual property and confidentiality

105. The Government notes concerns about unlimited liability for breaches of confidentiality and intellectual property rights. Since the November Consultation, the Government has reviewed its proposed approach in this area in parallel with work progressing on appropriate liability arrangements for the DCC service provider contracts. Again noting that a further future review of the arrangements will be appropriate, the Government is of the view that the basic approach set out in the November Consultation remains appropriate, that is that liabilities for breaches of SEC provisions relating to confidentiality and intellectual property rights should be uncapped. Whilst this is not consistent with other industry codes, this approach is generally considered to be more consistent with commercial arrangements covering similar subject matters.
106. It is, however, proposed to amend the November drafting slightly to make it clear that, in addition to any remedy for breach of intellectual property rights under the SEC, Parties whose intellectual property rights are breached may also seek injunctive relief in respect of any breach or potential breach to prevent unauthorised use of intellectual property. It is also worth noting that SEC Parties will be granted a licence to use necessary intellectual property for the purposes of taking DCC services under the SEC.
107. The DCC grants other SEC Parties a licence for using any intellectual property contained in the services that it provides under the SEC. Should a SEC Party be subject to a third party claim over whether it has breached intellectual property rights in using the services, an indemnity is provided to SEC Parties in respect of such a claim. To reflect this arrangement (and other similar indemnities), the drafting now provides for the ability of the DCC (or most likely a DCC service provider) to take over the conduct of such claims. This is considered appropriate given that the DCC will meet the costs of the claim under the indemnity.
108. In relation to confidentiality, the SEC requires that any confidential information must be clearly marked as such for it to be treated as confidential under the Code. The SEC drafting in relation to confidentiality has been expanded to make it clear that there is a confidentiality obligation on all SEC Parties (not just the DCC). The Government considers the scope for SEC Parties (other than the DCC) to receive confidential information to be limited. It is worth noting that for SEC Parties to be subject to a confidentiality obligation in respect of such information it must clearly be marked as confidential.

DCC's recovery of net liabilities

109. The Government notes concerns about the DCC's ability to recover its liability costs from SEC Parties when such costs exceed what it can claim from the individual SEC Party causing the breach. It will not always be possible for the DCC to completely 'back-off' liabilities that it faces under the SEC with equivalent liability arrangements in service provider contracts (or vice-versa). Such 'asymmetric' liability provisions are unavoidable in circumstances where service provider contracts are for a finite length and pre-determined value (hence warranting aggregate caps) whereas the SEC lasts in perpetuity, hence warranting per-event caps. This does mean that in certain circumstances it may conceivably be necessary for the DCC to recover some or all of its liability costs from SEC Parties to minimise unnecessary risk or exposure for the DCC.
110. In the absence of any provisions in the SEC to the contrary, any net liabilities would be funded by the future payers of the DCC's fixed charges. The Government agrees that it might not be appropriate to recover any 'net' liability payments on the same basis as DCC fixed charges, as this would only target a subset of DCC Users. Rather than devising a new charging base for these purposes, for reasons of practicality, it is proposed that, to the extent that such recovery is necessary, the basis for recovery should be the same as is currently used for the DCC's "bad debt" measures as described in Section K of the SEC; that is that net liability would be socialised explicitly within the current charging period across all DCC Users in proportion to the DCC charges each paid in the preceding 12 months.
111. The Government has also considered the use of either a contingency fund or performance bonds to protect against short term cash calls on SEC Parties in the event that a net liability arises for the DCC that cannot be recovered from the SEC Party that has breached the obligation causing the liability to arise, and that therefore needs to be recovered by way of increased charges to all SEC Parties. There are a range of difficulties with both of these options. The biggest problem is determining the exposure to be covered, given that the likelihood of a claim arising is very low. A reasonable assessment of the funds to be deposited or secured would need to be made by the DCC, and SEC Parties would need to commit capital in some way over the long term against an unknown, unlikely event. Additionally, the time period over which these funds would initially need to be paid would need to be determined. Furthermore, should such an approach be considered, it may be most appropriate to consider an alternative arrangement whereby the DCC is required to insure against such eventualities. In any of these options, a number of other practical and legal issues would need to be addressed. In light of these and the low probability of a claim arising, it is not proposed that such requirements should be included in the SEC at this stage.

Sharing recovered liabilities between more than one party

112. Where a SEC breach results in a number of SEC Parties being affected and therefore the breaching Party being liable to more than one other Party, and where the liability is capped, it will be necessary to set out how the liabilities recovered are apportioned between the affected Parties. It is proposed to include provisions to deal with such matters in subsequent SEC drafting. There are a number of ways in which such apportionment should operate, including apportioning the monies recovered:
- pro-rata on the damages suffered by each affected party;

- in equal amounts to each affected party (subject to no party receiving more than its own loss); and
- pro-rata on the capped damages suffered by each affected Party, where the capped damages are the actual damages capped at the maximum amount any Party could, were it to be the only party suffering damage, individually claim from the breaching Party.

113. The Government is initially of the view that the third of these options may be the fairest approach to dealing with such eventualities under the SEC. However, stakeholders' views are invited on this.

Dispute Resolution

114. The Government has concluded that it is appropriate to include provision for the DCC to join SEC disputes with related service provider disputes where both have been referred for arbitration. The Government considers that the decision to join disputes should be made by the DCC, as the counterparty to both sets of contracts. Arbitration in both instances will be subject to the Arbitration Act 1996 and the rules of the London Court of International Arbitration. A requirement for disputes to be resolved within a reasonable timescale has also been added, as has provision for parties to a dispute to vary the location of the hearing, if in agreement. The Government remains of the view that arbitration is a better means of resolving disputes than the courts, for disputes that are not determined by the Authority or the SEC Panel.

Further comments invited

115. The Government recognises that a number of respondents did not support aspects of the liability arrangements previously proposed. In response to those comments and the further development of the draft service provider contracts, the Government has refined some aspects of the liability arrangements. The Government has also proposed specific caps for inclusion in the SEC in relation to breaches of obligations giving rise to physical damage. The Government welcomes further comments on these proposals.

Consultation Question

2. **The Government has refined the legal drafting in relation to liability for breaches of confidentiality and intellectual property obligations and has proposed specific liability caps for inclusion in the SEC in relation to breaches of obligations giving rise to physical damage. The Government would welcome further comments on these proposals, together with the rationale for your views.**

Summary of changes between November 2012 draft and April 2013 text

Section M – General	<p>A cap of £1,000,000 has been set in relation to liability for breach of obligations giving rise to physical damage or data loss. (see paragraph M2.5)</p> <p>An obligation on DCC has been added to secure a waiver from its service providers against any rights or remedies that they may have against SEC Parties</p>
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for liability for physical damage or data loss that they cause to service providers. (see paragraph M2.13)

Text has been added to deal with the conduct of indemnity claims (see paragraph M2.16)

An obligation on SEC Parties has been introduced to keep DCC data confidential, where it is clearly marked as such (see paragraphs M4.13-M4.15)

4.2.10 Section X: Transition (previously Section L)

November 2012 Consultation

116. The November Consultation set out those provisions of Stage 1 of the SEC that will be in effect when it is introduced. It also described how sections of the SEC (including D – Modifications and E – Registration) will be in effect subject to variation. The Consultation proposed that the modification arrangements are varied so that only fast-track modifications or modifications that are determined to be urgent by the Authority can be progressed. It also proposed that they are varied so that the Secretary of State may cancel any modification proposal and the role of the Change Board is initially carried out by the Panel.
117. The November Consultation also described the governance setup arrangements of the SEC (covering the SEC Panel, Panel Chair, SECCo and SECAS). **Question 13** asked whether respondents agreed with this proposed variation to the SEC modification regime. **Question 14** invited comments on the Government’s proposed general approach to transition.

Views of respondents

118. There were mixed responses to **Question 13**. Some respondents agreed with the variation to the modification regime, and others challenged specific elements of the variation. One respondent was not in favour of the proposals and sought further clarity on when the enduring modification process would be established. Some respondents commented that the limited membership of the Panel would hamper its ability to make the best decisions on proposed modifications during the transitional arrangements. They suggested the Change Board, which will have a broader membership, should be in place during the transitional period. Some respondents questioned the need to give the Secretary of State the power to cancel modification proposals, arguing that they are unnecessary. Others suggested that the powers should be limited in some way, either so that they are in force for a limited period of time or so that they are only applied in circumstances where any change would be detrimental to the delivery of Government policy.
119. Some respondents noted the importance of the transitional period for the coordination of system preparation. It was suggested that a technical and/or delivery subcommittee supporting the SEC Panel would be a good way to govern transition. One respondent suggested that the Government consider amending paragraph L1.4 of the SEC to ensure that data provided to the DCC during transition (before the requirement for daily data provision takes effect) is made available in a more efficient manner. In relation to the

governance set-up arrangements, two respondents raised concerns about the time it would take to procure the SECAS.

Government conclusion and SEC text

120. Having considered respondent's views on the importance of the Change Board, the Government has concluded that the SEC should require the Panel to establish the Change Board as soon as is reasonably practical.
121. The Government has adjusted the Secretary of State's power to cancel modification proposals so that the Secretary of state may instead suspend a modification proposal. It means that, whilst the SEC is capable of being changed quickly, there is a way for Government to stop or pause change while it is still amending the SEC itself through its staged approach to delivering content. More generally, the Government will review the powers of the Secretary of State which are set out in Section X once the supplementary consultation on transition has closed.
122. The Government's view is that the industry should use readily available reports to provide aggregated monthly MPAN/MPRN data by supplier and network operator to the DCC during transition as this is likely to be more useful for the DCC and more efficient. However, the right for the DCC to request the more detailed data, if required, has been retained. Additionally, as discussed above, the requirement on registration bodies to provide data to the DCC in the transitional period has been expanded to include data indicating non-domestic sites, as this is required for DCC charging purposes. The SEC text as drafted allows the data to be aggregated, showing the number of MPANs/MPRNs per supplier.
123. In the November Consultation, Section J (Charges) was listed as a section of the SEC that would be effective from the date of the designation. Having reviewed the practicality of this arrangement, the Government has adjusted the drafting so that Section J (Charges) shall be effective from either three months after designation or the date notified by the DCC to the other original Parties on not less than 10 working days' prior notice, whichever is earlier.
124. Similarly, Section C has been varied so that the Panel is required to establish the first approved budget (to cover the period from designation) as soon as reasonably practical following the designation of the code.
125. Having further considered the nature of its transitional approach, the Government has published a supplementary consultation on a new transition section (Section X) of the SEC¹². This seeks views on the inclusion, within Section X, of:
 - New transitional objectives for SEC Parties;
 - Proposals to incorporate subsidiary documentation into the SEC during the transitional period; and
 - The introduction of a mechanism to enable the Secretary of State to amend the transition section of the SEC to meet transitional objectives.

¹² <https://www.gov.uk/government/consultations/stage-1-of-the-smart-energy-code>

126. The Government will consider responses to the supplementary consultation before making any appropriate amendments to the draft SEC. However, the new Section X incorporates the Section L drafting published in the November Consultation so that all transitional text is in the same place. To aid understanding, the full text of Section X is included in Annexes B and C of this document, with those matters that are the subject of the separate supplementary consultation on transition 'greyed out'.
127. In addition to consulting on new Section X provisions the Government has concluded that it is necessary to make changes to some elements of the original Section L drafting. These changes are not reflected in the supplementary consultation so are set out here.

Summary of changes between November 2012 draft and April 2013 text

Section X - Transition	<p>All transitional provisions in Section L have been moved to Section X. Transitional provisions that are subject to a separate consultation are greyed out in Annex B of this document</p> <p>The provisions that will be effective at designation (originally L1) are now set out in X2.</p> <p>New provisions regarding the effectiveness of Section J from designation have been added (see paragraph X2.2)</p> <p>X2.3 now provides for the Panel to establish a Change Board as soon as is reasonably practical.</p> <p>Changes have been made to the data that needs to be provided to the DCC from designation of the code (see paragraph X2.4)</p> <p>Governance set-up arrangements (originally L2) are now set out in X4.</p> <p>Provisions have been added to require the Panel to establish the first Approved Budget (to cover the period from designation) as soon as reasonably practicable following the designation of this Code. (see paragraph X4.12)</p>
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5. Establishment of the SEC

This chapter sets out the Government's plans to introduce SEC licence conditions, designate the SEC and put in place SEC governance arrangements.

5.1 Licence conditions to accede to and comply with the SEC and to enrol relevant meters with the DCC

5.1.1. Obliging organisations to accede to and comply with the SEC

128. The November Consultation set out the Government's proposals and rationale for licence conditions on gas and electricity suppliers and network operators to accede to and comply with the SEC from its designation, in order to provide for the recovery of the DCC's fixed costs from this time. Draft Licence Conditions were provided for comment. **Question 16** and **18** asked respondents whether they agreed in principle with the placing of a licence condition on gas and electricity suppliers and network operators to accede to and comply with the SEC. Questions **17** and **19** asked for views on the drafting of the associated Licence Conditions.
129. All respondents to these questions agreed with the need for the licence conditions and that the drafting provided delivered the policy objectives set out. A number of respondents discussed the application of the derogations included in the drafting. In light of consultation responses and further consideration, the Licence Condition drafting has been amended to enable the Authority to issue guidance with regard to derogations. This follows similar provisions contained in Standard Licence Conditions. The revised Licence Conditions are provided at **Annex E** and will be laid in Parliament shortly.

5.1.2 Obliging suppliers to enrol domestic smart meters with the DCC

130. The November Consultation set out the Government's intention to introduce a regulatory obligation on suppliers to enrol SMETS-compliant domestic meters with the DCC. This obligation would apply in relation to smart meters installed from a specified point in the future. **Question 15** asked respondents whether they agreed with this intention.
131. Among the 12 respondents to this question there was general support for the principle of domestic smart meters being managed through the DCC, but a divergence of views on how this could be best achieved. One respondent asked that any obligation for enrolment be made subject to robust cost benefit analysis. Another respondent supported the early migration of all compliant meters into the DCC to enable the delivery of impact assessment benefits subject to technical and commercial viability and argued that DCC services should be allowed to stabilise before enrolment is mandated. One respondent flagged the danger of some consumers missing out on the benefits of the DCC if there were no mandate, arguing that this would be unfair because all consumers would be paying for the DCC.

132. Only one respondent disagreed with the proposed obligation, stating a concern that suppliers were being asked to agree an approach without a complete understanding of which equipment would be deemed SMETS-compliant and hence able to be enrolled by the DCC. The respondent commented that, as it was also unclear when the proposed obligation would take effect, this raised a question regarding whether the prevailing approved equipment would be available in time.
133. A number of respondents raised issues related to the enrolment and adoption of Foundation meters. One respondent argued that if the Government believes that the DCC is in the best interests of consumers then it should mandate full enrolment, including foundation meters, as quickly as possible. It also noted there was a danger that some consumers will miss out on the benefits of the DCC if there is no mandate, though all consumers would be paying for the DCC.
134. The Government remains minded to mandate enrolment of SMETS2 meters with a compliant communications hub with the DCC. Further consideration is being given to the detail of this enduring enrolment mandate including from when it should be introduced and the notice period that should be attached to its introduction. Further detail will be set out as part of future SEC releases. The Government's approach to enrolment during foundation will be set out separately.

5.2 Designating the SEC

135. The detail of the SEC legal text may evolve as a result of this consultation, the DCC competitive process, the consultation on transition and further policy development. As the draft legal text evolves the Government will continue to engage with stakeholders on the relevant issues through stakeholder working groups and consultation where appropriate.
136. Once the Government considers that the legal text for Stage 1 of the SEC has been finalised, it will designate the SEC. Condition 22 of the DCC Licence grants the Secretary of State the ability to designate the SEC through a direction under the licence condition. It states that, before designating the SEC, the Secretary of State must consult relevant parties for a period of at least 28 days. The Government will undertake this formal consultation exercise before the DCC Licence comes into force, with the intention that the SEC will be designated to have effect at that point.

5.3 Establishing governance arrangements for the SEC

137. The November Consultation document set out the Government's intention for responsibility for SEC governance to transfer to industry as soon as practical, supporting the principle of industry-led governance. Proposals for the establishment of key SEC governance entities (the SEC Panel, the SECCo and the SEC Code Administrator & Secretariat) as well as the approach to the accession of Initial Parties were set out in the consultation. There were few comments from stakeholders on the proposed approach and, working with stakeholders, DECC is currently:
 - running the accession process for Parties to accede to the SEC at designation;
 - facilitating the appointment process for the Initial SEC Panel;
 - establishing a SECCo; and

- undertaking the procurement process for the appointment of the SEC Code Administrator and Secretariat on behalf of SECCo.
138. DECC is undertaking these activities in order to provide a working governance framework for the SEC, such that the SEC Panel can take responsibility for some elements of the governance of the SEC from its designation. Substantive work is therefore already underway and further information can be found at <https://www.gov.uk/smart-energy-code-sec-governance>
139. The SEC Code Administrator and Secretariat (SECAS) will play an important role in SEC governance, undertaking the day-to-day governance activities at the direction of the SEC Panel. The November Consultation proposed that the Government would facilitate the procurement of the SECAS, to enable them to be in place at SEC designation. The approach set out in the consultation was that the Government would run the procurement process, engaging with the industry to ensure that the requirements for the SECAS services are appropriately specified, but with the SECAS contracts themselves signed by the SECCo at SEC designation. The procurement process for the SECAS is now underway.
140. The November Consultation proposed that a SECCo would be established as mechanism for the SEC Panel to contract for a range of governance services (including the SECAS). This would be its only substantive function. It was proposed that the SECCo would be established as a company prior to SEC designation with Government-appointed lawyers given the legal responsibility to be its directors. This would enable SEC Panel members to become SECCo directors and SEC Parties to become shareholders at SEC designation, and therefore allow contracts to be signed by industry (notably the SECAS contract) at SEC designation. The process to establish a SECCo is now underway. Additionally, Annex 1 of Schedule 4 of the SEC has been completed to show the steps that will have been taken prior to designation with regard to shareholding and Directorships of SECCo.

Annex A: List of questions in the November Consultation

General questions	
1.	Do you agree that the Government conclusions are appropriately reflected in the SEC Stage 1 legal drafting? Please provide a rationale for your views, and any further comments on the draft legal text.
DCC charges	
2.	Do you have any comments on format of the DCC's Charging Statement for Service Charges?
3.	Do you agree with the thresholds applied to the 'first comer / second comer' principle (Five Year Rule for costs over £20,000)? If you disagree please set out the reasons for your preferred approach.
SEC Panel	
4.	Do you think the members of the Panel nominated by industry should be drawn from and elected in equal numbers by Party Category OR be elected by all Parties (as set out in the legal drafting)? Please give reasons for your answer.
Modifications	
5.	Do you support the proposed composition of the Change Board and its decision making arrangements?
6.	Do you think that the SEC should provide for Parties and the consumer representative to appeal Change Board recommendations before they are submitted to Ofgem? If so, what is the appropriate mechanism for determining such appeals?
7.	Do you have any further comments, or views on the cost implications to SEC Parties, regarding the proposals for governance, the modification process and the approach to appeal rights set out here and reflected in the legal drafting of Stage 1 of the SEC?
Liabilities	
8.	Do you agree that liability provisions for intellectual property rights and confidentiality should be included in the SEC? If so, do you agree that they should be unlimited?
9.	Do you agree with the Government's proposal that in instances where the DCC is

	exposed to liabilities that exceed what it can claim from the person causing the original breach, the net liabilities for the DCC will be recoverable from SEC Parties by way of an increase in the DCC's fixed charges?
Dispute resolution	
10.	Do you agree that the Government's proposal to allow DCC to link service provider and SEC disputes in the arbitration process?
Code co-ordination	
11.	Do you agree that the proposed legal drafting covering change co-ordination with other codes meets the requirements as set out in chapter 5?
Passing registration information to the DCC	
12.	Do you agree that the proposed legal drafting for the SEC covering obligations on SEC Parties to pass registration information to the DCC is appropriate? Please provide a rationale for your views.
Transitional arrangements	
13.	Do you agree with the proposed variation to the SEC modification regime in the transitional period, including a right of veto for the Secretary of State?
14.	Comments are invited on the approach to transition as set out in this chapter and section L of the SEC. Please provide rationale to support your views.
Licence conditions	
15.	It is the Government's intention to introduce a regulatory obligation on suppliers to enrol SMETS-compliant domestic meters with the DCC and that this obligation would apply in relation to smart meters installed (from a specified point in the future). Do you agree with this intention? Please provide a rationale for your views.
16.	Do you agree in principle with the placing of a licence condition on gas and electricity suppliers to accede to and comply with the SEC?
17.	Do you agree that the licence conditions as drafted meet the policy requirements as set out in the chapter? Please provide a rationale for your views.
18.	Do you agree in principle with the placing of a licence condition on gas and electricity network operators to accede to and comply with the SEC?
19.	Do you agree that the licence conditions as drafted meet the policy requirements as set out in the chapter? Please provide a rationale for your views.

Annex B: Text of Stage 1 of the SEC

Updated SEC Legal drafting is published as a separate document alongside this publication and is available here: <https://www.gov.uk/government/consultations/smart-energy-code-stage-1>

Annex C: 'Change-marked' text of SEC stage 1

SEC Legal drafting showing all the changes made since the November Consultation is published as a separate document alongside this publication and is available here:

<https://www.gov.uk/government/consultations/smart-energy-code-stage-1>

Annex D: Draft Schedule of Core Communications Services

The schedule of core communication services is published as a separate document alongside this publication and is available here: <https://www.gov.uk/government/consultations/smart-energy-code-stage-1>

Annex E: Licence conditions to accede to and comply with the SEC

Electricity Supply Licence condition to accede to and comply with the SEC

Condition [GG] – The Smart Energy Code

Party to the Code

GG.1 The licensee must:

- (a) by no later than the Commencement Date, be a party to the Smart Energy Code; and
- (b) thereafter remain a party to and comply with the Smart Energy Code.

Derogation

GG.2 The Authority, following consultation with the licensee and where appropriate any other person likely to be materially affected and after having regard to any guidance issued by it in accordance with paragraph GG.3, may give a direction (“a derogation”) to the licensee that relieves it of its obligations under the Smart Energy Code in respect of such parts of the Smart Energy Code, to such extent, for such period of time and subject to such conditions as may be specified in the direction.

GG.3 The Authority may issue, and may from time to time revise, guidance regarding the manner in which it will exercise its powers under paragraph GG.2.

GG.4 The guidance issued in accordance with paragraph GG.3 may, in particular, set out:

- (a) the process for requesting the Authority to grant a derogation under paragraph GG.2;
- (b) the type of information that is likely to be required by the Authority as part of that process; and
- (c) the criteria the Authority would have regard to in considering whether and to what extent to exercise its power to give a direction under paragraph GG.2.

Interpretation

GG.5 For the purposes of this Condition the licensee’s obligation to comply with the Smart Energy Code is an obligation to comply with the provisions of the Smart Energy Code so far as they are applicable to the licensee.

Definitions

GG.6 In this Condition:

Commencement Date	means: (a) the date which is the SEC Designated Date; or (b) the date on which the licensee first starts to supply electricity to any Domestic Premises or Designated Premises under this licence, whichever is the later.
DCC Licence	means the Licence for the Provision of a Smart Meter Communication Service granted pursuant to sections 7AB(2) and (4) of the Gas Act 1986 and sections 6(1A) and (1C) of the Electricity Act 1989.
Smart Energy Code	means the document of that name, as designated by the Secretary of State under Condition 22 of the DCC Licence.
SEC Designated Date	means the date the Smart Energy Code is designated by the Secretary of State in a direction given for the purposes of Condition 22 of the DCC Licence.

Electricity Distribution Licence condition to accede to and comply with the SEC

Condition [ZZ] – The Smart Energy Code

Party to the Code

- 1 The licensee must:
 - (a) by no later than the Commencement Date, be a party to the Smart Energy Code; and
 - (b) thereafter remain a party to and comply with the Smart Energy Code.

Derogation

- 2 The Authority, following consultation with the licensee and where appropriate any other person likely to be materially affected and after having regard to any guidance issued by it in accordance with paragraph 3, may give a direction (“a derogation”) to the licensee that relieves it of its obligations under the Smart Energy Code in respect of such parts of the Smart Energy Code, to such extent, for such period of time and subject to such conditions as may be specified in the direction.

- 3 The Authority may issue, and may from time to time revise, guidance regarding the manner in which it will exercise its powers under paragraph 2.
- 4 The guidance issued in accordance with paragraph 3 may, in particular, set out:
- (a) the process for requesting the Authority to grant a derogation under paragraph 2;
 - (b) the type of information that is likely to be required by the Authority as part of that process; and
 - (c) the criteria the Authority would have regard to in considering whether and to what extent to exercise its power to give a direction under paragraph 2.

Interpretation

- 5 For the purposes of this Condition the licensee's obligation to comply with the Smart Energy Code is an obligation to comply with the provisions of the Smart Energy Code so far as they are applicable to the licensee.

Definitions

- 6 In this Condition:

Commencement Date	means:
	(a) the date which is the SEC Designated Date; or
	(b) where this Condition comes into force after the SEC Designated Date, the earlier of the date on which the licensee offers to distribute electricity or the date on which it begins to distribute electricity in Great Britain.
DCC Licence	means the Licence for the Provision of a Smart Meter Communication Service granted pursuant to sections 7AB(2) and (4) of the Gas Act 1986 and sections 6(1A) and (1C) of the Electricity Act 1989.
Smart Energy Code	means the document of that name, as designated by the Secretary of State under Condition 22 of the DCC Licence.
SEC Designated Date	means the date the Smart Energy Code is designated by the Secretary of State in a direction given for the purposes of Condition 22 of the DCC Licence.

Gas Supply Licence condition to accede to and comply with the SEC

Condition [GG] – The Smart Energy Code

Party to the Code

GG.7 The licensee must:

- (a) by no later than the Commencement Date, be a party to the Smart Energy Code; and
- (b) thereafter remain a party to and comply with the Smart Energy Code.

Derogation

GG.8 The Authority, following consultation with the licensee and where appropriate any other person likely to be materially affected and after having regard to any guidance issued by it in accordance with paragraph GG.3, may give a direction (“a derogation”) to the licensee that relieves it of its obligations under the Smart Energy Code in respect of such parts of the Smart Energy Code, to such extent, for such period of time and subject to such conditions as may be specified in the direction.

GG.9 The Authority may issue, and may from time to time revise, guidance regarding the manner in which it will exercise its powers under paragraph GG.2.

GG.10 The guidance issued in accordance with paragraph GG.3 may, in particular, set out:

- (a) the process for requesting the Authority to grant a derogation under paragraph GG.2;
- (b) the type of information that is likely to be required by the Authority as part of that process; and
- (c) the criteria the Authority would have regard to in considering whether and to what extent to exercise its power to give a direction under paragraph GG.2.

Interpretation

GG.11 For the purposes of this Condition the licensee’s obligation to comply with the Smart Energy Code is an obligation to comply with the provisions of the Smart Energy Code so far as they are applicable to the licensee.

Definitions

GG.12 In this Condition:

Commencement Date

means:

- (c) the date which is the SEC Designated Date; or
- (d) the date on which the licensee first starts to supply

gas to any Domestic Premises or Designated Premises under this licence,

whichever is the later.

DCC Licence	means the Licence for the Provision of a Smart Meter Communication Service granted pursuant to sections 7AB(2) and (4) of the Gas Act 1986 and sections 6(1A) and (1C) of the Electricity Act 1989.
Smart Energy Code	means the document of that name, as designated by the Secretary of State under Condition 22 of the DCC Licence.
SEC Designated Date	means the date the Smart Energy Code is designated by the Secretary of State in a direction given for the purposes of Condition 22 of the DCC Licence.

Gas Transportation Licence condition to accede to and comply with the SEC

Condition [ZZ] – The Smart Energy Code

Party to the Code

- 7 The licensee must:
- (a) by no later than the Commencement Date, be a party to the Smart Energy Code; and
 - (b) thereafter remain a party to and comply with the Smart Energy Code.

Derogation

- 8 The Authority, following consultation with the licensee and where appropriate any other person likely to be materially affected and after having regard to any guidance issued by it in accordance with paragraph 3, may give a direction (“a derogation”) to the licensee that relieves it of its obligations under the Smart Energy Code in respect of such parts of the Smart Energy Code, to such extent, for such period of time and subject to such conditions as may be specified in the direction.
- 9 The Authority may issue, and may from time to time revise, guidance regarding the manner in which it will exercise its powers under paragraph 2.
- 10 The guidance issued in accordance with paragraph 3 may, in particular, set out:
- (a) the process for requesting the Authority to grant a derogation under paragraph 2;
 - (b) the type of information that is likely to be required by the Authority as part of that process; and

- (c) the criteria the Authority would have regard to in considering whether and to what extent to exercise its power to give a direction under paragraph 2.

Interpretation

- 11 For the purposes of this Condition the licensee's obligation to comply with the Smart Energy Code is an obligation to comply with the provisions of the Smart Energy Code so far as they are applicable to the licensee.

Definitions

- 12 In this Condition:

Commencement Date	means: (a) the date which is the SEC Designated Date; or (b) where this Condition comes into force after the SEC Designated Date, the earlier of the date on which the licensee offers to transport gas or the date on which it begins to transport gas in Great Britain.
DCC Licence	means the Licence for the Provision of a Smart Meter Communication Service granted pursuant to sections 7AB(2) and (4) of the Gas Act 1986 and sections 6(1A) and (1C) of the Electricity Act 1989.
Smart Energy Code	means the document of that name, as designated by the Secretary of State under Condition 22 of the DCC Licence.
SEC Designated Date	means the date the Smart Energy Code is designated by the Secretary of State in a direction given for the purposes of Condition 22 of the DCC Licence.

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