



Department
of Energy &
Climate Change

Smart Metering Implementation Programme

Stage 1 of the Smart Energy Code

Government's conclusions following supplementary consultation and
proposal to designate final legal text

17 July 2013

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This document can be found on DECC's website:

<https://www.gov.uk/government/consultations>

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1 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

Representations or objections to the proposal to designate the Smart Energy Code should be sent by **14 August 2013**.

Responses should be addressed to:

Smart Metering Implementation Programme – Regulation Team
Department of Energy & Climate Change,
3 Whitehall Place,
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Email: smartmetering@decc.gsi.gov.uk

Responses should be clearly marked Smart Metering Programme: Proposal to designate the Smart Energy Code.

Additional copies

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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).

We will publish responses to the consultation on our website at https://www.gov.uk/government/publications?publication_filter_option=consultations. Responses will have people's personal names, addresses or other contact details removed.

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.

2 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 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 and comply with its provisions.

The Government consulted twice in 2012 on the policy positions, and subsequently the legal drafting, for the first stage of the SEC, (SEC1). In addition, two supplemental consultations were published in April 2013. In refining the legal text, the Government has continued to undertake reviews through a number of dedicated stakeholder working groups.

This document fulfils three primary purposes: it sets out the Government's response to comments received on two supplementary SEC consultations published in April 2013; it sets out the final legal text of Stage 1 of the SEC; and it puts forward proposals to designate the Smart Energy Code and the Charging Methodology for DCC Services.

Government response to supplementary SEC consultations

Sections 3 and 4 of this document set out the Government's conclusions following two short consultation exercises undertaken earlier this year aimed at informing specific elements of drafting required for SEC1. These were:

- A supplementary SEC consultation on draft legal text to support transitional arrangements (which ended on 17 May 2013) and;
- A supplementary consultation on updated draft legal text in SEC1 (which ended on 27 May 2013)

Final legal text of SEC1

Annex A of this document sets out a final version of the SEC1 legal drafting, which includes the Charging Methodology for DCC service charges in Section K. A number of amendments have been made to the legal text since it was last published alongside the April 2013 consultations. These are summarised and explained in Sections 3 and 4 of this document. Annex B contains the legal text in change-marked form to show all the insertions, deletions and movements of text to the version published alongside the April 2013 consultations.

Proposals to designate the SEC and the Charging Methodology

Section 5 of this document contains the Government's proposal to designate the document attached at Annex A as the Smart Energy Code and to designate Section K within it as the Charging Methodology in accordance with Conditions 18 and 22 of the DCC Licence. Representations or objections concerning these proposals may be submitted to the Smart Metering Implementation Programme by 14 August 2013.

Further development of the SEC

Further changes to the designated SEC will need to be made prior to completing the implementation of the DCC's smart metering communications service. The anticipated scope of these changes is set out in Annex C. The Government is working with stakeholders on the process and timing for development of future SEC content once SEC1 is in place and has legal effect. Accordingly the Government will be outlining plans for the delivery of this remaining content in due course.

3 Responses to the Supplementary Consultation on transitional arrangements

This chapter summarises stakeholder responses to questions asked in the supplementary SEC consultation on draft legal text to support transitional arrangements.

3.1 Consultation summary

1. The supplementary SEC consultation on draft legal text to support transitional arrangements was published on 18 April 2013 and closed on 17 May 2013. It set out four questions regarding transitional arrangements and legal drafting for a new section 'Section X' in Stage 1 of the SEC. A further two questions related to changes to the DCC Licence, and the general proposals for managing changes to the SEC during transition. The questions asked were:

Consultation Questions	
1.	Do you agree with the general obligations on SEC Parties set out in section X1? Please provide a rationale for your views.
2.	Do you agree with the proposal to use Section X5 of the SEC to enable the incorporation of technical subsidiary documentation into the SEC? Please provide a rationale for your views.
3.	Do you agree with proposals to include, in Section X of the SEC, a mechanism to make expedited modifications to the SEC for transitional purposes?
4.	Do you agree that the DCC's Licence duties with respect to transition are better captured through an interim objective rather than discrete obligations?
5.	Please provide any further comments you have on the proposed legal drafting.
6.	Comments are invited on the proposed approach to determining how to change the SEC set out in this section.

2. There were 14 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.

3. All of the responses to this consultation are published alongside this document on the Government website¹.

3.2 Summary of responses to questions on transitional content

4. This summary is structured to follow the updated legal text of Section X of the SEC. It considers comments and sets out the Government's conclusions for each part of Section X in sequence, referring where appropriate to the specific questions that were asked as part of the consultation. Annex B contains the updated legal text for the whole of SEC1 in change marked form, documenting all of the detailed insertions, deletions and movements of text to the version of the legal text that was published in April 2013.
5. In the main, feedback was very positive with the vast majority of stakeholders welcoming the Government's transitional proposals as they were set out in the consultation document. Some responses suggested changes to the drafting, including that in certain areas it could be clearer or more explicit. However no significant concerns were expressed on any section.
6. Specifically, the method of incorporating technical documents into the SEC set out in Section X5 was welcomed. A minor drafting amendment has been suggested to ensure consultation around these documents includes consultation as appropriate on content as well as timing.
7. There was a mix of comments on the approach to defining the end of transition and who may be best placed to judge when it has been reached. The majority suggested the Secretary of State would be best placed to make this kind of decision although there was some suggestion that industry itself should have a more fundamental role.
8. Some responses suggested that the Government needed to ensure the drafting of Section X6 (the expedited mechanism for making changes to the SEC) was appropriately drafted to provide an effective mechanism that worked within the existing legal framework. One respondent questioned the need for it, or how effective it may be.

3.2.1 Section X1: General provisions regarding transition

9. **Question 1** of the consultation asked whether stakeholders agreed with the general obligations on SEC parties set out in Section X. All respondents were generally content with the principles that Section X1 was drafted to achieve, namely the timely completion of implementation and the requirement of SEC parties to meet a transitional objective.
10. The Government additionally sought views on the idea of a defined 'completion of implementation' in the legal framework, and which party should be responsible for setting the date on which it occurred.

Stakeholder responses

11. One supplier and one code administrator, along with Ofgem, welcomed the clarity now included around the duration of the transition phase and how the decision will be made as to

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

when this period concludes, given the definition of “Completion of Implementation”. These respondents all considered it appropriate that this be a decision made by Government, following thorough consultation with the Authority and with industry.

12. However one supplier felt that this decision best sat with industry, a final decision falling to the Change Board with an avenue of appeal to the Authority if needed. This, they argued, would mean that those who are most impacted by the completion of implementation (SEC Parties) have responsibility for the final decision.
13. One large supplier raised concerns as to the requirement for parties to provide cooperation and assistance to each other, noting that this may be seen to be in conflict with parties’ obligations under competition law. On the other hand, one energy data manager raised concerns that the requirement did not go far enough. One supplier questioned the need for provision X1.9, requiring Parties to provide information to the Secretary of State given requirements to provide information set out in the electricity and gas supply licences. Given that this requirement should apply to all SEC Parties, and not just licensees.

Government conclusion

14. The Government is still considering who will be best placed to decide on when the Transition Objective has been achieved and Section X shall no longer apply. It notes that the view of most stakeholders is that the Secretary of State is best placed to take that decision. It also recognises that the decision will need to be largely informed by the industry, regardless of who takes it, and that it is essential that all parties have been consulted upon any proposed date to be designated as the Completion of Implementation.
15. The Government further recognises that consideration of who will be best placed to take this decision will likely be informed by the ongoing discussions between the Government and stakeholders on the precise form of transitional governance. As such, it is proposed that the SEC drafting in Section X1 should remain flexible placing the final decision with the Secretary of State or such person as the Secretary of State may nominate for this purpose.
16. Given the conflicting responses on transitional objectives to provide reasonable cooperation to one another, the Government remains of the view that the drafting balances the need for cooperation and assistance against anti-competitive behaviour and believes that reassurance is provided by the obligation to co-operate or assist being limited to “reasonable steps”.
17. The Government has concluded to keep this provision in place. The drafting will be amended to ensure that the Section X requirement does not duplicate or contradict any reporting obligations that exist under licences.

3.2.2 Transitional Objectives (common to both the SEC and the DCC Licence)

18. Following discussions at working groups, the reference to the “paramount need for parties to achieve the transition objective” has been removed and the section redrafted to ensure objectives are viewed in the round and to avoid the perception that transitional objectives will always outweigh other objectives. The transition objective will therefore be considered alongside the other objectives. A parallel amendment will also be made in the DCC Licence.

3.2.3 Sections X2, X3 and X4

19. Sections X2 (Effective provisions at designation), X3 (Provisions to become effective following designation) and X4 (Governance Set-up Arrangements) have proven acceptable to stakeholders and have attracted little comment or objection either at stakeholder working groups or in consultation responses.
20. Feedback at working groups has indicated that stakeholders are supportive of the need for certain parts of the SEC to come into force at different points in time and that Section X2 achieves the most practical and effective delivery of this principle. Section X3 is a supplement to the variations to the SEC set out in X2, setting out details around how such variations may cease and both sections include the requirement for stakeholder consultation with regard to applying dates whereby sections of the SEC are varied or such variations cease to apply.
21. Given that neither of these sections, nor the governance arrangements detailed in Section X4, have attracted any comments or objections, the text as proposed in the consultation will be included in SEC1.

3.2.4 Section X5: Incorporation of certain documents into the SEC

22. **Question 2** of the consultation asked whether respondents agreed with the proposals to enable the incorporation of technical documentation into the SEC.

Stakeholder responses

23. All respondents were supportive of the process proposed for incorporating technical documents into the SEC. One large energy supplier commented that whilst they recognised that this gave further powers to the Secretary of State, Section X5.7 provides suitable safeguards and requires appropriate consultation on any documents.
24. However, another supplier was concerned about the extent of such consultations because the requirement to consult in X5.7 applied to timescales but not content. This is a view that had also been raised at stakeholder working groups.
25. One distribution network operator, along with Ofgem, stressed the need for the scope and volume of incorporation to be carefully managed and that there must be robust and transparent processes and criteria in place to determine when documents should be placed under SEC governance. One energy data manager highlighted the need for DECC to continue to lead on finalisation of these documents and to oversee their incorporation.

Government conclusion

26. The Government accepts that the drafting focussed on consultation on timescales for the transfer of technical documents and was not explicit that the content of the documents should have been subject to appropriate consultation. Whilst it is anticipated that these documents, throughout their development, will be subject to on-going consultation with stakeholders, for the avoidance of doubt drafting in the SEC on transfer of these documents will be amended to ensure that appropriate consultation is undertaken on the content of the document. As such, Section X5 has been redrafted.

3.2.5 Section X6: Transitional Variations

27. **Question 3** asked whether respondents agreed with proposals to include, in Section X6 of the SEC, a mechanism to make expedited modifications to the SEC for transitional purposes.

Stakeholder responses

28. The majority of stakeholders who responded recognised the need for, and supported, the proposal to include a mechanism to make expedited modifications.
29. One code administrator, along with Ofgem, suggested that they would like some clarity on the circumstances where this mechanism may be used. A number of respondents also suggested that changes made using this mechanism ought to be in the minority given the availability of urgent SEC modifications. One supplier queried the need for this mechanism, suggesting that the case for such powers was yet to be established. They noted that a standard government consultation process would mean the new method may be no more expedient than the proposed industry led urgent modification process. Other respondents also noted the need for an agreed process for consultation when utilising the power.
30. Two suppliers, whilst not objecting in principle to the intended process, noted that there may be alternative legal methods to introduce this mechanism, and noted that the mechanism needs to be robust to legal challenge when used.

Government conclusion

31. The Government recognises the broad support for the mechanism, and understands the importance of providing clarity on the role of the expedited mechanism set out in X6. The mechanism is designed to facilitate the industry's progression through transition and will not endure beyond the completion of implementation. The mechanism is not designed to be subject to a standard government consultation process, but rather that each consultation process for any change proposed using the X6 mechanism would be tailored to the nature of the change.
32. Whilst the Government notes potential for alternative legal routes to introduce the mechanism, it remains of the view that both the mechanism, and its proposed method of introduction, are appropriate, given that it has been specifically designed to ensure that variations introduced using it are time-limited, and subject to consultation.
33. As such, the Government intends to include the legal text in X6 as per the consultation document.

3.2.6 Supporting changes to the DCC Licence and general comments

34. The consultation set out that the DCC Licence would need to change to support revised transitional arrangements in the SEC. **Question 4** sought views on whether the DCC's licence obligations with respect to transition are better captured through an interim objective rather than discrete obligations.

Stakeholder responses

35. All of the stakeholders who responded were content that an interim objective better captured the DCC's duties. Nobody expressed a preference for discrete obligations.
36. The consensus was that this solution gave the DCC a general incentive to deliver an outcome rather than to adhere to specific obligations and that this better served the intent of the code. It also recognised that not all risk factors may be under the DCC's direct control.
37. One supplier, while supportive of the approach, suggested there was a lack of clarity as to whether transitional objectives would override all other code objectives, including the

promotion of competition; or whether all objectives should be taken into consideration when developing and proposing changes to the SEC.

Government conclusion

38. The universal support for this amendment is welcome and the Government is consequently minded to proceed on this basis. As mentioned in 3.2.2, the Government will re-draft the text in section C1.2 in order to address potential stakeholder confusion about the prioritisation of specific objectives.
39. **Question 5** asked for additional comments on the proposed legal drafting.
40. There were limited additional comments on the proposed legal drafting, which had not already been raised in answering the earlier questions. Most of these related to the decision that completion of implementation had been reached, as discussed in section 3.2.1 above.

3.2.7 Modifying the SEC during Transition

41. The consultation document also considered the different mechanisms by which the SEC could be amended, should the proposed legal text be incorporated into the SEC during transition. It noted that there were three mechanisms that could be used, and **Question 6** invited comments on the proposed approach for utilising these different mechanisms, and the example given for how this would be governed during transition.
42. Responses here were varied. Some respondents commented on the potential need for modifications that are made using the expedited route to be tested against the enduring solution and, if appropriate, incorporated into the enduring solution in a timely manner to avoid a possible backlog of modifications at the end of transition.
43. The Government agrees with the need for avoiding a backlog of modifications that need to be made via the enduring process towards the end of transition and recognises that this can be achieved either by the Secretary of State using powers under section 88 of the Energy act, or by the modifications being brought forward under the SEC modification regime.
44. One Meter Asset Provider sought clarification on the meaning of the word “urgent”. The Government is satisfied that the Authority’s existing definition of an “urgent” modification will be sufficient for the purposes of Section X. One supplier emphasised the importance of the SEC Change Board being established from the outset.
45. The Government is content that concerns around the establishment of the Change Board have been addressed following working groups and there is now drafting in Section X2.3(d) which obliges the SEC Panel to constitute the Change Board at the earliest opportunity.

4 Summary of responses to the supplementary consultation on updated draft legal text in SEC1

This chapter summarises stakeholder responses to the second of the two SEC consultations published in April this year. It covers the questions on the updated legal text asked in the consultation on enduring arrangements, sets out the Government's response and highlights where the legal text has been subject to further change.

4.1 Consultation summary

46. The Government Response and Consultation on updated draft legal text for Stage 1 of the Smart Energy Code was published separately to the consultation on transitional arrangements (Section X). It provided the Government's response to the November consultation on the SEC draft legal text, set out revised drafting and sought views on two additional questions. It opened on 29 April 2013 and closed on 27 May 2013 and set out two questions related to publication of information on elective services and the legal drafting for liabilities. Henceforth this document refers to this consultation as the April 29 Consultation. The questions asked in the April 29 consultation were:

Consultation Questions	
1. Elective Services	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.
2. Liabilities	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

47. Seven organisations responded to the supplementary SEC1 consultation. Responses were submitted by large energy suppliers, a gas transportation network and another industry organisation. The majority of these responses dealt solely with the topics which the Government invited comment upon. Some respondents provided additional detailed comments on some other topics covered in the SEC.

48. All of the responses to this consultation can be found on the Government website².

² <https://www.gov.uk/government/consultations/smart-energy-code-stage-1>

4.2 Stakeholder responses and final changes to legal text

4.2.1 Question 1 – Elective Services

49. In the April 29 consultation the Government proposed amending the requirement to publish details of elective services six months after the service has first been provided. Specifically, the legal text of the SEC now requires a description of the service to be published (rather than the size of the data message).

Stakeholder responses

50. All respondents agreed with the approach to publishing a description of each elective service rather than the size of the data message. Respondents commented that this seemed to better reflect the original policy intention and would have more meaning to the market.
51. One respondent suggested that the period before publication should be one year rather than the six months proposed. Another suggested that the six month period will probably undermine the commercial value that elective services offer and limit their potential take-up. One respondent argued for transparency, making clear that they still have concerns about ensuring that elective services do not adversely impact the continuing provision of core services and queried whether the information being made available is sufficient to allow SEC Parties appropriate oversight of the arrangements.

Government conclusion

52. Having reviewed the comments from stakeholders the Government is satisfied that the revised drafting on elective services supports our policy intentions and balances the competing requirements articulated by industry. The six month period before publication provides the first user of an elective service with a degree of first mover advantage. After six months it is likely that other DCC users would have sufficient intelligence on products being delivered to market to quickly identify the nature of the service. The Government has therefore concluded that keeping a description of the service confidential for longer than six months is not justified.

4.2.2 Question 2 – Liabilities

53. In the April 29 consultation the Government restated the approach to the treatment of liabilities first set out in the November 2012 consultation, but with some refinements in legal drafting. The main components of this approach are:

- an ability for the DCC to recover its net liability costs from SEC Parties when such costs exceed what it can claim from the individual SEC Party causing the breach
- 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) set at £1,000,000 per incident or series of related incidents, and
- unlimited liability for breaches of confidentiality and intellectual property rights.

54. The Government also invited views on how liabilities should be recovered and apportioned when a breaching party is liable to more than one other SEC Party, and where the liability is capped. It set out an initial view that the fairest approach would be to apportion the liabilities pro-rata based on the actual damages, capped at the maximum amount each party could claim.

Stakeholder responses

55. Respondents commented in particular on the caps to liabilities for physical damage and the unlimited liabilities attached to breach of the confidentiality and intellectual property obligations.
56. Some respondents suggested reviewing the cap to physical liabilities, indicating that it might need to be higher. One argued the £1,000,000 liability in existing codes is for single fuels, and at the very least should be £1,000,000 per fuel in the SEC. Another respondent commented on the importance of ensuring the caps for physical damage in the SEC are aligned as far as possible with the DCC service provider contracts.
57. A number of respondents explicitly stated their support for the unlimited nature of liabilities for breach of confidentiality and intellectual property obligations. One commented that they are pragmatic and do not confer excessive risk, another noted they reflect standard practice for communications and technology contracts. One respondent explicitly opposed the unlimited nature of the liabilities and commented that if they remain then provision should be made to ensure that parties are fully aware of the circumstances that trigger their coming into effect. One respondent restated their opposition to the DCC recovering uncollectable liabilities through increases in the DCC's fixed charges.
58. More generally one respondent supported the refinements to the legal drafting and welcomed the additional clarity it gives. A number of respondents suggested the liability provisions are reviewed regularly and through the operation of the code to ensure they remain appropriate and do not create perverse incentives.
59. No respondents to the April 29 consultation commented on how liabilities should be recovered and apportioned when a breaching party is liable to more than one other Party, and where the liability is capped.

Government conclusion

60. Having reviewed responses to the April 29 consultation the Government is of the view that the basic approach set out in the November 2012 Consultation and restated in the April 2013 consultation remains appropriate. As a consequence no changes have been made to the drafting of the liability provisions in the SEC.
61. The Government considers that the £1,000,000 cap for physical liabilities is appropriate as it is in place to act as a disincentive to bad practice and is not intended to be cost reflective. It is worth noting that these capped amounts can be increased or decreased through a SEC modification so parties are free to bring forward such modifications if they wish.
62. The Government has concluded that liabilities for breaches of SEC provisions relating to confidentiality and intellectual property rights will be uncapped. Whilst this approach does not follow existing industry codes it is generally considered to be more consistent with commercial arrangements covering similar subject matters.
63. The Government recognises the importance of clear drafting to identify the types of infringement that would trigger liability. With this in mind the drafting published with the April 29 consultation was amended to clarify the provisions relating to breach of intellectual property and confidentiality.

64. In particular it is worth restating that 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 provides for 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.
65. 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.
66. The Government notes that a number of respondents made clear that the liability provisions should be kept under review. It will be necessary to revisit this liability provisions 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.
67. With regard to capped liabilities owed to multiple parties the Government is minded to adopt the approach proposed in the April 29 consultation whereby liabilities are apportioned pro-rata based on the actual damages, capped at the maximum amount each party could claim. Legal drafting to give effect to this will be delivered in a future version of the SEC, not in SEC1.

4.2.3 Other stakeholder comments and changes to legal text

68. A number of stakeholders made detailed comments on particular sections of SEC drafting either through their consultation responses or at working group discussions. Some of these have resulted in drafting changes, these are summarised and explained here together with other changes the Government has considered necessary on further review of the draft text. Where appropriate the Government sets out why changes requested by stakeholders have not been made.
69. Annex B contains the updated legal text in change marked form, documenting all of the detailed insertions, deletions and movements of text to the version of the legal text that was published alongside the April 29 Consultation.

Changes to Section A (Definitions)

70. The definitions of Domestic Premises and Non-Domestic Premises have been adjusted to align with the relevant energy supply licences.
71. The SEC legal drafting previously captured a Small Supplier Party as a supplier that (in aggregate with its affiliates) supplies either or both fuels to less than 250,000 MPANs/MPRNs. This definition has been adjusted to mean a party that supplies electricity and/or gas to fewer than 250,000 Domestic Premises. This latter definition is comparable to that used in the Smart Metering Consumer Engagement licence conditions.

Changes to Sections C (Governance) and D (Modifications)

72. In response to comments from stakeholders the Government has added to the drafting in Section C to provide all Parties and Consumer Futures with the right to appeal Panel budgets to Ofgem. While there is no standard approach to budget setting across existing codes,

some do give parties a greater say in the approval of budgets, and providing for an appeal right should incentivise good budget setting practice.

73. The appeal right is time limited and designed so as not to delay the budget setting process. Any appeal of the budget will only be validly made if notified to Ofgem within 10 working days following the publication of the draft budget approved by the Panel.
74. Ofgem may dismiss the appeal if it considers that it is trivial, vexatious or has no reasonable prospect of success, or it may give notice that it will consider the appeal. During this process the budget approved by the Panel shall remain the approved budget until and subject to any interim directions issued by Ofgem.
75. Where Ofgem determines that the budget approved by the Panel is not consistent with the General SEC Objectives, then it will either direct amendments to the budget or direct the Panel to produce a further draft budget and re-commence the budget approval process.

Changes to Section E (Registration) and related changes to Section X (transitional variations)

76. The information each Gas Transporter shall provide to the DCC in respect of each MPRN has been corrected following feedback from industry (see Annex B).
77. Since the April 29 consultation the Government has added a number of transitional variations to Section E through Section X2.4. These changes have been made so that aggregated registration data can be provided based on existing reporting within the registration systems on an interim basis without incurring additional costs before the system changes planned to support enduring registration arrangements are established. The drafting changes:
 - allow for registration data to be provided at an aggregate level and on the last working day of each month or as soon as is reasonably practical thereafter. During this initial period the invoicing timetable that the registration data is used for has, to some extent, more flexibility than under enduring arrangements, because the DCC does not need to ensure that funds are available to pay service providers by the end of the month, and
 - allow for certain variations to the data that is provided while registration systems are being re-designed. This includes the provision of gas registration data based on Supply Points rather than MPRNs, and recognises that electricity registration data currently makes no distinction between import and export meters.
78. For a short time period this inability for the DCC to differentiate between import and export meter points will result in export electricity suppliers not being levied a charge per MPAN and import electricity suppliers paying very slightly more per MPAN. This is not considered to have a material impact on suppliers given the level of costs that will be recovered during this period.

Changes to Section H (DCC Services)

79. The drafting has been amended so that bilateral agreements for electives services must provide for disputes to be initially brought to the Panel, but ultimately determined through arbitration because of their commercial nature (previously Panel determination would be final and binding). Schedule 3 (Specimen Bilateral Agreement) has also been amended accordingly.

Changes to Section I (Privacy)

80. Following comments from a respondent to the April 29 consultation the Government has amended the drafting to explicitly require the DCC to notify the 'data controller' promptly if it processes any Personal Data otherwise than in accordance with the Code. The DCC is also required to notify the data controller of any subject access request received by the DCC with respect to the processing of personal data pursuant to the Code. These changes have been made to clarify the data protection obligations on the DCC. Other minor changes have been made to align the provisions in Section I more closely with those contained in the DCC's service provider contracts.
81. One respondent asked about the placing of security obligations on the DCC. These will be placed on the DCC through its licence and through Section G provisions that will be introduced in a future version of the SEC.

Changes to Sections J (Charges) and K (Charging Methodology)

82. A number of stakeholders have expressed a concern that the SEC timescales for DCC Users paying promptly in arrears are unrealistically tight and may incur disproportionate costs. One respondent to the April 2013 consultation described the timescales as 'not acceptable'. The current drafting prescribes that invoices should be paid within 5 working days of receipt of an invoice. Stakeholders would like longer to pay, consistent with some other codes. As an example one respondent suggested 30 days 'in line with standard business practice'.
83. Given the financial nature of the DCC and the requirement on them to manage cash flows / credit cover and then pay service providers within the month, the Government does not intend to extend the SEC payment terms. The SEC contains a 'pay now / dispute later' regime. This means that although invoices must be paid within 5 working days, there is a further 12 months to validate / query each invoice. In addition the existence of widely available payment options such as the Faster Payments Scheme mean that the payment timescale should not impose additional transactional costs on DCC users.³
84. The Government has made two amendments to the invoicing arrangements. In Section J it has added an obligation on the DCC to publish an indicative timetable of the dates on which it intends to submit invoices. The Government has also added an obligation on the DCC to provide such information as a party may reasonably request regarding the calculation of charges payable by that Party,
85. The Government has also amended Section J so that the DCC shall give notice of proposed changes to the charging statement.

Changes to Schedule 4 (SECCo)

86. Legal text has been adjusted in a number of places to clarify meaning. In particular it is made clear that Directors shall act in all reasonable respects to give effect to the SEC but subject always to their duties and responsibilities under the Companies Act 2006.

³ <http://www.fasterpayments.org.uk/>

5 SEC designation and establishment

5.1 Developing the SEC and giving it legal effect

87. 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. As summarised above, in April 2013 the Government issued two further consultations: 1) a supplementary SEC consultation on proposed transitional provisions; and 2) a supplementary SEC consultation on updated draft legal text.⁴ This document sets out the Government's conclusions following these final two consultations.
88. The Government now intends to designate the SEC to give it legal effect. Before a direction designating the SEC can be issued, in accordance with Condition 22 of the DCC Licence, the Government must: a) propose to designate the SEC and specify the date (or a method by which such date may be determined) from which the Smart Energy Code will have effect; b) set out the text and reasons for proposing to designate it; c) allow a period of at least 28 days within which representations or objections may be made; and d) have regard to those representations or objections in deciding whether to designate.
89. The Government also intends to designate the Charging Methodology set out in Section K of the SEC attached at Annex A. The Charging Methodology has been subject to the consultations set out in the first paragraph above.
90. Before a direction designating the Charging Methodology can be issued, in accordance with Condition 18 of the DCC Licence, the Government must: a) publish the terms of the Charging Methodology; b) state the reasons for proposing to so designate it; c) allow a period of at least 28 days within which representations or objections may be made; and d) have regard to those representations or objections in deciding whether to designate.

5.2 Proposal to designate the SEC

91. The Government proposes to designate the document attached at Annex A as the Smart Energy Code on 30 August 2013 or such later date as the DCC Licence is granted.
92. The Government expects that designation will occur within a four week period between 30 August and 27 September 2013. If the DCC Licence is not granted during this period the Government will update stakeholders regarding plans for SEC designation.
93. The Government has consulted extensively on the content of the Smart Energy Code. The reasons for proposing to designate the document attached at Annex A as the Smart Energy Code are fully described in this and previous consultation conclusions. In particular, such document satisfies the requirements of Condition 22 of the DCC Licence. Condition 22 of the DCC Licence requires, amongst other things, that the Smart Energy Code is the document that:

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

- is designated by the Secretary of State having due regard to the requirement for compatibility with the Transition Objective set out in Part C of Condition 22;
 - is designated by the Secretary of State on the basis that the SEC is appropriately designed to achieve the General SEC Objectives set out in Part D of Condition 22;
 - makes provision for the technical, commercial and operational arrangements set out in Part E of Condition 22;
 - makes provision in respect of the matters relating to SEC governance and SEC administration set out in Part F of Condition 22;
 - makes provision for the incorporation of documents into the SEC and other necessary matters as set out in Parts G and H of Condition 22; and
 - may be modified on and after SEC Commencement Date in accordance with the provisions of Condition 23 (Change control for Smart Energy Code).
94. In accordance with Condition 22 of the DCC Licence, the matters that the SEC must include or for which it must make appropriate provision may be included or provided for at any time between the SEC coming into force and completion of implementation (see Section 3.2.1 of this document for a discussion on this term).
95. Further changes to the designated SEC will need to be made prior to completing the implementation of the DCC's smart metering communications service. The anticipated scope of these changes is set out in Annex C. The Government is working with stakeholders on the process and timing for development of future SEC content once SEC1 is in place and has legal effect. The Government will be outlining plans for the delivery of this remaining content in due course

5.3 Proposal to designate the Charging methodology

96. The Government proposes to designate Section K of the Smart Energy Code attached at Annex A as the Charging Methodology. The reasons for proposing to designate Section K as the Charging Methodology are fully described in this and previous consultation conclusions. In particular, such section satisfies Condition 18 of the DCC Licence. Condition 18 of the DCC Licence requires, amongst other things, that the Charging Methodology:
- is a complete and documented explanation, presented in a coherent and consistent manner, of the methods, principles, and assumptions that apply for the purpose of determining the Service Charges payable for Mandatory Business Services provided under or pursuant to the SEC; and
 - achieves the Relevant Policy Objectives of the Charging Methodology set out in Part C of Condition 18

5.4 Representations regarding designation proposals

97. Representations or objections concerning the proposals to designate the SEC and the Charging Methodology may be submitted by 14 August 2013 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

98. Responses should be clearly marked Smart Metering Programme: Proposal to designate the Smart Energy Code.

5.5 Establishing the SEC

99. The Government has put in place a number of processes to establish some of the governance arrangement for the SEC from its designation. Details of the processes being followed were published on 8 April 2013 ([Smart Energy Code Governance Set-up Arrangements](#)) and include:
- running the accession process for Parties to accede to the SEC at its commencement. Accession application forms have been submitted allowing accession to the SEC on its designation. Accession is completed by signing the Framework Agreement (SEC Schedule 1) and some parties have provided authority for this to be signed on their behalf; others will be invited to attend a “signing session” on the day of designation (details of which will be issued in due course);
 - facilitating a process for industry election of the elected members of the initial SEC Panel. Information about the process for the nomination and election of the initial SEC Panel was published on 19 April ([Smart Energy Code Governance Set-up Arrangements – Nomination and Election for the initial SEC Panel](#)). The outcome of this process – the names of the Elected Members of the Initial SEC Panel – will be communicated in due course; and
 - undertaking the procurement process for the appointment of the SEC Code Administrator and Secretariat (SECAS) on behalf of the Panel and establishing a SECCo which will be the contracting body for the Panel.

Annex A: Legal Text of SEC1

The Finalised legal text of SEC1 is published as a separate document alongside this publication and is available from: <https://www.gov.uk/government/consultations/stage-1-of-the-smart-energy-code-conclusions-and-proposal>

Annex B: Legal Text of SEC1 (change marked)

The Finalised legal text of SEC1 in change marked form, showing changes since the publication of legal text in April 2013 is published as a separate document alongside this publication and is available from: <https://www.gov.uk/government/consultations/stage-1-of-the-smart-energy-code-conclusions-and-proposal>

Annex C: Development of SEC Content

The anticipated scope of future SEC content is published as a separate document alongside this publication and is from: <https://www.gov.uk/government/consultations/stage-1-of-the-smart-energy-code-conclusions-and-proposal>

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