



Response to Consultation on new smart energy code content and related supply licence amendments

We welcome the opportunity to respond to this consultation and would be happy to discuss our response further.

As we outlined at length in our response to DECC's Smart Metering Implementation Programme¹, we have grave concerns about the Government setting a SMETS1 end date prior to having established whether or not meter manufacturers would be capable of supplying SMETS2 meters that are both commercially and technically feasible before this date. Our concern is now further heightened by the proposal to insist that suppliers take *"all reasonable steps to commission"* a SMETS2-compliant meter after the date of DCC live.

We appreciate that the Government is anxious to *"focus the industry"* and expedite the process of rolling out SMETS 2 meters as much as possible.² Yet the benefits of SMETS 2 meters will be clear and appreciable once they become a commercial reality. There is therefore no need to mandate the installation of them as they will clearly be technically superior once they are commercially ready.

Until such time as SMETS 2 meters are commercially available it seems unreasonable to insist that suppliers install a meter that doesn't exist yet given that the DCC live date is less than a year away. We would further argue that introducing a regulated deadline as a means of focusing the industry is not fit for purpose and would fail to improve upon the speed at which SMETS 2 meters are rolled out.

Facilitating a Monopoly market

In addition to the lack of benefits of proposing this particular amendment, there are also a considerable number of negatives which we are concerned DECC have not considered. There is a real danger that insisting suppliers install SMETS 2 compliant meters will force suppliers to deal with whichever meter provider manages to have a SMETS 2 compliant meter ready in time to coincide with the DCC live date. Should it transpire that only one meter manufacturer is capable of rolling out a SMETS 2

¹ OVO Energy (2015) response to DECC's Smart Metering Implementation Programme

² Paragraph 34. DECC (2015) Government response to the Smart Metering Rollout Strategy consultation

compliant product after the date of DCC live, that manufacturer will be in a monopoly position, enabled by the obligation on suppliers to purchase any meter they wish to install from them.

Such a monopolist, would by definition face little or no competitive pressure, damaging the ability of the market to encourage technical advances and innovate to reduce costs. Our major concern is that a scenario in which a monopolist supplier is allowed to flourish would be damaging to the public image of smart meters, especially if it transpires that the monopolist supplier's product is inferior in terms of quality and reliability, as is likely to be the case in the absence of competitive pressure. The fact that DECC seems unconcerned with the possibility that they will create an anticompetitive market is quite troubling. Especially given that suppliers are likely to pass on the cost of purchasing and installing meters directly to customers.

The proposed drafting appears inconsistent with the need for a transitional period

We would further argue that DECC has failed to adequately consider the commercial implications of drafting this legislation to include the term;

"From the date the Enrolment Service first becomes available"

A term which we interpret as the date when DCC goes live. The use of this date would appear inconsistent with the Government's response to the Smart Metering Rollout Strategy consultation (SMRSC). In its response to the SMRSC, the Government concluded that the *"SMETS1 end date should be 1 August 2017 (i.e. DCC Live plus 12 Months)."* This date was chosen in recognition of the need to allow *"sufficient time for energy suppliers to make the transition from SMETS1 to SMETS2"*.

In light of the Government's conclusion, it seems inconsistent to insist that the DCC live date be de facto mandated, as the date that suppliers must begin the roll out of SMETS2 meters. Especially given that the Government had previously committed; *"to provide industry with the flexibility to plan and manage the rollout efficiently"*.

Insisting that a specific date is the time period when suppliers suddenly have to adopt wholesale changes to their operations is wholly unrealistic and not in keeping with the need for a transition period. All suppliers have to order their meters in advance. Suppliers therefore have to forecast the amount of meters they are likely to require and order this specific quantity. The lack of a true transitional period that is implied by this regulation creates significant uncertainty for suppliers as to whether they will be capable of ordering the correct type of meters in the correct quantities. Given the uncertainty regarding the commercial availability of SMETS2 meters, the current drafting of this regulation would seem to mandate that once a SMETS2 meter becomes available, suppliers must suddenly commence installing SMETS 2 meters instead of SMETS1, assuming that DCC has fully gone live. If the regulation is passed in its current form then it is likely that a specific day or week may come when suddenly suppliers have to switch from installing SMETS 1 type meters to SMETS 2.

An insistence on a particular day is therefore likely to promote inactivity on the part of suppliers as they will be unwilling to face the risk that they order a meter that will become stranded, i.e. that they will not be permitted to install. For this reason we would argue that this provision as drafted, is discriminatory towards suppliers who are actively installing meters currently and seems in no way to reflect DECC's own acknowledgement of the need for a transitional period.

In summary we object to the proposed wording of this amendment on the grounds that;

- a. It is not suitably worded to reflect the uncertainty associated with the availability of SMETS 2 meters and risks creating a distorted market.
- b. It is drafted in a manner that de facto removes the possibility for suppliers to avail of a transitional period, which is contrary to DECC's conclusion that a transitional phase is required.

In light of these shortcomings we propose that the wording of this amendment be changed to explicitly recognise the existence of the transitional period. This will ensure

that suppliers will not be deemed to be in breach of this provision should they continue to install SMETs 1 type meters after the date of DCC live. Effecting this change will not however impact the obligation for suppliers to install only SMETs 2 meters once the transition period has ended. This change would therefore be consistent with the Government's conclusions in the Government response to the Smart Metering Rollout Strategy consultation.

Q2 Do you agree that this legal duty should take effect when DCC's enrolment services are first available?

As we have outlined in our answer to the previous question we have grave concerns that the wording of this proposed amendment contradicts DECC's own conclusion that the industry is in need of a transitional period. The inclusion of the term "*from the date the Enrolment Service first becomes available*" in particular, suggests that the DCC live date is the de facto date for suppliers to cease installing SMETs 1 type meters, to avoid being in breach of their licence conditions.

We also wish to draw attention to the potential that the date on which DCC goes live may yet prove uncertain. It seems unwise therefore to effectively impose on suppliers an obligation to install a meter that is not commercially available once a date that is not fully certain has passed. The risk this exposes suppliers to is clear. In the absence of a certain time frame suppliers will be incapable of forecasting at what stage they will suddenly have to stop installing one type of metering and start installing another. For this reason we would be in favour of the DCC live date being removed from this provision in line with our suggestion above. We think an obligation that is based on the availability of the meter creates a greater level of certainty for all parties rather an obligation that is based on the availability of the system and merely assumes the meters will be available.

Q3 Do you have any comments on the proposed drafting in these new subsidiary documents?

We have no specific comments on this proposal

Q4 Do you have any specific comments on the proposed revised approach to dealing with Post-Commissioning Obligations including the proposal to delete Sections M2.7 and M2.8?

We have no specific comments on this proposal

Q5 Joining and unjoining, do you have any comments on the proposed approach?

We have no specific comments on this proposal

Q6 Do you have any comments on the proposed drafting changes to Sections F2, G, M2 and A?

We have no specific comments on this proposal

Q7 Do you agree with the proposal to move some of the technical details in F2 into a subsidiary document in line with the approach taken in relation to Sections H4, 5 & 6?

We have no specific comments on this proposal

Q8 Do you support the proposed changes to Section T to ensure that the testing objectives reflect a more up to date version of the SEC?

We have no specific comments on this proposal

Q9 Do you agree with the proposal that the DCC should offer a testing service for prospective Non Gateway Suppliers?

We have no specific comments on this proposal

Q10 Do you intend to test only Devices (and not User Systems) against the DCC Systems? If so, how and when do you intend to do this? Is it your intention to: become a SEC Party and establish a DCC Gateway Connection; rely on other parties to interact with the DCC for the purposes of testing Devices; or another means (e.g. direct connection without being a SEC Party)

We have no specific comments on this proposal

Q11 Do you agree with the proposals, and associated legal drafting in relation to the SMKI Recovery Procedure Guidance document? Please provide a rationale for your view.

We have no specific comments on this proposal

Q12 Do you agree with the proposed drafting on how changes to the SMKI Recovery Key Guidance are managed, or do you think it should be a SEC Subsidiary Document and open to the SEC modification process? Please provide a rationale for your response.

We have no specific comments on this proposal

Q13 Do you agree with the proposals, and associated legal drafting in relation to the SMKI Recovery Procedure Liabilities? Please provide a rationale for your view.

We have no specific comments on this proposal

Q14 Do you agree with the proposals, and associated legal drafting to use IKI for communications over the NGI and in relation to TAD? Please provide a 36 rationale for your view.

We have no specific comments on this proposal

Q15 Do you agree that it is necessary for the PMA to be able to require Parties to nominate Key Custodians? Please provide a rationale for your response.

We have no specific comments on this proposal

Q16 Do you agree with the proposals, and associated legal drafting to make clarificatory changes to the SMKI Certificate Policies? Please provide a rationale for your view.

We have no specific comments on this proposal

Q17 Do you agree with the proposals, and associated legal drafting to allow the DCC to become an Eligible Subscriber for certain SMKI Organisation Certificates

for the purpose of signing Registration Data? Please provide a rationale for your view.

We have no specific comments on this proposal

Q18 Do you agree with the legal drafting to oblige Network Operators to establish their Organisation Certificates prior to DCC Live? Please provide a rationale for your view.

We have no specific comments on this proposal

Q19 Do you agree with the proposal and legal drafting in relation to the miscellaneous changes to the PKI content? Please provide a rationale for your view.

We have no specific comments on this proposal

20 Do you have any comments on the proposed drafting regarding the CIO independence requirements?

We have no specific comments on this proposal

Q21 Do you agree with the proposals, and associated legal drafting (including the proposed changes to the CHIMSM at Annex D), which would permit Suppliers to re-use Communications Hubs that they have removed from consumer premises in certain circumstances?

We agree with this proposal.

Q22 Do you agree with the proposal, and associated legal drafting, for an obligation for Supplier Parties to respond to any to any reasonable request from the DCC for information pertaining to compliance with the CH Support Materials and for a reciprocal obligation to be placed on the DCC?

We have no specific comments on this proposal

Q23. Do you agree with the proposals, and associated legal drafting (including the proposed changes to the CHIMSM at Annex D), relating to visits by the DCC to consumer premises?

We have no specific comments on this proposal

Q24 Do you agree with the proposal, and associated legal drafting, for Parties to be liable for all reasonable costs and expenses incurred by the DCC as a result of a delivery of Communications Hubs being prevented from taking place in accordance with the SEC, due to a breach of the SEC by that Party.

We wish to seek further clarification on a specific aspect of the proposed amendment F6.18. We agree that a party should be deemed liable for all reasonable costs and expenses if they prevent the DCC from delivering communication hubs under certain circumstances. What we are unclear about is whether a supplier would be considered in breach of the SEC, if they were given insufficient notice of the delivery in question by DCC and for this reason were incapable of taking delivery.

If this amendment effectively allows DCC to deliver communication hubs without notice, we would oppose this amendment on the grounds that it is unfair to expect suppliers to ensure their warehouses are always capable of receiving an order at any given moment.

If our reading of this provision is incorrect, as we anticipate, then we would propose that this amendment be altered to prevent other parties from misinterpreting it in a similar fashion. As an example, we would support the addition of a proviso that stated *"once both the supplier and DCC have agreed to a date and time of mutual convenience..."*. This proviso would be added to the proposed amendment as written; *"that a Party will be liable to reimburse the DCC for all reasonable costs and expenses incurred where that Party prevents the DCC from making a delivery of Communications Hubs to it in accordance with the SEC"*.

We would argue that the addition of this proviso makes it explicitly clear that; a party will not be accountable for reasonable costs if it should prevent the DCC from fulfilling a delivery where no prior arrangement was in existence as to when that delivery should take place.

Q25 Do you agree with the proposals and associated legal drafting for the consequential changes to the SEC arising from the Communications Hub Support Materials?

We have no specific comments on this proposal

Q26 Do you agree with the proposals as described under the heading of "Miscellaneous Communications Hub issues" above and the associated legal drafting?

We have no specific comments on this proposal

Q27 Do you agree with the proposed changes to Incident Management? Please provide a rationale for your views.

We have no specific comments on this proposal

Q28 Do you agree with the proposed approach to provide a more flexible governance for the Error Handling Strategy, set out above? We have no specific comments on this proposal

We have no specific comments on this proposal

Q29 Do you agree with the proposals in relation to the timing of the further activation of the SEC Modification Process? Please provide a rationale for your response.

We have no specific comments on this proposal

Q30. Do you agree with the proposals and legal text in relation to the manner in which the SEC Modification Process is further activated, including the temporary performance of certain enduring Authority functions by the Secretary of State? Please provide a rationale for your response.

We have no specific comments on this proposal

Q31 Do you have any comments on the proposed drafting regarding the scope of the Threshold Anomaly Detection Procedures?

We have no specific comments on this proposal

Q32 Do you agree with the proposed additional text to F3 to provide affected Supplier Parties or the DCC with the ability to appeal (to Ofgem) SEC Panel decisions relating to device non-compliance with the Technical Specifications and any associated remedial plan?

We have no specific comments on this proposal

Q33 Do you agree with the proposal, and associated legal drafting in relation to amending the definitions in preparation for the future introduction of technical specifications into the SEC? Please provide a rationale for your view.

We have no specific comments on this proposal