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DP288 'Erroneous Section J Default Notices'

Modification Report

Version 0.1

11 March 2025

Corporate member of
Plain English Campaign
Committed to clearer
communication

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About this document

This document is a draft Modification Report. It currently sets out the background, issue, and progression timetable for this modification, along with any relevant discussions, views and conclusions. This document will be updated as this modification progresses.

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1. Summary

This proposal has been raised by Catherine Duggan from Electricity North West Ltd.

Smart Energy Code (SEC) Section J outlines Data Communications Company (DCC) Charges, Credit Cover Requirements and the review and forecasting of DCC Charges. Section J.1 'Payment of Charges' details how SEC Parties will be invoiced by the DCC for their Charges.

Section J2 'Payment Default and Disputes' lists the actions the DCC could take in the event of a payment failure. Where a Party fails to pay an amount set out in an Invoice by the relevant Due Date, Section J2.1 enables the DCC to issue an Event of Default Notice to that Party setting out the unpaid amount and other aspects where applicable.

Section J2.6 requires the DCC to notify the SEC Panel that an Event of Default has occurred within three Working Days on non-payment by the defaulting Party following the notice.

The Proposer has identified instances where the DCC did not collect the amount invoiced to the Party by the Due Date via Direct Debit. In one instance, this resulted in the DCC then issuing an erroneous Event of Default Notice to the Proposer due to the late collection of the Direct Debit to the Party. The DCC only confirmed after five working days the notice was sent in error (which is after the date the DCC were required to inform the SEC Panel). The Proposer subsequently identified there is no provision within the SEC for the prevention or exclusion of the DCC issuing an Event of Default Notice to a Party due to DCC's late Direct Debit collection.

A Party can receive an erroneous Event of Default Notice, which has the potential of causing reputational damage to the Party in question. In addition to potential reputation damages, there is also likely resource impacts associated with all those involved, including that of the SEC Panel.

The Proposer would like to place an obligation within the SEC preventing the DCC from raising an Event of Default Notice against a Party on the grounds of the DCC's late Direct Debit collection.

This modification will impact all SEC Parties. Any potential costs associated with this modification are still yet to be determined. This is a Self-Governance Modification.

2. Issue

What are the current arrangements?

SEC Section J 'Payment of Charges'

SEC Section J outlines DCC Charges, Credit Cover Requirements and the review and forecasting of DCC Charges. Section J.1 'Payment of Charges' details how SEC Parties will be invoiced by the DCC for their Charges. A DCC invoice must contain various details outlined below:

- The date by which payment is due (pursuant to Section J1.5);
- A breakdown (in reasonable detail) of the Charges incurred by that Party in that month;
- Subject to Section J1.4, the amount of VAT payable on the above amounts;
- Any adjustment required (pursuant to Section J1.9);
- The total amount payable by that Party in respect of the above.

Communications Hubs (CH) Finance Charges, which are required to be invoiced separately, will also contain the same information outlined above.

Section J1.5 notes that each Party shall pay the amount set out in an Invoice issued to it by the DCC by the “Due Date” for payment; being the later of five Working Days following receipt of such invoice or eight Working Days following the end of the month to which such Invoice relates.

Section J2 ‘Payment Default and Disputes’ lists the actions the DCC could take in the event of a payment failure. Where a Party fails to pay an amount set out in an Invoice by the relevant Due Date, Section J2.1 enables to the DCC to issue a notice to that Party setting out the unpaid amount and other aspects where applicable such as Default Interest (Section J.2.2), Resolution of Payment Disputes (Sections J2.4 & J2.5), Credit Assessment Reports (Section J3.16) and Events of Default (SEC Section M ‘General’, Section M8.1(c)). Section J2.6 requires the DCC to notify the SEC Panel that an Event of Default has occurred within three Working Days on non-payment by the defaulting Party following the notice.

An Event of Default can be triggered by any of the below criteria as defined by Section M8.1:

- the Defaulting Party has committed a material breach of SEC Section I ‘Data Privacy’ Section I1.2 ‘User Obligations’;
- the Defaulting Party has failed in a material respect to comply with an enforcement notice served by the Information Commissioner pursuant to the Data Protection Legislation, whether such failure has been notified to the Panel by the Information Commissioner or the Panel has otherwise become aware of such failure;
- the DCC has served a notice on the Defaulting Party in accordance with Section J2.1 ‘Notification of Payment Failure’ in respect of Charges payable by the Defaulting Party, and such Charges have not been paid within three Working Days following that notice;
- the DCC has issued a notice to the Defaulting Party in accordance with Section J3.14 ‘Breach of Credit Cover Obligations’ in respect of Credit Support required to be procured by the Defaulting Party, and such Credit Support has not been provided within three Working Days following that notice;
- the Defaulting Party has not paid any amount other than in respect of the Charges (failures in respect of which are subject to Section M8.1(c)), which the Defaulting Party is due to have paid under the SEC, and does not remedy such failure within five Working Days after a notice requiring it to do so (which notice must refer to this in SEC Section M8);
- the Defaulting Party has made a material misrepresentation in its Application Form;
- the Defaulting Party is in material breach of any of its material obligations under the SEC and/or any Bilateral Agreement (other than those that are subject to another paragraph of Section M8.1) and the Defaulting Party has failed to remedy the breach (or to desist from the breach and mitigate its effects insofar as it is reasonably practicable to do so) within 20 Working Days after a notice requiring it to do so (which notice must describe the breach in reasonable detail and refer to SEC Section M8); and/or
- the Defaulting Party suffers an Insolvency Type Event.

What is the issue?

The Proposer has identified instances whereas the DCC have not collected the amount via Direct Debit invoiced to the Party by the Due Date. The DCC have then issued an erroneous Event of Default Notice due to the DCC's late collection of the Direct Debit to the Party.

The Proposer subsequently identified there is no provision within the SEC for the prevention or exclusion of the DCC issuing an Event of Default Notice to a Party due to late Direct Debit collection by the DCC.

What is the impact this is having?

A Party can receive an erroneous Event of Default Notice which has the potential of causing reputational damage to the Party in question. Pursuant to Section J2.6, Events of Default Notices must be referred to the Panel within three working days of continued non-payment. If an erroneous Event of Default notice issue were to be referred to the Panel relating to the DCC's late Direct Debit collection, this may reflect negatively on both the DCC, due to the administrative error leading to the dispute, and the Party in question as their reputation may be questioned.

In addition to potential reputation damages, there is also likely resource impacts associated all those involved, including that of the Panel. Pursuant to Section J2.4, disputes relating to Events of Default Notices may also be referred to the Panel by the Party. Escalations for determination would require additional administrative burdens on all Parties involved, with time utilised having associated costs and impacts.

Impact on consumers

There are no impacts to Consumers relating to this issue.

3. Assessment of the proposal

Areas for assessment

Operational & Financial Impacts

This modification may require a change to ongoing operational and financial processes utilised by both the DCC and SEC Parties. The Smart Energy Code Administrator and Secretariat (SECAS) will look to determine any potential impacts and outline any changes required to the SEC where applicable.

Sub-Committee input

SECAS will engage with the Chairs from the Operations Group (OPSG), the Privacy Sub-Committee (PSC), the Smart Metering Key Infrastructure Policy Management Authority (SMKI PMA), the Security Sub-Committee (SSC), the Technical Architecture and Business Architecture Sub-Committee (TABASC) and the Testing Advisory Group (TAG), to confirm what input is required from these forums. SECAS believes the following Sub-Committees will need to provide the following input to this modification:

Sub-Committee input	
Sub-Committee	Input sought
OPSG	Identify any potential operational impacts caused by implementing a new SEC obligation relating to DCC invoicing.
PSC	We do not believe there will be any privacy related impacts.
SMKI PMA	We do not believe there will be any SMKI PMA related impacts.
SSC	We do not believe there will be any security related impacts.
TABASC	We do not believe there will be any technical or business architecture impacts.
TAG	We do not believe there will be any testing related impacts.

Appendix 1: Progression timetable

Timetable	
Event/Action	Date
Draft Proposal raised	11 Mar 2025
<i>Presented to the Change Sub Committee (CSC) for initial comment</i>	18 Mar 2025
<i>CSC converts Draft Proposal to Modification Proposal</i>	18 Mar 2025
<i>Modification presented to the OPSG</i>	8 Apr 2025
<i>Refinement Consultation</i>	23 Apr – 14 May 2025
<i>Modification presented to the Working Group</i>	4 Jun 2025
<i>Modification Report approved by CSC</i>	17 Jun 2025
<i>Modification Report Consultation</i>	18 Jun – 9 Jul 2025
<i>Change Board Vote</i>	23 Jul 2025

Italics denote planned events that could be subject to change

Appendix 2: Glossary

This table lists all the acronyms used in this document and the full term they are an abbreviation for.

Glossary	
Acronym	Full term
CH	Communications Hub
CSC	Change Sub-Committee
DCC	Data Communications Company
OPSG	Operations Group
PSC	Privacy Sub-Committee
SEC	Smart Energy Code
SECAS	The Smart Energy Code Administrator and Secretariat
SMKI PMA	Smart Metering Key Infrastructure Policy Management Authority
SSC	Security Sub-Committee

Glossary	
Acronym	Full term
TABASC	Technical Architecture and Business Architecture Sub-Committee
TAG	Testing Advisory Group