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Action:	For Decision
Acronyms and Defined Terms SEC Glossary	

Review of SEC derogation provisions

1. Purpose

Following Panel Action 114/01, we have reviewed the Smart Energy Code (SEC) derogation provisions. This document sets out our considerations and conclusions both on the specific ask around Planned Maintenance, and on general derogation provisions.

The SEC allows the Panel to agree to the Data Communications Company (DCC) deviating from the Planned Maintenance approach set out in the SEC. The Panel can therefore agree to these now without any changes needed to the SEC. We recommend the Panel delegates these powers to the Operations Group (OPSG), a log be set up to record any agreed deviations, and an agreed process be agreed with the DCC for requesting these. We also propose to discuss with Ofgem the appetite for a Panel-led general derogations process to be added into the SEC, modelled on those that exist under other Codes.

2. Planned Maintenance exemptions

SEC Panel Action 114/01 asked *“the Panel Chair to review how derogation rules operate and how, in relation to requests for DCC’s High Impact Windows exemption in the SEC, it is possible for Panel toleration to be noted, but lack of compliance recorded. [The] Panel Chair to report back to the Panel what the impact would be should the DCC proceed without SEC Panel permission”*.

The SEC sets out some provisions for the Panel to agree to the DCC deviating from the Planned Maintenance provisions in the SEC.

SEC Section H8.3 sets out the approach the DCC should take to Planned Maintenance, namely:

- Planned Maintenance should be categorised ‘Low Impact’ and ‘High Impact’
- Planned Maintenance should be undertaken between 20:00 and 08:00
- High Impact maintenance should be limited to six hours per month split over no more than two windows
- Low Impact maintenance should be limited to six windows per month of no more than six hours each

However, it also states this is *“unless the Panel agrees otherwise”*.

This wording would allow the Panel to agree to the DCC taking a different approach to Planned Maintenance than what is specified in Section H8.3 if it was a formal decision of the Panel. There is nothing in the wording to suggest any deviations must be agreed on an individual case-by-case basis; if the DCC wanted to request a longer-running deviated approach and the Panel was content to agree to that, this would be possible under the current wording. The only caveat is that any approach is subject to any contrary provisions in SEC Subsidiary Documents around the Smart Metering Equipment Technical Specifications (SMETS) 1 Smart Metering Wide Area Network (SM WAN) or the SMETS1 Service Provider Systems.

This paragraph forms an obligation on the DCC. If it was to deviate from the provisions within Section H8.3 without formal agreement from the Panel, then this would constitute a breach.

SEC Section H8.4 requires the DCC to make a schedule of Planned Maintenance for a given month available at least 20 Working Days (WD) before that month begins. SEC Section H8.5 allows the Panel to request the DCC reschedules any Planned Maintenance in this plan, stating its rationale for any such request. The DCC needs to take all reasonable steps to accommodate such a request but would not be in breach if it couldn't accommodate this request as long as it can show it took all reasonable steps to try to do so.

3. Derogation provisions under the SEC

General derogation provisions

There is no Panel-led process for requesting derogations generally from SEC obligations. Instead, provisions for seeking derogations from the Authority against clauses in the SEC are set out in relevant Licences. For example, DCC Licence Condition 22.33 sets out:

22.33 The Authority may (after consulting with the Licensee and, where appropriate, any other person likely to be materially affected) give a direction ("a derogation") to the Licensee that relieves it of any one or more of its obligations under the Smart Energy Code to such extent, for such period of time, and subject to such conditions as may be specified in the direction.

Similar clauses exist in all the other relevant Licences, covering Suppliers and Network Parties. The Panel would not generally be involved in these applications unless the Authority considered it to be materially affected by the proposed derogation and subsequently consulted with it.

SEC Section M11.12 acknowledges these provisions, setting out that:

M11.12 A Party that holds an Energy Licence shall not be obliged to comply with its obligations under this Code to the extent to which such Party has the benefit of a derogation from the obligation to do so granted by the Authority under such Energy Licence.

Further SEC provisions on derogations

The only other reference to 'derogation' within the SEC is in SEC Section A4. This allows the Secretary of State to grant a Supplier a derogation from the General Installation End Date of any Version 1.x (i.e. SMETS1) of the Electricity Smart Metering Equipment Technical Specifications (ESMETS), the Gas Smart Metering Equipment Technical Specifications (GSMETS) and the In-Home Display Technical Specifications (IHDTs). This is a process between the Supplier and the Secretary of State, with no involvement by the Panel.

4. Derogation processes in other Codes

Recent UNC modifications introducing a derogation framework

Uniform Network Code (UNC) modification [UNC0800 'Introducing the concept of a derogation framework into Uniform Network Code \(UNC\) \(Authority Direction\)'](#) was implemented on 1 October 2022. It introduced a derogation framework into the UNC, including the parameters around how one can be applied for, the evidence required, any restrictions, and the decision-making criteria. This modification was an amended version of [UNC0760 'Introducing the concept of a derogation framework into Uniform Network Code \(UNC\)'](#), which had been rejected by the Authority, taking into account the Authority's reasons for rejecting the original proposal.

The general process for applying for such a derogation is:

- A Party makes a written application to the Code Administrator, in the form specified in the UNC. The Code Administrator will then send a copy of this to all relevant people (which includes all Parties and the Authority, among others).
- The Modification Panel will review the application, including whether it relates to the Derogation Use Cases set out in the UNC, and any views from Parties. It will determine whether the application should be rejected, whether further assessment is needed before it can proceed, or whether it should proceed to consultation.
- Following consultation, the Modification Panel will recommend approval or rejection to the Authority. The Authority will then make the final determination.

A derogation needs to relate to a Derogation Use Case which are set out in the UNC. If an application is deemed by the Modification Panel to not comply with a Use Case, then it would lapse and would have no effect.

The sole Use Case currently set out is that a derogation application must “*relate to a project which is consistent with:*

- *a change in national government policy (including policy of the national devolved parliaments)*
- *a change in local government policy*
- *the trialling of new technologies or the making of technological advances*
- *facilitating the uptake of low carbon technologies*
- *any requirement contained in a local area energy plan or equivalent arrangement*

the purpose of which is to facilitate net zero and the achievement of a 100% reduction of greenhouse gas emissions (compared to 1990 levels) in the UK by 2050”.

Other notable derogation processes within Codes

The Distribution Connection & Use of System Agreement (DCUSA) (DCUSA Clause 56) and the Retail Energy Code (REC) (REC Clause 23) both contain a general derogation process. This mechanism allows the DCUSA Panel or the REC Performance Assurance Board (PAB) (respectively) to grant a derogation to Parties in relation to any obligation or obligations contained in the Code. In contrast to the UNC, there are no use cases that a derogation must first meet to be approved.

The process under these Codes is also more streamlined than those introduced under the UNC:

- A Party requesting a derogation must notify the Code Administrator/Manager, who then notifies Parties and the Authority of the request.

- The Panel/PAB will consider the application and any views received from Parties or the Authority. It will determine whether to approve or reject the derogation, and if approved may also impose any conditions or terms it sees fit.
- The Authority has the power to veto any derogation granted by the Panel/PAB within 10WD of being notified of that decision.

However, in most cases there are no general derogation application clauses within the relevant Licences applicable to these Codes, in contrast with the SEC (see above).

Derogation processes also exist under the Balancing & Settlement Code (BSC) (BSC Section H10) and the DCUSA (DCUSA Clause 56), in relation to their respective sandbox provisions. These allow Parties to request time-limited derogations from relevant Code provisions to undertake their proposed sandbox trials.

5. Conclusions and recommendations

Planned Maintenance

The Panel is already able to agree to the DCC deviating from the Planned Maintenance provisions in SEC Section H8.3. This covers not just one-off deviations but would also allow longer-lasting deviations to be agreed in advance. Therefore, no SEC changes are required to enable the Panel to do this.

We recommend the Panel delegates this power to the OPSG, as per SEC Section C6.4, as the OPSG will be closer to the detail of any Planned Maintenance. The Panel would need to formally approve this delegation, which would then be recorded in the SEC Panel Delegations Register.

We will set up a log to record the Planned Maintenance deviations. This log will record both those requests 'fully agreed' by the Panel/OPSG but also instances where any deviation by the DCC was 'tolerated but not compliant'.

We would encourage the DCC to proactively engage with the Panel/OPSG on any necessary deviations from the Planned Maintenance provisions ahead of time. We believe that a standard procedure should be agreed with the DCC and the Panel/OPSG for requesting and approving these deviations, to help process any such requests in a timely and consistent manner.

General derogations

The relevant Licences already contain provisions allowing the DCC, Suppliers and Network Parties to request derogations from SEC obligations from the Authority. There is no Panel-led process for these under the SEC.

Processing and considering such requests may be time-consuming for Ofgem. Introducing a Panel-led derogations process would allow the Panel to take some of the burden from the Authority, while still allowing the Authority to veto any proposed derogations that it disagrees with. It would also enable Other SEC Parties, who are not subject to a Licence, to be able to request such derogations. However, given the rarity of such requests, the effort of introducing these provisions may outweigh the benefits they would bring.

We propose to discuss with Ofgem the appetite for a Panel-led derogations process to be introduced into the SEC, modelled on those under the other Codes noted above. Introducing such provisions will require an Authority-Determined Modification, and therefore we would need a suitably strong business

case and rationale for doing so. We would therefore also want to understand the Panel and Parties' appetites for introducing such provisions.

6. Recommendations

The Panel is requested to:

- **NOTE** the assessment of derogation provisions under the SEC;
- **ENDORSE** SECAS's conclusions and recommendations;
- **AGREE** the next steps for this work; and
- **AGREE** to close Action 114/01.

David Kemp

SECAS Team

21 November 2023