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<b>Paper Reference:</b>	<b>SECCB_26_2301_02</b>
<b>Action:</b>	<b>For Decision</b>

## SECMP0043 Change Board vote

### 1. Purpose

[SECMP0043 'Modification to Services Force Majeure Provisions'](#) has undergone Modification Report Consultation and is now being presented to the Change Board for vote. The Change Board is invited to recommend whether SECMP0043 should be approved or rejected by the Authority.

This paper provides a high-level summary of the key points. Full details can be found in the Modification Report in Appendix A and the responses received to the Modification Report Consultation in Appendix B.

### 2. Summary of the proposal

#### What is the issue?

In April 2018, Ofgem implemented the Data Communications Company (DCC) Operational Performance Regime (OPR) through modification to the Smart Meter Communication Licence (DCC Licence). The key principles underpinning the design of the OPR performance measures are consistent with the Performance Measures in SEC Section H13. The OPR places performance incentives on the DCC by placing 100% of the value of DCC's smart meter related margin at risk.

Following a review of current regulation, the DCC believes that neither the OPR or the SEC provide an application process for the DCC to apply for relief for 'all categories' of exceptional events (events outside the DCC's control). In the absence of a process for a broader concept of exceptional events in the SEC, the DCC believes there is a risk that it will be unfairly penalised under the OPR for delayed or non-delivery of DCC services due to events outside its control.

An application process does exist under SEC Section M3 for Services Force Majeure (FM) under which the DCC can apply to the SEC Panel for relief for delayed or non-delivery of DCC Services. However, Services FM is narrowly defined and only applies to a limited number of exceptional events, such as acts of terrorism or war; it does not apply to all events outside the DCC's control.

#### What is the Proposed Solution?

The proposed solution is to introduce a new application process under SEC Section H, which the DCC and the Panel would follow if the DCC wishes to claim relief for exceptional events for its OPR reporting. This new process is distinct from the existing Services FM application process. It introduces a broader concept of 'exceptional event' under a new definition of OPR Exceptional Event and sets

out the relief application process. This solution would apply only to the DCC's reporting under the OPR, and not to the DCC service provider reporting under SEC Section H13.

### 3. Modification Report Consultation responses

Six responses were received to the Modification Report Consultation, and the full responses received can be found in Appendix B.

Four respondents (two Large Suppliers, one Small Supplier and one Networks Party) believed SECMP0043 should be rejected as it did not better facilitate SEC Objectives (b)<sup>1</sup> and (g).<sup>2</sup> Respondents felt that the existing Force Majeure provisions in the SEC adequately covered the scenarios provided by the DCC. One respondent was concerned that the definition of 'Exceptional Event' was very 'open-ended', which creates a potential future financial risk to all other SEC Parties that cannot be adequately defined, or its impact be appropriately determined or accounted for. Another respondent considered that some of the DCC's examples of Exceptional Events were not acceptable. A further respondent felt it wasn't clear how this change meets the objective set by Ofgem in its decision on the OPR.

One respondent (a Large Supplier) believed SECMP0043 should be approved. They felt this change would create a suitable performance framework for DCC to work within and would remove doubt as to how any exceptional events may or may not apply to the OPR framework. They acknowledged the responses received to the Working Group Consultation that were not supportive of the change but noted that Parties will not know the frequency of use, or the impact, of this proposed relief mechanism until it is utilised. They therefore believed it would be appropriate to implement SECMP0043 and make changes as necessary in the future through further modifications.

The final respondent (a Networks Party) abstained, as they were not clear the modification better facilitated the SEC Objectives.

### 4. Next steps

#### Determination approach

The Panel has determined that SECMP0043 should be submitted for Authority determination. The Change Board's vote will therefore form a recommendation to the Authority, who will make the final decision.

#### Implementation approach

The Panel has agreed the following implementation approach of:

- 28 February 2019 (February 2019 SEC Release) if a decision to approve is received on or before 14 February 2019; or
- 10 Working Days following approval if a decision to approve is received after 14 February 2019.

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<sup>1</sup> Enable the DCC to comply at all times with the General Objectives of the DCC (as defined in the DCC Licence), and to efficiently discharge the other obligations imposed upon it by the DCC Licence.

<sup>2</sup> Facilitate the efficient and transparent administration and implementation of this Code.

## 5. Recommendations

The Change Board is requested to:

- **AGREE** that SECMP0043 should proceed to vote;
- **RECOMMEND** to the Authority whether SECMP0043 should be **APPROVED** or **REJECTED**; and
- **PROVIDE** rationale for this recommendation against the General SEC Objectives.

David Kemp

SECAS Team

16 January 2019

### Attachments

- **Appendix A:** SECMP0043 Modification Report
  - **Annex A:** SECMP0043 Legal Text
  - **Annex B:** SECMP0043 Working Group Consultation responses
- **Appendix B:** SECMP0043 Modification Report Consultation responses