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SECMP0043 ‘Modification to Services Force Majeure Provisions’ Change Board vote

About this document

This document summarises the discussions of the Change Board on SECMP0043 and the outcome of the vote.

This vote forms a recommendation to the Authority on SECMP0043.

1. Change Board discussions

Views and discussions on the proposal

The DCC reiterated their view that this modification would allow Parties, via the Panel, to be able to make decisions on the relief granted to the DCC, and that this process would remove uncertainty around how this would take place. They disagreed with the views that the examples put forward to the Working Group would fall within the scope of the existing Services Force Majeure definitions and felt there had been a consensus that these were suitable examples in the Working Group meeting where these had been discussed.

One Change Board member noted the following points:

- The Operational Performance Regime (OPR) is not part of the SEC but is part of the Smart Meter Communications Licence (DCC Licence). They felt that where changes are required to the OPR that are not the direct result of consequential changes to the SEC Code Performance Measures, these need to be directed to Ofgem for consideration as a Licence or Regulatory Instructions and Guidance (RIGs) change.
- They were also concerned whether this modification would be permissible under the DCC Licence which notes that the OPR must not differ substantially from the illustrative provisions of Parts A to D of Schedule 4, which directly references the calculation of the measures under Part C of Condition 38, which in turn notes that the amounts shall be zero unless determined otherwise in accordance with calculations as may apply under OPR which is to be developed and populated by the Authority in a direction to be given to the Licensee between March 2016 and August 2020. They note that such a direction was submitted to the DCC by the Authority on 4 September 2017 to take effect from 1 April 2018. The direction refers to the calculations (OPR Performance Measure Methodology) contained within the RIGs; however, as the Authority concluded that the OPR and the SEC Performance Measurement Reporting should be consistent, the majority of these refer to the SEC Performance Measures.
- They also did not believe that the SEC Panel has any established right to approve or reject any performance-related matter that is under the Authority's governance as part of the DCC Licence. In addition to the Panel not having any legal vires to alter regimes under Authority governance, they did not believe that the Panel will ever be provided with what they require in order to fulfil the obligations this modification would seek to impose on them in the 10 Working Day timescales introduced by the modification. To their knowledge, there has never been a problem record that has been resolved within 10 Working Days of the associated incident record being raised, with the problem investigations generally taking months. They also felt that the performance-impacting data has consistently not been accommodated within the performance figures reported by the DCC, and the Panel has no way of validating this.

Other Change Board members supported this member's views, in particular on the first two points.

One Large Supplier member disagreed and felt there would be benefit in implementing this modification. They noted the proposal does create an element of risk for Parties as there is a danger that the OPR is undermined by excessive use of a 'relief' process. However, the frequency of use, or the impact, of this proposed relief mechanism will not be known until it is utilised. They felt SECMP0043 should be implemented and, if necessary, changes can be made in future through further modifications.

Views against the General SEC Objectives

Objective (b)¹

The majority of the Change Board believes that SECMP0043 will not better facilitate SEC Objective (b).

Some members believed that the concerns raised over whether this modification would be permissible under the DCC Licence meant that SECMP0043 would be detrimental to SEC Objective (b).

Other members did not believe there was enough evidence provided by the Proposer as to why this change would better facilitate this SEC Objective, with one member unclear as to what it was solving and feeling this should be picked up outside of the SEC.

One Large Supplier member disagreed. They believed this will marginally better facilitate SEC Objective (b) by creating a suitable performance framework for the DCC to work within and removing doubt as to how any exceptional events may or may not apply to the OPR framework.

Objective (g)²

The majority of the Change Board believes that SECMP0043 will not better facilitate SEC Objective (g).

Some members felt that the exceptional events highlighted by the DCC would be covered by the existing definition of Services Force Majeure, and that this is not as narrowly defined as the DCC believes. They felt the existing provisions were adequate. Members were also concerned the definition of 'Exceptional Event' could be open-ended.

Other members did not believe there was enough evidence provided by the Proposer as to why this change would better facilitate this SEC Objective.

One Large Supplier member disagreed. They felt that while creating additional processes to deal with OPR relief does not better facilitate SEC Objective (g), the minor procedural changes do better facilitate this, and so on balance they felt the objective was better facilitated overall.

¹ 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.

² Facilitate the efficient and transparent administration and implementation of this Code.

2. Change Board vote

Change Board recommendation

The Change Board voted to recommend that the Authority should **reject** SECMP0043.

The vote breakdown is summarised below.

| Change Board vote | | | | |
|-------------------------|---------|--------|---------|---------|
| Party Category | Approve | Reject | Abstain | Outcome |
| Large Suppliers | 1 | 6 | 0 | Reject |
| Small Suppliers | 0 | 1 | 0 | Reject |
| Network Parties | 0 | 3 | 0 | Reject |
| Other SEC Parties | 0 | 3 | 0 | Reject |
| Consumer Representative | 0 | 0 | 0 | - |
| Overall outcome: | | | | REJECT |

The Consumer Representative was absent for the vote.