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# SECMP0043 Initial Modification Report

## About this document

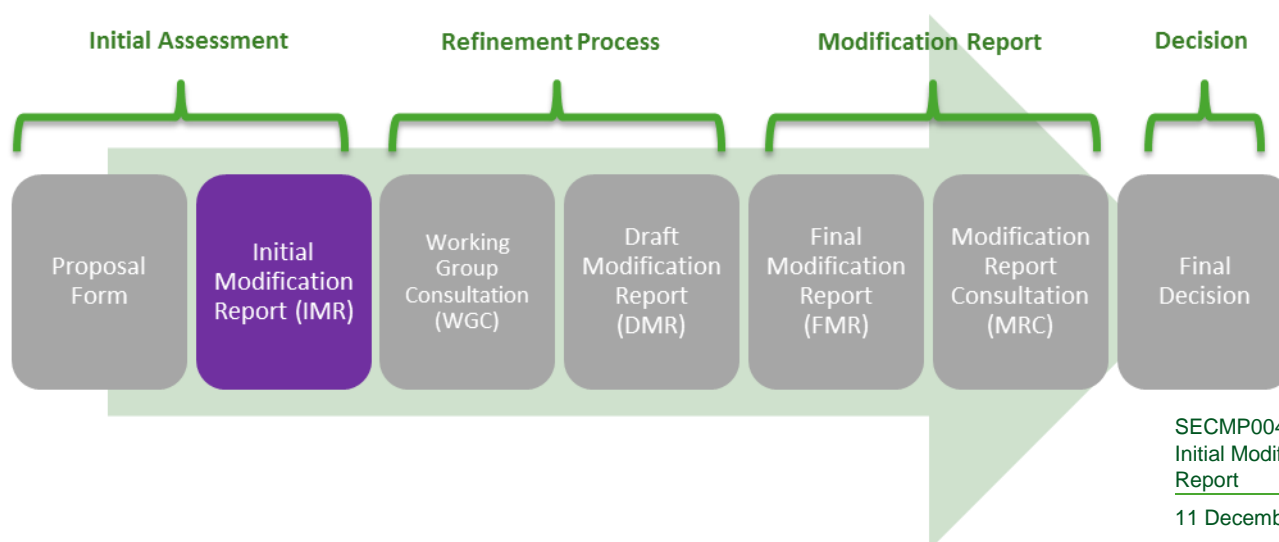
This Initial Modification Report (IMR) contains our initial assessment of SECMP0043. It also provides information on the issue, the Proposer's solution, potential impacts, costs and proposed progression.

**This document was submitted to the Smart Energy Code (SEC) Panel for consideration to determine whether this Modification Proposal should be progressed through the Modification Process.**

As part of this document the Panel:

- **AGREED** that this modification should be submitted into the Refinement Process to be assessed by a Working Group;
- **AGREED** the Working Group ToR;
- **AGREED** the progression timetable set out in Section 6; and
- **AGREED** that SECMP0043 should be progressed as a Path 2 Modification Proposal.

## Where are we in the process?



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Report

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## Stage 01: Initial Modification Report

# SECMP0043:

## Modification to Services Force Majeure Provisions

What stage is this document in the process?

01	Initial Assessment
02	Refinement Process
03	Modification Report
04	Decision

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### Summary

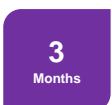
This modification aims to refine the Services Force Majeure (FM) provisions in the SEC to clarify what is considered a Services FM event and refine the SEC procedures which apply in the event of a Services FM.

### Proposed Progression

This Modification Proposal has been agreed to be:



- progressed as a Path 2: Authority Determined Modification Proposal; and
- progressed through the Refinement Process for three months.



### Potential Impacts



- There are no impacts on SEC Parties identified.
- There are no impacts on DCC Central Systems or Party interfacing systems.

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## About this Document

This is an Initial Modification Report (IMR). This document contains details of the issue, solution, potential impacts and costs as well as the agreed progression for SECMP0043.

This document has two attachments:

- Attachment A contains the SECMP0043 Modification Proposal Form; and
- Attachment B contains the Proposer's proposed draft legal text changes to support this modification.

The Panel considered this IMR at its meeting on 8<sup>th</sup> December 2017. The Panel agreed that this Modification should progress into Refinement for further development by a Working Group.

## 1. Summary

### What is the issue?

Following Ofgem's decision to implement the DCC Operational Performance Regime (OPR) in April 2018, the DCC has reviewed the Services Force Majeure (FM) provisions in SEC Section M3. This modification aims to clarify what is considered a Services FM event and refine the SEC procedures which apply in the event of a Services FM.

### What is the Proposed Solution?

The Proposer (the DCC) proposes to make clarifications to the Service FM provisions by providing additional detail to the definition of Services FM in SEC Section A and clarity to the procedure which the DCC and the Panel are to follow if the DCC wishes to claim Services FM outlined in SEC Section M3.

### Potential impacts

#### Party

Large Supplier Parties		Small Supplier Parties	
Electricity Network Parties		Gas Network Parties	
Other SEC Parties			

#### System

DCC Systems		Party interfacing systems	
Smart Metering Systems		Communication Hubs	
Other systems			

### Potential implementation costs

SECAS believes that the cost to implement SECMP0043 will be limited to SECAS time and effort to deliver the necessary document changes.

### Proposed progression

The Panel agreed that this modification be progressed as a Path 2: Authority Determined and progressed through the Refinement process for three months.

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## 2. What is the issue?

### The DCC Operational Performance Regime

The DCC licence contains a framework whereby Ofgem can establish an Operational Performance Regime (OPR) that would place performance incentives on the DCC's operations. Such an OPR would place 100% of the value of the DCC's smart meter-related margin at risk. Ofgem issued three industry consultations between March 2016 and June 2017 on the design and implementation of the OPR.

On 4 September 2017, Ofgem issued its [decision to implement the OPR](#). The regime and changes to Schedule 4 of the Smart Meter Communication Licence to reflect the new obligations will take effect from 1 April 2018.

Part of Ofgem's considerations looked at how exceptional events in the DCC's performance reporting should remain consistent between the OPR and SEC and Service Provider performance measures. Respondents to Ofgem's June 2017 consultation on the implementation of the OPR believed that this should be consistent, but felt there was a lack of transparency and consultation with industry on the content of the DCC's allowed exceptions. The DCC also expressed concerns that the current exceptional events list is not fit for purpose for the OPR.

In its decision, Ofgem stated:

"If SEC parties believe that current processes can be improved, they should take actions to do so through SEC governance processes such as code modifications."<sup>1</sup>

### Services Force Majeure under the SEC

SEC Section M3 'Services FM and Force Majeure' lays out the process to be followed in the event of a Services Force Majeure (FM). This would be triggered following an occurrence of a situation beyond the DCC's ability to control (e.g. terrorist acts or natural disasters) that prevents the DCC from delivering its Services. In such an occurrence, the DCC can apply to the Panel for relief from any Liabilities for non-performance of its obligations in respect of its Services that are due to the Services FM, until the situation ends. The Panel will then determine the extent of the relief to be given.

Following Ofgem's decision to implement the OPR, the DCC has undertaken a review of the regulatory provisions. It has identified changes it believes are needed to SEC Section A, specifically the definition of Services FM, and SEC Section M3, on the provisions which apply if the DCC wishes to claim Services FM under the SEC.

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<sup>1</sup> Ofgem's OPR Decision, Page 5 - [https://www.ofgem.gov.uk/system/files/docs/2017/09/1\\_decision\\_on\\_dcc.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/09/1_decision_on_dcc.pdf)



## What is the issue?

The DCC believes that the Services Force Majeure (FM) provisions in the SEC defining what is considered a Services FM event needs to be clarified. It also believes that the SEC procedures which apply in the event of a Services FM need to be refined. It proposes to do this in the following ways:

- by removing any ambiguity in the process whereby the DCC is able to make an application to the SEC Panel to claim relief from liability for the non-performance of its obligations, if the event or circumstance is beyond the reasonable control of the DCC. This would be subject to there being no wilful act, neglect or failure to take reasonable precautions against the relevant event by DCC; and
- by refining the process which the DCC is required to follow if it wishes to make an application to the Panel to claim relief from liability for the non-performance of its obligations (pursuant to the SEC) in the event of Services FM.

The changes proposed to the Section A definition of Services FM are only intended to clarify the provisions and to remove any ambiguity that the DCC is able to make an application to the SEC Panel to claim relief from Liability for the non-performance of its obligations if the event or circumstance is beyond the reasonable control of the DCC. This would be subject to there being no wilful act, neglect or failure to take reasonable precautions against the relevant event by DCC.

The DCC also considers that such changes would align the DCC's obligations to those of other network operators under other industry codes and licences.

### 3. Solution

#### Proposed solution

The DCC raised SECMP0043 'Modification to Services Force Majeure Provisions' on 30 November 2017. Under this modification, the DCC proposes the following changes:

- To modify the definition of Services FM in SEC Section A 'Definitions' to clarify that the DCC can make an application to the SEC Panel to claim relief from liability for the non-performance of its obligations if the event or circumstance is *beyond the reasonable control* of the DCC. It also proposes to expand the list of events that could be considered as Services FM to include "a failure or delay by any other person in the performance of that other person's obligations under or in accordance with [the SEC]".
- To clarify the procedures in SEC Section M3 'Services FM and Force Majeure' which the DCC and the Panel are to follow if the DCC wishes to claim Services FM. In particular, the DCC seeks to amend the timescales by which it is to notify the Panel to be five working days after *it becomes aware* of the occurrence of the Services FM, and to require the Panel to provide a response within 10 working days of the DCC's notification.

The DCC's proposed legal text changes to deliver its solution is provided in Attachment B.

#### Views against the General SEC Objectives

The Proposer believes that this Modification Proposal better facilitates General SEC Objectives (b)<sup>2</sup> and (g)<sup>3</sup>.

- **Objective (b):** DCC considers that by providing additional details to add clarity to and improve the processes under the SEC the Modification facilitates the second General SEC Objective as the proposed clarity and improvements the Modification seeks will help to facilitate DCC efficiently discharging the obligations imposed upon it.
- **Objective (g):** The DCC consider the Modification better facilitates the seventh General SEC Objectives of the efficient and transparent administration of the Code as it seeks to improve the procedures under the SEC.

<sup>2</sup> To 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>3</sup> To facilitate the efficient and transparent administration and implementation of this Code.



For the avoidance of doubt, the Proposer believes that this modification is neutral against the remaining Objectives.



## 4. Potential Impacts

The following section sets out SECAS's initial assessment of the likely impacts and costs should SECMP0043 be approved and implemented. Additional impacts and costs may be identified by the Working Group (WG) as part of the Refinement Process.

### SEC Party impacts

Large Supplier Parties		Small Supplier Parties	
Electricity Network Parties		Gas Network Parties	
Other SEC Parties			

There are no impacts on Parties anticipated.

### Central System impacts

DCC Systems		Party interfacing systems	
Smart Metering Systems		Communication Hubs	
Other systems			

There are no impacts on Central Systems anticipated.

### Testing

There are no system impacts anticipated and no testing will be required.

### SEC and Subsidiary Document impacts

SECMP0043 will impact SEC Section A, specifically the definition of Services FM, and SEC Section M3, specifically clauses: M3.3(b), M3.4 and the addition of a new clause M3.5A.

### Impacts on other industry codes

There are no impacts anticipated on any other industry codes.

### Greenhouse Gas Emission impacts

There are no impacts anticipated on greenhouse gas emissions.



## 5. Potential Costs

### Potential implementation costs

The cost to implement SECMP0043 is expected to be limited to the SEC Administration time and effort for:

- Making the necessary amendments to the SEC;
- Releasing a new version of the SEC to SEC Parties; and
- Publication of the new version on the SEC website.

However, this will be confirmed as part of the WG's assessment and development of the modification.

## 6. Proposed Progression

### Modification Path

The Proposer and SECAS recommended that SECMP0043 be progressed as a Path 2: Authority Determined Modification Proposal. The Panel agreed that this Modification should be progressed as Path 2

### Proposed progression

The Panel agreed the following progression timetable.

Activity	Date
Modification Proposal raised	30 November 2017
IMR presented to Panel	8 December 2017
Working Group Meeting	Week beginning 8 January 2018
Working Group Consultation (15 working day duration)	Issued during week beginning 19 January
Working Group Meeting	Week beginning 12 February 2018
Panel reviews Modification Report	9 March 2018
Modification Report Consultation (15 working day duration)	Issued during week beginning 12 March 2018
Change Board vote	18 April 2018
Anticipated date of Modification Decision by the Authority	25 May 2018

### Refinement length

The Panel agreed that this modification be submitted to the Refinement Process for a three-month duration for assessment by a Working Group (WG). This three-month timeframe will allow for:

- a full WG assessment to take place (approx. two WG meetings); and
- One 15 working day industry consultation to be issued and reviewed.



For a more detailed progression plan please see Appendix 1.

## Working Group

### Membership

The Panel agreed that the SECMP0043 WG be made up of individuals with expertise in governance, particularly if they have experience in force majeure or exceptional circumstances provisions, as well as any other relevant experts and interested parties.

### Terms of Reference

In order to assess the Modification Proposal fully, the Panel has requested that the WG consider the following specific questions in addition to the standard WG Terms of Reference (ToR) questions.

The standard ToR for SEC WGs can be found on the [About Modifications](#) page of our website.

#### **Q1: Is the definition of Services Force Majeure appropriate?**

The Proposer believes that amendments are needed to the definition of Services Force Majeure. In particular, the Proposer believes that the definition should be expanded to include “a failure or delay by any other person in the performance of that other person's obligations under or in accordance with [the SEC]” and that the whole definition should apply to “any event or circumstance which is beyond the reasonable control of the DCC”.

The Working Group should consider whether these additions are appropriate and robust, and whether any further amendments to this definition should be made in light of the OPR.

#### **Q2: Who defines a Services Force Majeure?**

The Panel requested for the Working Group to consider who defines the Services Force Majeure and to assess whether further clarification is required beyond what is in the proposed legal text.

#### **Q3: Are the timescales for notification and response appropriate?**

The Proposer believes that the deadline for the DCC notifying the Panel of a Services Force Majeure should remain at five working days but that this should be



measured from the point of the DCC becoming aware of the occurrence, rather than the point the occurrence commenced.

The Proposer also believes that a timescale for the Panel to respond to a request for Services Force Majeure should be included in the SEC, and that this should be set to 10 working days following the DCC's notification.

The Working Group should consider whether these amendments to the process are appropriate and, if so, whether these timescales are both appropriate and sufficient. The Panel also requested that the Working Group to consider the definition of the timings and assess whether they are sufficient. In particular, the Panel requests the Working Group ensures that the trigger point for the timescales commencing is very clearly defined.



## 7. Recommendations

The Panel:

- **AGREED** that this modification should be submitted into the Refinement Process to be assessed by a Working Group;
- **AGREED** the Working Group terms of reference;
- **AGREED** the progression timetable set out in Section 6; and
- **AGREED** that SECMP0043 should be progressed as a Path 2 Modification Proposal.

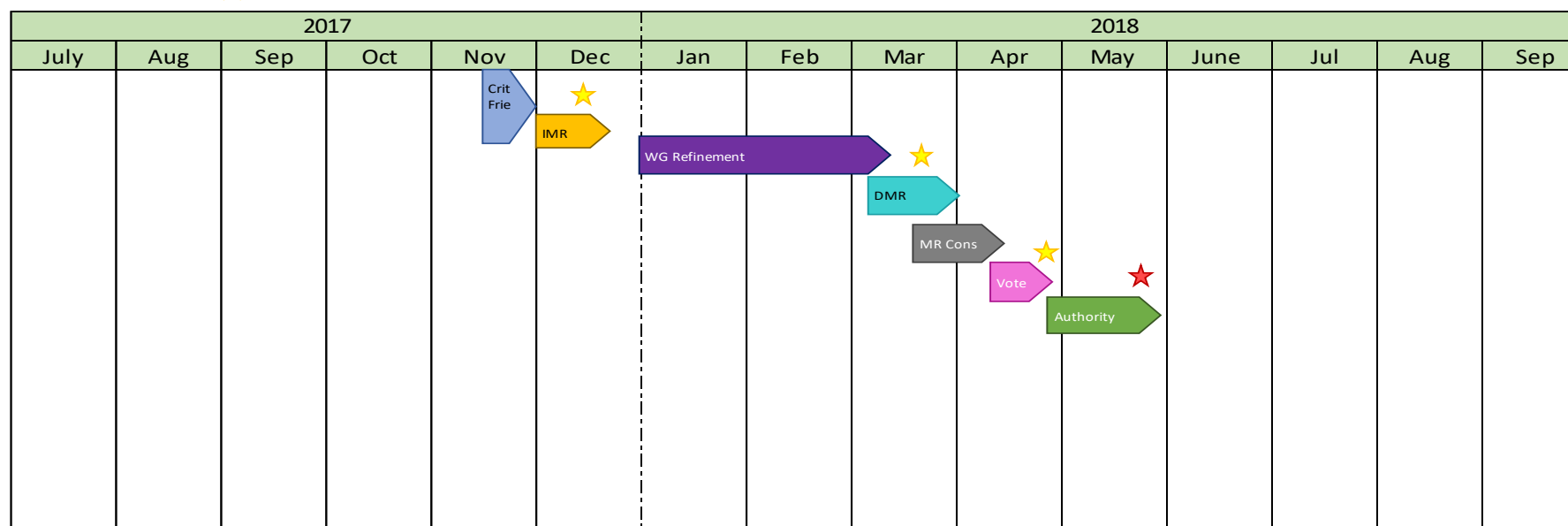




## Appendix 1: Detailed Progression Plan

Please note that the progression plan shown below is subject to change.

Panel agreed milestone ★ Decision Date ★





## Appendix 2: Glossary

The table below provides definitions of the terms used in this document.

Acronym	Defined Term
IMR	Initial Modification Report
SEC	Smart Energy Code
DCC	Data Communications Company
WG	Working Group
WD	Working Day