

Modification proposal:	Smart Energy Code (SEC) Modification Proposal (MP) 149: Effecting Changes to the Smart Energy Code efficiently		
Decision:	The Authority ¹ has determined to reject ² this modification ³		
Target audience:	Data and Communications Company (DCC), SEC Panel, Parties to the SEC and other interested parties		
Date of publication:	09 February 2022	Implementation date:	n/a

Background

SEC Section D1.3 sets out the persons who are entitled to raise a Draft Proposal to modify the SEC. This includes SEC Parties, the DCC, Citizens Advice and Citizens Advice Scotland, any person specifically designated by the Authority for that purpose, the Authority where the Draft Proposal is in relation to a Significant Code Review, and the SEC Panel in specific circumstances.⁴ In addition, the Retail Energy Code (REC) Code Manager and the SEC Administrator and Secretariat (SECAS) can also raise Draft Proposals where a consequential change to the SEC has been identified as a result of a change to another industry code.⁵

There are examples where a SEC Party has chosen to raise a modification after a change has been identified by a body that is not authorised under the SEC to raise the necessary Draft Proposal. This has happened, for example, when the SEC Panel or SECAS have identified issues and SEC Parties have subsequently chosen to raise related modifications.

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989 and by section 38A of the Gas Act 1986.

³ 'Change' and 'modification' are used interchangeably in this document.

⁴ The circumstances in which the Panel can raise Draft Proposals are set out in SEC Section D1.3(e). For example, the Panel can raise Draft Proposals to address inconsistencies between the SEC and other industry codes, or following an Authority requested review of whether the code continues to meet the SEC Objectives.

⁵ The ability for the REC Code Manager and SECAS to raise Draft Proposals was introduced following our approval of SECMP161 'Significant Code Review – Retail Code Consolidation': <https://www.ofgem.gov.uk/publications/retail-code-consolidation-scr-sec-modification-decision-mp-161>

In September 2020 we issued our decision⁶ to reject SECMP088 “Power to raise modifications”. SECMP088⁷ sought to extend who could raise a Draft Proposal to, among others, SECAS and the SEC Panel. In our decision letter for SECMP088, we set out our reasons for rejecting the change. In summary, we considered that insufficient evidence had been presented to demonstrate that the current SEC modification processes were blocking the efficient progression of modifications, and that the Final Modification Report (FMR) did not provide appropriate detail on the impact of the modification on the SEC or how the new powers would be used. While we refer to SECMP088 in this decision, we have assessed SECMP149 on its own merits.

The modification proposal

SECMP149 was raised by Centrica (the Proposer) on 14 January 2021 and seeks to amend SEC Section D (Modification Process). This modification proposes to amend the SEC Panel’s and SECAS’ current powers to raise Draft Proposals by removing the existing limitations on the types of changes they can propose.⁸ In addition, SECMP149 proposes to allow the SEC Panel to delegate the power to raise Draft Proposals to certain SEC Sub-Committees, but only where the change relates to matters within the scope of the Sub-Committee’s terms of reference.⁹ It is not proposed that the Change Board (CB) or Change Sub-Committee (CSC) would be able to raise Draft Proposals, which the SECMP149 Working Group stated was due to their role in the SEC change process. The proposal would also grant the Alt HAN Forum the power to raise Draft Proposals, but only in relation to matters within its scope.¹⁰

The Proposer considers that SECMP149 would better facilitate the seventh SEC Objective (g)¹¹, arguing that the current limits on who can raise a Draft Proposal are blocking the efficient progress of changes. The Proposer explains that this is because of the time required to find a SEC Party who agrees that a Draft Proposal is needed, as well as the time and effort that a Proposer needs to commit to the development of the modification. The Proposer also considers

⁶ Authority decision on SECMP088 “Power to raise modifications”: <https://www.ofgem.gov.uk/publications/secmp088-power-raise-modifications>.

⁷ SECMP088 “Power to raise modifications”: <https://smartenergycodecompany.co.uk/modifications/power-to-raise-modifications/>.

⁸ The existing limitations on the types of changes that the SEC Panel and SECAS can propose are set out in SEC Section D1.3.

⁹ In accordance with SEC Sections G and L respectively, the Security Sub-Committee and Smart Metering Key Infrastructure Policy Management Authority (SMKI PMA) can already raise Draft Proposals which relate to matters within their scope.

¹⁰ In accordance with SEC Section Z “Alt HAN Arrangements”.

¹¹ Facilitate the efficient and transparent administration and implementation of this Code.

that the Proposed Solution would ensure that the owners of modifications remain fully engaged throughout the process.

SEC Change Board¹² recommendation

At the SEC Change Board meeting on 29 September 2021, a majority of the Change Board considered that SECMP149 would better facilitate the SEC Objectives¹³, namely the seventh General SEC Objective, and the Change Board therefore recommended its approval.

Our decision

We have considered the issues raised by SECMP149 and the Final Modification Report (FMR) received by us on 29 September 2021. We have considered and taken into account the votes of the SEC Change Board on the proposal which is attached to the Change Report. We have concluded that implementation of the modification proposal will not better facilitate the achievement of the SEC Objectives.

Reasons for our decision

We consider this modification proposal will not better facilitate the seventh General SEC Objective and has a neutral impact on the other applicable Objectives. We note that one respondent to the Refinement Consultation stated that they believe it would better facilitate the first General SEC Objective¹⁴, however we believe the impact against this Objective is neutral.

The seventh General SEC Objective is to facilitate the efficient and transparent administration and implementation of the SEC.

In our decision to reject SECMP088, we did not consider that sufficient evidence was presented to demonstrate inefficiencies in the current arrangements. We note the discussions at the SECMP149 Working Group which highlighted the level of effort and responsibility

¹² The SEC Panel and Change Board are established and constituted pursuant to and in accordance with DCC Licence 22.26(a).

¹³ The Objectives in accordance with DCC Licence 22.10-22.17.

¹⁴ The first General SEC Objective is to facilitate the efficient provision, installation, and operation, as well as interoperability, of Smart Metering Systems at Energy Consumers' premises within Great Britain.

associated with raising modifications. These views were also reflected by several respondents to the Refinement and Modification Report consultations. However, we remain of the view that insufficient evidence has been provided to demonstrate that the current governance arrangements are blocking the raising or efficient progression of Draft Proposals that the industry considers would better facilitate the General SEC Objectives. The Proposer highlights SECAS' role in facilitating the incorporation of Issue Resolution Proposals (IRPs)¹⁵ into the SEC. In addition, the FMR provides examples of a number of other modifications that have been raised by industry parties where, for example, SECAS or the SEC Panel have identified possible changes to the code. This includes two examples where, in the view of the Proposer and Working Group, the ability for the SEC Panel or a Sub-Committee to raise the changes in question would have resulted in more efficient progression of change. Whilst we note the examples provided, we are unaware of any instances in which the current governance arrangements have prevented such modifications being raised, nor do we consider that sufficient evidence has been given to demonstrate that the powers proposed by SECMP149 would have resulted in more efficient or effective progression of the modification proposals referenced in the FMR.

In our SECMP088 decision, we also raised concerns that insufficient checks and balances were in place to ensure that these new powers would be used appropriately and efficiently. The SECMP149 Working Group's view was that the existing arrangements in the SEC provide sufficient protection against the misuse of these new powers due to the oversight provided by the Change Sub-Committee and the Change Board. We do not agree with this assessment on the basis of the evidence provided in the FMR. The roles of the Change Sub-Committee and the Change Board are set out in their respective terms of reference, which also include a duty for both groups to provide updates to the Panel on their work, including a summary of key decisions and activities.¹⁶ However, it is not the role of either of these groups to oversee or assess the activities of SECAS both in respect of the wider change process and more specifically in the proposed new role of raising modifications.

We would expect that a proposal for a code administrator to carry out a new activity would include details of how this would be overseen and would provide SEC Parties with assurances that any associated costs are being incurred efficiently. We recognise that it is a duty of the

¹⁵ <https://smartenergycodecompany.co.uk/issue-resolution-proposals-irps/>

¹⁶ Change Sub-Committee Terms of Reference: <https://smartenergycodecompany.co.uk/download/10720/>. Change Board Terms of Reference: <https://smartenergycodecompany.co.uk/download/2238/>.

SEC Panel to manage the Code Administrator and Secretariat, and oversee their performance.¹⁷ However the FMR includes no assurance or detail on when or what information would be provided to the Panel to allow it to meet this duty. We are concerned that a lack of sufficient checks and balances in relation to SECAS' role could create inefficiencies in the change process, which could result in additional costs to industry and consumers. We also note similar concerns shared by a respondent to the Modification Report Consultation and several members of the Working Group that this proposal could potentially slow down the modification process due to a possible increase in the number of modifications being raised, as well as a call from another consultation respondent for greater clarity on when the Panel and SECAS would seek to use these new powers. As such, we would expect the modification proposal to include appropriate checks and balances such as obligations to report on these activities.

The FMR refers to assurances given by SECAS that they will produce guidance on how these new arrangements would work. However, no draft of this guidance, nor detail on what it may contain, has been provided. In addition, we understand that any such guidance would sit outside the code, and therefore would not be subject to formal change processes. The process for amending this guidance, including any role for SEC Parties in doing so, has not been explained. Further, no detail has been provided on how compliance with this guidance would be monitored.

The concerns set out in our decision on SECMP088 do not seem to have been fully addressed in this proposal. We would expect any proposals in this space to include a full assessment of the anticipated impact and risks of the proposal, as well as appropriate checks and balances to ensure that these changes deliver the intended benefits.

Lastly, we acknowledge that the code governance landscape is currently undergoing a period of significant change. The FMR makes reference to this, including highlighting the new Retail Energy Code (REC), as well as our ongoing joint Energy Codes Review with BEIS.¹⁸ This review is proposing fundamental changes to code governance including the creation of the new licensable activity of code management. In the most recent consultation, we proposed that any interested person, including code managers, will be able to raise code changes. However, this

¹⁷ In accordance with SEC Section C2.3(b).

¹⁸ <https://www.gov.uk/government/consultations/energy-code-reform-governance-framework>

new framework would also include new responsibilities and accountabilities for code managers, giving enhanced confidence to market participants on their activities and performance.

Decision notice

In accordance with standard licence condition 23 of the Smart Meter Communication licence, the Authority hereby determines that modification proposal SECMP149 “Effecting changes to the Smart Energy Code efficiently” shall not be made.

David Hall

Interim Deputy Director, Industry Rules

Signed on behalf of the Authority and authorised for that purpose.