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## Stage 03: Final Modification Report

# SECMP0045:

# Incorporation of the requirements of the General Data Protection Regulations

## Summary

This modification proposes to introduce the necessary changes required to the Smart Energy Code (SEC) to implement the requirements of the General Data Protection Regulation (GDPR).

## Panel views

The Panel unanimously believes that SECMP0045 should be:



- progressed as a Path 2: Authority Determined Modification Proposal; and
- submitted for Modification Report Consultation.

## Impacts



- There are no impacts on SEC Parties identified.
- There are no impacts on Data Communications Company (DCC) Central Systems and/or Party interfacing systems.

What stage is this document in the process?

01	Initial Assessment
02	Refinement Process
03	Modification Report
▶ 04	Decision

### SECAS Contact:

**Name:**

Talia Addy

**Number:**

020 7090 1010

**Email:**

[SEC.Change@gemserv.com](mailto:SEC.Change@gemserv.com)

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## About this Document

This document is the Final Modification Report (FMR) for SECMP0045. This document provides detailed information on the issue, solution(s), impacts, costs and Panel discussions and conclusions on the modification.

The Change Board will consider this modification at its meeting on 21 March 2018, where it will recommend whether SECMP0045 should be approved or rejected by the Authority.

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## 1. Summary

### What is the issue?

The GDPR is being introduced to harmonise data privacy laws across Europe. The SEC constitutes a multilateral contract between SEC Parties, and contains provisions around data privacy; it is important that the obligations being introduced under the GDPR are reflected in the SEC.

As the SEC currently only reflects the requirements of the [Data Protection Act 1998](#) (DPA), updates are required to reflect the changes being introduced by the GDPR.

### What is the Proposed Solution?

This modification will introduce the necessary changes required to the SEC to implement the requirements of the GDPR.

### Potential impacts

#### Party

There are **no direct impacts to SEC Parties** due to the implementation of this Modification, as it only seeks to ensure the SEC itself is compliant with the GDPR.

#### System

There are no impacts on DCC Central Systems or on Party interfacing systems.

### Potential implementation costs

The estimated cost to implement SECMP0045 is approximately £1,200 and is limited to SEC time and effort to deliver the necessary document changes.

### Implementation Date

SECAS recommends an implementation date of:

- **25<sup>th</sup> May 2018**, if a decision to approve is made on or before 24<sup>th</sup> May 2018; or
- **1 Working Day** following approval if a decision to approve is made after 24<sup>th</sup> May 2018.

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## Panel conclusions

The Panel unanimously agreed that SECMP0045 should progress to Modification Report Consultation as a Path 2: Authority Determined Modification Proposal.

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## 2. What is the issue?

### What is the GDPR?

The GDPR<sup>1</sup> was developed by the [European Parliament](#), the [Council of the European Union \(EU\)](#) and the [European Commission](#). The GDPR will replace the Data Protection Directive 95/46/EC, which was implemented into English Law through the DPA.

The GDPR is being introduced to harmonise data privacy laws across Europe. This will reshape the ways in which organisations are required to approach data. It is intended to empower all EU citizens, protecting them from privacy and data breaches in an increasingly data-driven world.

Although the key principles of GDPR still hold true under the DPA, many changes have been proposed to the regulatory policies. The key points of the GDPR as well as information on the impacts it will have on businesses can be found on [the EU General Data Protection Regulation website](#).

### When is the GDPR coming into force?

After four years of preparation and debate, the GDPR was approved by the European Parliament on 14<sup>th</sup> April 2016 and **will come into force on 25<sup>th</sup> May 2018**. This means that any organisation required to comply with GDPR must do so by 25<sup>th</sup> May 2018.

### What is the issue?

The SEC constitutes a multilateral contract between SEC Parties and contains many references to data and data handling that falls within the scope of the DPA and therefore under the GDPR. As such, it is important that the obligations being introduced under the GDPR are reflected in the SEC. As the SEC currently only reflects the requirements of the DPA, updates are required to reflect the changes being introduced by the GDPR.

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<sup>1</sup> [REGULATION \(EU\) 2016/679](#)

## 3. Proposed Solutions

### Proposed solution

The DCC raised [SECMP0045](#) on 23<sup>rd</sup> January 2018.

Prior to this modification being raised, the DCC and SECAS carried out a joint review of the SEC to identify all necessary changes to introduce the requirements of the GDPR.

The proposed solution seeks to limit most of the legal text changes to **Section I ‘Data Privacy’**, with minor changes being made to **Section M ‘General’** and **Appendix AG ‘Incident Management Policy’**.

This ‘catch-all’ approach in Section I has been identified as the most efficient way of implementing the required changes. It will also ensure that any future changes to the GDPR (or any changes to the interpretation of the GDPR) can be incorporated into the SEC without having to make vast changes, which reduces the risk of inconsistencies arising within the Code or instances of GDPR changes being missed.

In addition to this ‘catch-all’ approach, **Section A ‘Definitions and Interpretation’** will be updated to introduce new definitions and make amendments to existing definitions where required.

For the avoidance of doubt, the proposed solution assumes that the current model of implicit consent provided by Users and Registration Data Providers, to allow the DCC to act as data processor on their behalf, remains valid under the GDPR. This assumption will be kept under review by the DCC and a separate modification may be raised to codify this arrangement if it is deemed necessary to support the implementation of the GDPR.

### Alternative solution

The SECMP0045 alternative solution takes the same approach as the proposed, in that it limits most of the legal text changes to **Section I**, with minor changes being made to **Section M**, **Appendix AG** and **Section A**.

During the development of the legal text for SECMP0045, two approaches for incorporating the requirements of GDPR Article 28(3) were identified. These changes impact on SEC Section I1.6 (please see below for more details). The Panel agreed that an alternative solution should be raised to allow both options to be consulted upon.

Other than this one variance, all other parts of the legal text and all assumptions made under the proposed solution apply equally to the alternative solution.

### GDPR Article 28(3) and SEC Section I1.6

Article 28(3) states that, where data processing is governed by a contract or other binding legal act, it must set out the:

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- subject matter;
- duration the data will be held for;
- nature of the data being held;
- purpose for holding this data;
- type of data being held;
- categories of data subjects; and
- obligations and rights of the data controller.

As Proposer, the DCC (and its legal advisors), believe that the proposed wording for SEC Section I1.6 (Attachment B) is appropriate, as the points referenced in Article 28(3) are sufficiently detailed throughout the rest of the Code.

SECAS's legal advisors believe that this information needs to be referenced in a new SEC Section I1.6A, as shown in the alternative version (Attachment C), to ensure that the SEC complies with Article 28(3).

SECAS does not believe the difference in the two sets of legal text poses a concern for the DCC, but is instead an issue for Users. Users, as data controllers, are obliged by law to include a description of the subject matter, nature etc. of data processing. Users therefore need to consider which version of the legal text better gives effect to that obligation, or (alternatively) whether neither option is sufficient and further work is required to set out these matters in more detail

The Panel has agreed that both versions of the legal text should be progressed to Modification Report Consultation as a Proposed and Alternative solution. As part of this consultation, we will seek the views of Users on which version should be implemented.

## GDPR Article 28(2)

It should be noted that Article 28(2) of GDPR states that a sub-processor is not to be appointed without the written authorisation of the controller, and (where a general consent is given) without giving the controller the opportunity to object to the identity of the sub-processor. The proposed drafting provides for consent and does so by reference to the DCC licence, which might therefore be construed as specific (rather than general) consent.

## Draft legal text changes

The proposed legal text changes to the SEC are provided in **Attachments B** (Proposed Solution) and **C** (Alternative Solution).

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For the avoidance of doubt, it is only Sections I1.6 and I1.6A that differ between the legal text for the Proposed and the Alternative Solutions; all other changes are identical in both versions.

## Views against the General SEC Objectives

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

- **Objective (b)** - The incorporation of the requirements of the GDPR into the SEC will support the efficient discharge of the obligations imposed upon DCC by Condition 10 of the DCC Licence (Protection of Confidential Information).
- **Objective (f)** - The GDPR is intended to protect Personal Data and incorporating its requirements into the SEC will contribute to the overall protection of Data under the Code.

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

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<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 ensure the protection of Data and the security of Data and Systems in the operation of [the SEC]



## 4. Impacts

The following section sets out our assessment of impacts should SECMP0045 be approved and implemented.

### SEC Party impacts

There are **no direct impacts to SEC Parties** due to the implementation of this Modification as it only seeks to ensure the SEC itself is aligned and compliant with the GDPR.

As part of the implementation of this Modification Proposal (subject to approval), SECAS, the DCC and SEC Parties will need to ensure that they remain compliant with the SEC which, in this case, will mean ensuring they are compliant with the GDPR. SECAS and the DCC are already ensuring their own compliance, and it is expected that impacted SEC Parties will already be doing the same.

### Central System impacts

There are no impacts on Central Systems because of this modification. This Modification only seeks to introduce the requirements of the GDPR into the SEC.

The DCC is currently assessing whether future changes to DCC Systems may be required to ensure compliance with the GDPR. If such changes are identified, the DCC will raise a separate modification to progress these.

### Testing

There is no testing required as part of this modification.

### SEC and Subsidiary Document impacts

The documents set out below require changes as part of this modification:

- SEC Section A 'Definitions and Interpretation'
- SEC Section I 'Data Privacy'
- SEC Section M 'General'
- SEC Appendix AG 'Incident Management Policy'

### Impacts on other industry codes

There are no impacts on other industry codes arising from this modification.

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## Greenhouse Gas Emission impacts

There are no impacts on Greenhouse Gas Emissions.

## 5. Costs

### SEC implementation costs

The costs to implement SECMP0045 will be limited to the Code 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 it on the SEC website.

#### SECAS implementation costs

Implementation Activity	Effort (man days)	Cost
Application of approved changes to the SEC. Publication of a new version of the SEC on the SEC Website and issuing this to SEC Parties. Reviewing and updating any impacted SEC guidance materials.	Two	£1,200 <sup>4</sup>

<sup>4</sup> SEC man day effort based on a blended rate of £600 per day.



## 6. Implementation

### Recommended implementation date

The Panel has agreed an implementation date of:

- **25<sup>th</sup> May 2018**, if a decision to approve is made on or before 24<sup>th</sup> May 2018; or
- **1 Working Day** following approval if a decision to approve is made after 24<sup>th</sup> May 2018.

The GDPR will be implemented on 25<sup>th</sup> May 2018. The proposed implementation approach has been chosen to ensure that the incorporation of required SEC changes will align with the date that the GDPR will be enacted into British law.

A fall-back implementation date of one working Day following approval has been included. This will ensure that, in the unlikely event there is a delay in receiving the Authority decision, the SEC is compliant as soon as possible following 25<sup>th</sup> May 2018.

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## 7. Panel discussions & conclusions

### Panel discussions

The Panel noted the recommendation that SECMP0045 should be progressed directly to Modification Report Consultation. It agreed that this approach should be taken as there would be little a Working Group could add to the development of the changes. This modification is seeking to amend the SEC in response to mandatory changes arising from Relevant Instruments, and there is little discretion in how these changes are to be given effect (SEC Section D3.9(d)(ii)).

The Panel considered the two versions of legal text, as well as the arguments from the DCC and SECAS's legal advisors on the merits of each approach. Members agreed that the decision on which of the two versions is the most appropriate should sit with Users, as it is Users that will be most impacted by the approach taken. The Panel concluded that both variants should be taken forward to Modification Report Consultation, and the views of Users obtained as part of it. The Change Board and the Authority will then be able to take these views into account when determining which version should be approved.

### Panel conclusions

The Panel unanimously agreed that SECMP0045 should progress to Modification Report Consultation as a Path 2: Authority Determined Modification Proposal.

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## Appendix 2: Glossary

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

Acronym	Defined Term
DCC	Data Communications Company
DPA	Data Protection Act
FMR	Final Modification Report
GDPR	General Data Protection Regulation
SEC	Smart Energy Code
SECAS	Smart Energy Code Administrator and Secretariat

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