



Legal Text

SECMP0047

Default Provisions for Other SEC Parties

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Summary

This modification seeks to make changes to the Smart Energy Code (SEC) to prevent SEC Parties listed under "Other SEC Parties" being penalised for operating without licences and not becoming DCC Users or otherwise taking up DCC services.

About this document

This document contains the SEC legal text that will deliver the intent of SECMP00047.

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18th April 2018

Version 1.0

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1. Draft Legal Text

This section sets out the draft Legal Text Changes for SECMP0047. These changes have been drafted against the Smart Energy Code (SEC) version 5.14¹.

Section J 'Charges'

Make changes to 2.1 as follows

Notification of Payment Failure

J2.1 Where a Party fails to pay an amount set out in an Invoice by the relevant Due Date, then the DCC shall, on the Working Day following the Due Date, issue a notice to that Party:

- (a) setting out the unpaid amount; and
- (b) referring to the matters set out in Sections J2.2, J2.4, J2.5, J3.16 (where applicable), and M8.1(~~dc~~) (Events of Default).

Make changes to 2.6 as follows

Pursuing Non-Payment

J2.6 Where the DCC has served a notice in accordance with Section J2.1 in respect of Charges payable by a Party, and such Charges have not been paid within three (3) Working Days following that notice, the DCC shall:

- (a) as required by Section M8.2 (Notification of Events of Default), notify the Panel that an Event of Default has occurred in respect of that Party under Section M8.1(~~dc~~); and
- (b) the DCC shall take all reasonable steps and proceedings (in consultation with the Panel) to pursue and recover the unpaid amount (together with interest), unless and until the Panel (whether on the application of the DCC or otherwise) determines that it would not be worthwhile to do so in the circumstances (having regard to, amongst other things, the DCC's duties under part D of Condition 11

¹Note that if a new version of the SEC is designated before the submission of the Final Modification Report to the Change Board or Authority, the drafting will be checked to make sure there are no consequential impacts. Our current understanding is that the specifications that SECMP0047 is amending are not expected to change as part of any forthcoming designations.

of the DCC Licence).

Make changes to 3.14 as follows

Breach of Credit Cover Obligations

J3.14 Where a Party fails to procure that Credit Support (or additional Credit Support) is provided to the DCC on the Party's behalf in accordance with this Section J3, then the DCC shall issue a notice to that Party:

- (a) setting out that fact; and
- (b) referring to the matters set out in Section M8.1(~~ed~~) (Events of Default).

Section M 'General'

Make changes to 8.1 as follows

Events of Default

M8.1 An “**Event of Default**” shall have occurred in respect of any Party other than the DCC (the “**Defaulting Party**”) if one or more of the following occurs in respect of the Defaulting Party:

~~(a) — the Defaulting Party does not hold an Energy Licence and has not, during any period of six consecutive months, done any or all of the following: (i) taken one or more Services; and/or (ii) made a request for a formal offer for a proposed Elective Communication Service;~~

~~(b)~~(a) the Defaulting Party has committed a material breach of Section I1.2 (User Obligations);

~~(e)~~(b) the Defaulting Party has failed in a material respect to comply with an enforcement notice served by the Information Commissioner pursuant to section 40 of the Data Protection Act, whether such failure has been notified to the Panel by the Information Commissioner or the Panel has otherwise become aware of such failure;

~~(d)~~(c) the DCC has served a notice on the Defaulting Party in accordance with Section J2.1 (Notification of Payment Failure) in respect of Charges payable by the Defaulting Party, and such Charges have not been paid within three (3) Working Days following that notice;

~~(e)~~(d) the DCC has issued a notice to the Defaulting Party in accordance with Section J3.14 (Breach of Credit Cover Obligations) in respect of Credit Support required to be procured by the Defaulting Party, and such Credit Support has not been provided within three (3) Working Days following that notice;

~~(f)~~(e) the Defaulting Party has not paid any amount other than in respect of the Charges (failures in respect of which are subject to Section M8.1~~(d)~~(c)) which the Defaulting Party is due to have paid under this Code, and does not remedy such failure within five (5) Working Days after a notice requiring it to do so (which notice must refer to this Section M8);

~~(g)~~(f) the Defaulting Party has made a material misrepresentation in its Application Form;

~~(h)~~(g) the Defaulting Party is in material breach of any of its material obligations under this Code and/or any Bilateral Agreement (other than those that are subject to another paragraph of this Section M8.1) and the Defaulting Party has failed to remedy the breach (or to desist from the breach and mitigate its effects insofar as it is reasonably practicable to do so) within 20 Working Days after a notice requiring it to do so (which notice must describe the breach in reasonable detail and refer to this Section M8); and/or

~~(i)~~(h) the Defaulting Party suffers an Insolvency Type Event.

Section X 'Transition'

Make changes to 2.6 as follows

Variations in respect of Section M

X2.6 Notwithstanding that Section M (General) is stated in Section X2.1 to be effective, it shall, until the date designated by the Secretary of State for the purposes of this Section

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X2.6, apply as varied by this Section X2.6. ~~The variation to apply pursuant to this Section X2.6 is that Section M8.1(a) shall not apply.~~