



Modification proposal:	<b>Smart Energy Code (SEC) Modification Proposal 0045: Incorporation of the requirements of the General Data Protection Regulations</b>		
Decision:	The Secretary of State <sup>1</sup> directs that this modification be made <sup>2</sup>		
Target audience:	Smart Meter Data Communications Company (DCC), Parties to the SEC, the SEC Panel and other interested parties		
Date of publication:	1 May 2018	Implementation date:	25 May 2018

## Background

The General Data Protection Regulation ('GDPR') is being introduced to enhance data privacy laws across Europe. It will replace the Data Protection Directive 95/46/EC, which was implemented into British law through the Data Protection Act 1998 (DPA), and will come into force in the UK on 25 May 2018.

New requirements within the GDPR (Article 28) require that specific provisions exist within contractual conditions imposed by a Data Controller on the relevant Data Processor. The Smart Energy Code ('SEC') is a multi-party agreement that exists between Data Controllers (e.g. Suppliers / DCC Users) and a Data Processor (which the DCC may be determined as being) processing smart metering related personal data and thus the SEC should be amended to accommodate the requirements of Article 28.

## The modification proposal

The Modification Proposal was raised by the Data and Communications Company (DCC) on 23 January 2018. It seeks to incorporate relevant requirements of the GDPR into the SEC where necessary.

The proposed modification seeks to limit most of the changes to Section I of the SEC (Data Privacy), with consequential changes throughout the SEC so that wherever a requirement of the GDPR occurs, the rules contained in Section I would be referenced. In addition to this, the definitions in Section A would be updated to reflect all new or revised definitions under the GDPR.

This approach has been identified as the most efficient way of implementing the required changes and ensuring that any future changes to the GDPR (or any changes to the interpretation of the GDPR) can be incorporated into the SEC without requiring a large number of minor changes to be made, which would increase the risk of inconsistencies arising within the Code.

During the refinement process, the Code Administrator (SECAS) developed an alternative version of the legal text to implement the proposed changes (Alternative Proposal).

<sup>1</sup> References to the "Secretary of State", "BEIS", "we" and "our" are used interchangeably in this document. This decision is made on behalf of the Secretary of State.

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



### **Change Board<sup>3</sup> recommendation**

At the Change Board meeting on 21 March 2018, the Change Board considered whether the Modification Proposal and/or the Alternative Proposal would better facilitate the SEC Objectives. They unanimously voted that the Alternative Proposal should be approved on the basis that it better facilitates General SEC Objectives (b)<sup>4</sup> and (f)<sup>5</sup>. Although the majority of the Change Board members considered that the Modification Proposal also delivers the proposed change, they rejected it in line with the SEC provision D8.14(b)<sup>6</sup>, which specifies that only one variation of the Proposal can be approved.

SECAS submitted the Modification Proposal to BEIS for a decision in our temporary role as the Authority<sup>7</sup> on 23 March 2018.

### **DCC Impact assessment**

This Modification Proposal does not impact the DCC systems so an Impact Assessment is not required.

### **Our decision**

We have considered the issues raised by the modification proposal submitted on 23 January 2018 and the Modification Report (MR) dated 16 February 2018, including the two versions of legal text finalised on 16 March 2018 (Modification Proposal and Alternative Proposal). We have considered and taken into account the responses to the industry consultation on the modification proposal which are attached to the MR<sup>8</sup> and such other matters as we consider appropriate. We have concluded that:

- implementation of the Modification Proposal and Alternative Proposal will have a neutral impact on the achievement of the applicable objectives of the SEC<sup>9</sup>; however,
- the Modification Proposal and Alternative Proposal will better facilitate our Principal Objective and Statutory Duties<sup>10</sup>; and
- the Alternative Proposal is hereby directed to be made.

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<sup>3</sup> The Change Board is a sub-committee of the SEC Panel, established and constituted pursuant to and in accordance with Section D8 of the Smart Energy Code.

<sup>4</sup> the second General SEC Objective is 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>5</sup> the sixth General SEC Objective is to ensure the protection of Data and the security of Data and Systems in the operation of this Code;

<sup>6</sup> Section D of the SEC: <https://smartenergycodecompany.co.uk/the-smart-energy-code-2/>

<sup>7</sup> Section D8.3 of the SEC as varied by Section X2.3: <https://smartenergycodecompany.co.uk/the-smart-energy-code-2/>

<sup>8</sup> SEC modification proposals, modification reports and representations can be viewed on the SECAS website at <https://smartenergycodecompany.co.uk/modifications/incorporation-of-the-requirements-of-the-general-data-protection-regulations/>

<sup>9</sup> As set out in Condition 22 Part D of the Smart Meter Communication Licence available at: <https://www.smartdcc.co.uk/about-dcc/smart-dcc-licence/>

<sup>10</sup> The Secretary of State's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 and the Gas Act 1986.



## Reasons for our decision

We consider that this Modification Proposal has a neutral impact on all SEC objectives, including SEC Objectives (b) and (f).

**b) to enable the Smart Meter Communication Licensee to comply at all times with the General Objectives of the DCC (as defined in its Licence), and to efficiently discharge the other obligations imposed upon it by the Smart Meter Communication Licence;**

The Proposer of the Modification Proposal suggested that the incorporation of the requirements of the GDPR into the SEC would support the efficient discharge of the obligations imposed upon DCC by Condition 10 of the DCC Licence (Protection of Confidential Information).

The Proposer did not provide any arguments to support this statement. DCC will be bound by the GDPR as of the date it comes into the effect and whether the relevant references are introduced into the SEC is a matter of good regulatory practice rather than necessary for DCC to discharge its obligations. That being the case, we believe that the Modification Proposal has a neutral impact on SEC Objective (b).

**f) to ensure the protection of Data and the security of Data and Systems in the operation of this Code;**

The Proposer of the Modification Proposal argued that a benefit of implementing Modification Proposal 45 is a potential increased security and data privacy that is brought in by the GDPR. Although the key principles of the GDPR are already part of the data protection landscape under the previous legislation (Data Protection Act), which SEC Parties are already required to comply with, changes and additional controls are being introduced to protect EU/ UK citizens from data privacy breaches in an increasingly data driven environment. The Proposer argues that the benefits of this increased data security and privacy would be extended to the smart energy sector through its incorporation into the SEC.

As noted above, SEC Parties will be bound by the GDPR regardless of whether it is formally introduced into the SEC. The Modification Proposal simply notes the requirements of the GDPR within the SEC and does not assess the merits of implementing the GDPR. As such, we conclude that the modification proposal has neutral impact on SEC Objective (f).

## Principal Objective and Statutory Duties (Provision 3A (5A))

While we believe that, due to its nature, the Modification Proposal has a neutral impact on the General SEC Objectives, we find however that it does better facilitate the Principal Objective and Statutory Duties of the Secretary of the State, in particular provision 3A (5A) (b) of the Electricity Act 1989<sup>11</sup>. This provision states that, in carrying

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<http://www.legislation.gov.uk/ukpga/1989/29/contents>



out their duties, the Secretary of State must have regard to the best regulatory practice. The introduction of the GDPR requires some modifications to the SEC, in order to accommodate the requirements introduced by the GDPR. This Modification Proposal represents a viable manner in which these modifications can be incorporated into the SEC and it is therefore considered best regulatory practice.

### **Modification Proposal and Alternative Proposal**

Two versions of the legal text were put forward, the Modification Proposal (developed by the Proposer) and the Alternative Proposal (developed by the Code Administrator). The main difference in the drafting relates to Section I1.6; the Alternative Proposal specifies further detail on the type of Personal Data included within the messages, whereas the Modification Proposal only refers to the DCC License and the SEC for Personal Data and Processing.

Having considered two versions of the legal text, we find that both versions, in principle, deliver the intent of the proposed change. We note, however, that paragraph I1.6 of the Modification Proposal contains a reference to the DCC licence, whereas the clause in the Licence that is referenced does not in fact set out the referenced subject matter. In addition we note that the Change Board has approved the Alternative Proposal, which in terms of Section 9 of the SEC, we are required to consider as a recommendation. Accordingly, we consider that the Alternative Proposal to the SEC modification should be approved and incorporated into the SEC.

### **Decision notice**

1. In accordance with Condition 23.15 of the Smart Meter Communication Licence and Section D of the Smart Energy Code as varied by Section X2.3, the Secretary of State hereby directs that Alternative Proposal SECMP0045: Incorporation of the requirements of the General Data Protection Regulations be made.

**Duncan Stone**  
**Head of Delivery**  
**Smart Metering Implementation Programme**

(an official of the Department for Business, Energy & Industrial Strategy authorised to act on behalf of the Secretary of State)