

Review of Indicative Table of Contents for the Smart Energy Code

**Governance
Output from DCG SG3 Telecon
On 3rd December 2010**

Agenda item 2 - Parties

Prospectus notes:

This would define the parties to the Code. These would include the licensed energy suppliers, licensed electricity distribution companies, licensed gas transporters (DNs and iGTs) and DCC

Parties (1)

Define persons that must be or can be Parties to the Code, e.g.

- Suppliers (all suppliers – large/small/domestic/non-domestic)
- DNOs/IDNOs
- GTs/IGTs
- The DCC
- Energy Service Companies – a broad category covering parties who provide a wide range of services
- Others who voluntarily choose to become Parties
- Consumer Representatives
- Other specified authorised parties e.g. metering companies:
MAMs - gas; and MAPs, MOPs, and DCs - electricity
 - Define in terms of data required and how data will be used; scope of DCC will affect party categories
 - Note possible authorised parties for future decision

Parties (2)

Capacities that a Party must or may have under the Code and any limit on capacities in which a Party can participate

Any key properties or requirements, specific to the Code, that are inherent to some or all Parties and any limits to such properties/requirements, e.g.:

Registration - further to accession, Parties must complete particular registration procedures(s)

The Code Administrator's role and obligations

- in relation to Parties' requirements
- Parties' recourse in the case of errors by the Code Admin

Another option is to put Code Administrator role in DCC Licence - but consensus seems to be to put it in the Code

Agenda item 3: Accession & Withdrawal

- Prospectus notes:
 - “There would be an accession process for new parties and provisions relating to accession by unlicensed parties, such as energy service companies or aggregators, to the extent that these need to be bound by the Code”
 - “...sign a framework agreement to give contractual effect to the Code’s provisions” (as noted in Prospectus)
- It is expected that there may also need to be a process for managing the exit of a party.

Accession

Accession instances:

- Original parties – those organisations party to the original Framework Agreement (obligated)
- New parties - Admission of new licensees usually anticipated within code drafting as it is a licence requirement to be a party to the code
 - usually conditional, e.g. has a licence, has/will become party to other relevant codes (e.g. DTSA, DCUSA, BSC, UNC)
 - admission or accession of unlicensed organisations to the extent that they need to be within the Code arrangements (voluntary)

Exclusions:

- Any category of 'party' comprising organisations not bound by the Code provisions

Admissions

Code is binding on party on signing Framework Agreement

New party details registered

Which rights/duties available/applicable on accession – e.g.

- Operational assurance (SEC entry processes/DCC integration testing)
- voting?
- funding?

Admission of non-licensed parties:

Other ‘users’ of DCC services or smart data a SEC ‘community’ of “Interested Industry Participants”,

consider relevant status for

- Receipt and use of data
- Use of DCC services
- Participate in consultation process, but not vote or ‘own’ a Mod?
- Non-contributory to funding? Admission Fee?

Exit/Withdrawal

Exit instances:

- No registered supply points (never become active, or become inactive)
- Consequential on a material or persistent breach/default
- Licence revocation
- Administration/bankruptcy

Assumptions:

- Non-licensed signatories can exit for any reason, but residual issues for data usage/access
- Conditions for managed exit – e.g. sums owed and any outstanding liabilities, terminate access rights etc - need to be robust, rapid where needed
- Integrate 'SoLR' processes insofar as SEC scope is impacted

Exclusions:

- temporary suspensions – but Panel would need appropriate powers and processes for these
- code administrator (although provision for admission of successor)
- DCC licensee? (although provision for admission of successor)
- Regulators
- Consumer bodies

Agenda Item 4

SEC Panel – Standard Terms

Prospectus: A panel would be responsible for governance of the Code. The composition would achieve appropriate representation of all stakeholders while providing for efficient decision making. The Chairman would likely be appointed by the Authority*.

Establishment of the Panel

Panel Objectives

Duties

Powers

Composition

Elections

Alternates / Reserves

Term of Office

Removal / Replacement

Protection

Chairman

Secretary

Meetings

Representation / Voting

Conflicts of interest

*Other options: Appointed from Panel Members or provided by Secretariat

SEC Panel – Matters for Consideration

- Possible Panel Duties?
 - Manage accession / withdrawal
 - Manage Panel appointments
 - Develop budgets
 - Manage and co-ordinate modifications Process
 - Manage breach process
 - Maintain the Code
 - Establish working relationships with industry bodies
 - Administer website
 - Performance Management of DCC?
 - Audit?
- Other?

SEC Panel – Matters for Consideration

- Possible Panel Powers?
 - Appoint and remove Secretariat
 - Appoint and remove professional advisors
 - Enter in to third party contracts to discharge duties
 - Intellectual property licensing
 - Constitute working groups / sub committees
 - Delegated Authority
 - Vote on modifications
 - Consider and grant derogations
- Other?

SEC Panel – Matters for Consideration

- Options for Panel Composition?

- Number of members
- Independents
- Elected representatives
- Company representatives
- Consumer representatives
- Code representatives
- Authority appointments
- Observers / attendees

- Options for Representation / Voting?

- Do all members hold a vote?
- Are all votes given equal weighting?
- Majority vote (simple majority, % pass)
- Unanimous decision
- Chair casting vote

Agenda Item 5 - Modification procedure

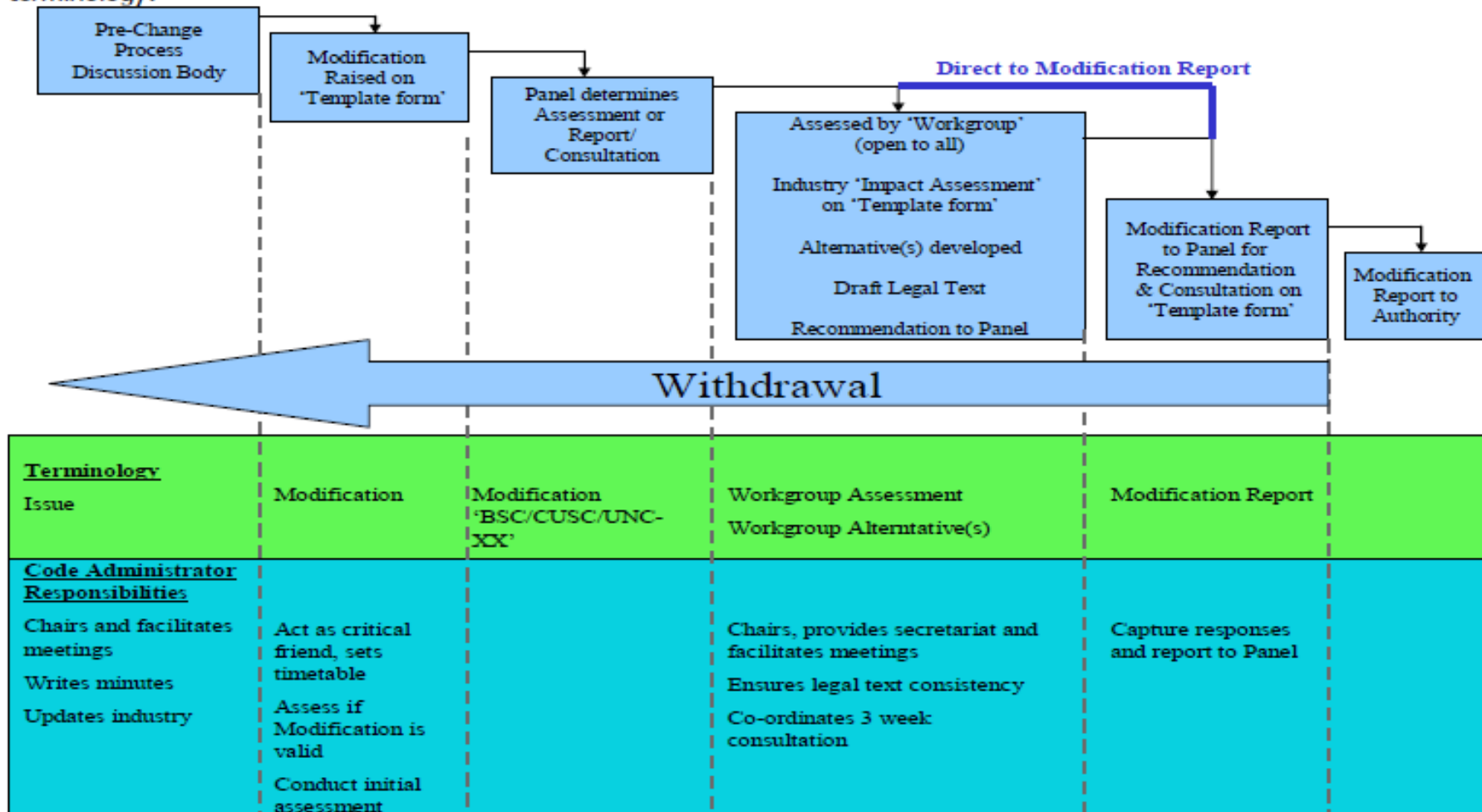
Prospectus notes:

This procedure would follow code governance good practice as set out in Ofgem's final proposals from the Code Governance Review

Common Modification Process from Code Administration Code of Practice

Common Modification Process

There will be a common Modification process adopted under each code. The process will include the following steps and terminology:



Modifications (2)

- **Underlying legal framework**
- **Roles in the Modification process**
- **Recording and Reporting information from Process**
- **Proposal, Withdrawal and Rejection**
- **Panel proceedings**
- **Modification Groups**
- **Modification Procedures**
- **Urgent Modifications**
- **Implementation**
- **Creation and Maintenance of Subsidiary Documents**

Modifications (3)

- Common Modification process set out in Code Administration Code of Practice provides a template
 - Cannot effectively consider variations from standard Mod process until scope of SEC/DCC confirmed
 - As a minimum the Code should require 'best endeavours' to engage parties in the change process
- Wider range and number of participants involved in SEC compared with other Codes, and more of a comms/IT element
 - Facilitating responses to changes, e.g. wide SEC community
 - One suggestion: use more 'IT-based' model; take longer to assess changes because so many participants impacted
 - DCC moving away from 'owned framework' to a more flexible, comms based model ?

Agenda Item 6: Industry Agreements

Prospectus notes:

“There would need to be interfaces established with other industry codes so that industry systems and procedures could be synchronised to enable change control to operate where there are interdependencies.”

Inter dependencies to be identified when scope of SEC and DCC functions confirmed.

Starter for 10*

(list to be developed to include energy, metering, comms etc agreements)

Anticipated will include: UNC/IGT UNC SPAA MRA BSC	Other candidates: DTSA MAMCOP MOCOPA DCUSA
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Potential Inter-dependency areas

key principle will be to establish precedence in the event of conflict/dual impact with existing instruments

Likely candidates:

- Signposts (eg UNC → SPAA, MRA → DTSA, BSC → MRA)
- E2E process for inter-related changes – e.g. joint MRA/BSC change process
- Data transfer – format, medium, source/recipient
- ECOES/SCOGES
- Assurance
- ‘Event Logs’ – CoS, Objections, De-energisation/Disablement...giving rise to ‘priority provisions’

Others:

- Two-way flow of exceptions (SEC → existing instruments)
- Migration (if DCC has a registration function)
- Periodic reconciliations/refreshes
- Joint governance community - SEC seat at existing panels/committees, where relevant – and vice versa
- Cases where non-compliance/default with one code affects another? (eg MRA and DCUSA; BSC and MRA)

Agenda Item 7 - Limitation of liability and other provision

Prospectus notes:

This would define any limitations of liability of the various parties under different circumstances and deal with other provisions of a general nature

Limit of Liabilities (1)

The extent of the limitation of the liabilities of a Party that withdraws or is expelled from the SEC

- The extent of the limitation of obligations and liabilities of other Parties to the withdrawn/expelled Party
- Whether limitation is automatic or elective (no examples of elective limitation identified)
- Whether limitation relates to liabilities under the SEC only or also to related or subsidiary documents
- Any limitations other than liabilities e.g. registrations and authorisations under the SEC cease to be effective

The date from which limitation of liabilities takes effect e.g. the withdrawal/expulsion date

The general effect of a Party's withdrawal/expulsion on the status of the relationship between other Parties and the SEC

Limit of Liabilities (2)

- Parties and liabilities being limited must be identified
- Not yet agreed who will underwrite the DCC
 - Group member believed those that want to participate should fund (i.e. assume the risk)
 - Ofgem could adopt a different approach
 - Liability inherently tied in to funding

Limit of Liabilities (3)

Restrictions or exclusions from the limitation of liabilities

- Status of rights and liabilities of a Party at the withdrawal/expulsion date
- Status of rights and liabilities of a Party that accrue after the withdrawal/expulsion date but relate to activities prior to that date, and the limits of such accrual
- Status of rights and liabilities of other Parties to the withdrawn/ expelled Party
 - at the withdrawal/expulsion date or that accrue after that date
 - limits of accrual
 - any distinction between withdrawal and expulsion
 - any particular rights of other Parties resulting from the circumstances giving rise to expulsion

Any obligation to report or notify of limitation

Agenda Item 8

Funding / Costs – Matters for Consideration

- Funding parties?

- All Parties
- Licensed parties
- Users of DCC services
- Other

- Share of costs?

- Proportionate to use of DCC services
- Equal split
- Market share
- Combination
- Other

Funding / Costs – Standard Terms

Relates to all DCC costs including Secretariat

- Preparation and approval of Budgets
- Amendments of Budgets
- Payment of Costs Incurred
- Share of Costs – methodology for calculation of all DCC charges?
- Recovery of Costs – part of bundled DCC charge or separate?
- Audit
- Interest
- Review of cost recovery mechanism?

Agenda item 9: Termination

- The SEC shall continue in full force and effect until the earlier of:
 - (a) the termination of the SEC Agreement; and
 - (b) the date on which an effective resolution is passed, or a binding order is made, for the winding up of [body that gives effect to SEC]
- **OR** is it not appropriate to have termination provisions of the SEC itself in the SEC. Transition from the SEC to any new arrangements be dealt with by the Authority/Govt as part of an 'Implementation Scheme' (with changes to licence obligations and any run off arrangements).
 - Would need to cover financial/intellectual property/other assets
 - Arrangements for Authority 'run-off' powers could be included
 - Government may grant powers via statutes - what is benefit?

Agenda Item 10 - Other

- Breach/Default
- Force Majeure
- Liquidated Damages
- Disputes

Agenda Item 10: Breach/Default

Prescribe events and following actions/consequences, including:

appropriate circumstances for actionable breach i) by parties; and ii) DCC

prescribe matters of default –

any other than ‘the usual suspects’ (insolvency, unremedied breach or Force Majeure)?

timescales for breach/Force Majeure events becoming default events

consequences of default

Ensure SEC Panel have appropriate powers to manage events of breach/default

for parties & for DCC – different approaches?

Remedies for breach events - including compliance issues e.g. through performance framework or re-qualification assurance

Potential for any ‘permissible failures’ allowed within SEC provisions (or related existing instruments)

Establish links with other codes (and vice versa) if event has wider ramifications

DCC of Last Resort?

Agenda Item 10: Force Majeure

Reasonable to assume that

'usual' force majeure circumstances would be considered:

EXAMPLE

A temporary event or circumstances not reasonably foreseeable and beyond the reasonable control of the party and which results in or causes a failure to perform its obligations, but: excluding -

a strike, lockout or other industrial action by a party's own employees or those of its agents or contractors (unless forming part of a national strike) shall not be Force Majeure;

the act or omission of any agent or contractor of a party shall not be Force Majeure;

Force Majeure provisions would apply to all parties and DCC with similar exclusion from liability providing the situation does not prevail or become irrecoverable (and therefore a default)?

Consider any Force Majeure provisions in DCC licence

- Should SEC Panel have appropriate powers to manage Force Majeure events

Timescale/period of Force Majeure

Appropriate rectification or proceed to default process

Notifications to other parties

Liaison with other Industry agreements where the Force Majeure impacts those provisions, and vice versa

Agenda Item 10

“Liquidated Damages”

Matters for Consideration

Relates to DCC services and should be dealt with under DCC Management section of SEC?

Panel duty to enforce regime?

Any circumstances under the SEC, where actions taken (or not taken) by one Party causes a financial loss for another?

Liquidated Damages – Standard Terms

- Acknowledgement by Parties
- Compliance with performance levels
- Application
- Methodology / calculation
- Charge cap
- Timing and commencement
- Collection and recovery

Agenda Item 10 - Dispute Resolution

Prospectus: This would set out procedures for resolution of disputes.

Standard Terms in existing Codes

- Contract Management
- Mediation
- Expert determination
- Communications
- Timetable and Procedure
- Costs
- Arbitration
- Third Party Claims
- Referral to Authority?

Matters for Consideration

- What are the nature of disputes under the SEC?
- Specific types of operational disputes?