

Decision

CONSULTATION RESPONSES AND DECISION ON OUR PROPOSALS FOR VERSION 1.1 OF THE RETAIL ENERGY CODE

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We published our consultation on proposals for a version 1.1 of the Retail Energy Code (REC) in October 2020.¹

This Decision document summarises the consultation responses we received and sets out our reaction to them. It sets out our decision to bring REC v1.1 into force and provides information on how we plan to take forward some of the detailed points we consulted on.

¹ <https://www.ofgem.gov.uk/publications-and-updates/retail-energy-code-proposals-version-11>

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1. Consultation Responses and Decision on our Proposals for Version 1.1 of the Retail Energy Code

1.1. We published our consultation on proposals for a version 1.1 of the Retail Energy Code in October 2020.²

1.2. We received 36 responses falling into the following categories of respondents:

- 5 large suppliers
- 5 mid-tier suppliers
- 1 industrial and commercial only supplier
- 6 Distribution Network Operators (DNOs)
- 1 independent DNO
- 4 Gas Transporters
- 2 independent Gas Transporters and independent DNOs
- 1 Supplier trade body
- 1 Network trade body
- 1 Meter Operator (MOP)
- 2 Metering Asset Managers (MAMs)
- 1 Metering business trade body
- 1 Code panel
- 2 Code administrators
- 1 Consumer body
- 2 Other

1.3. We have published responses (where the respondent has not asked for their response to be kept confidential).³

1.4. Below we set out a summary of key points raised in consultation responses and our reaction to them. These should be read in conjunction with the proposals spelled out in the consultation document.

² <https://www.ofgem.gov.uk/publications-and-updates/retail-energy-code-proposals-version-11>

³ <https://www.ofgem.gov.uk/publications-and-updates/retail-energy-code-proposals-version-11>

1.5. Given overwhelming support for our proposals, we will bring REC v1.1 into force in order to further develop the governance, change management and performance assurance for the REC and to transfer the management of energy theft related schemes to the REC and its governance. We will make these changes to the REC through the change management provisions of REC v1.0 (clause 11), using Ofgem governance groups. Accordingly, we have issued a change request to the Regulatory Group of the Switching Programme. This also includes updated versions of the REC Main Body and Schedules that constitute version 1.1. Further detail on our consideration of the responses to the consultation are set out below.

1.6. As the REC Code Manager is currently at an early stage of its mobilisation, we have agreed with RECCo that in the near term changes to the REC should continue to be made in line with the transitional approach in place under REC through the governance of the Ofgem Switching Programme. The Ofgem governance groups will be able to delegate responsibility for change to the Category 2 and 3 REC documentation as and when the REC Manager and responsible committees are established, in line with the Change Management Schedule. This will facilitate a staggered start for such groups and allow for the early adoption of documents and procedures developed by relevant Subject Matter Experts in anticipation of being fully operational by 1 September 2021.

1.7. Question 2.1. Do you have any comments on the process for appointing additional REC Company (RECCo) Directors?

Consultation Response

Respondents were very broadly supportive of the proposals, including the nominations committee approach and the suggestion that Ofgem should continue to appoint directors until a majority are independent from parties and recruited by the nominations committee.

Ofgem Response

We have carefully considered all stakeholder responses. We will proceed as proposed in the consultation document. The REC will contain provisions for the creation of a

nominations committee and the Ofgem will continue to approve director appointments until the majority of the RECCo Board are independent of parties.

1.8. Question 2.2: Do you agree that Metering Equipment Managers (MEMs) should be Parties to the REC?

Consultation Response

There was widespread agreement to MEMs being parties to the REC from all categories of respondents apart from the MAMs and their trade body and the MOP respondent. Those who responded positively, generally suggested this would helpfully allow MEMs to influence the requirements on them. Many also thought this would have a positive effect on assuring the performance of MEMs.

The minority of respondents who disagreed took the view that the current performance management and assurance arrangements for MEMs worked well or could be extended by creating performance management measures for gas under the Uniform Network Code equivalent to those that exist for electricity in the Balancing and Settlement Code. In addition to that, they felt that putting MEMs under the performance assurance regime of the REC PAB would undermine the supplier hub principle under which suppliers manage the relationship with agents.

Ofgem Response

We have carefully considered all stakeholder responses. We continue to believe that there would be benefits from bringing various metering codes of practice under REC governance, as well as under the REC performance assurance regime. We also believe that it would be sensible in those circumstances to enfranchise MEMs in the REC. Alongside the majority of respondents, we do not believe that this would undermine the supplier hub principle in a meaningful way.

We will proceed as proposed in the consultation document and will work with RECCo to take forward MEM accession to the REC.

1.9. Question 2.3. Do you agree in principle that the obligations currently placed upon metering agents by the BSC could be integrated with the REC performance assurance framework, subject to certain conditions being met?

Consultation Response

This question received positive responses from the majority of respondents, including one of the metering agent respondents.

One MAM and a trade association of meter agents, as well as the MOP respondent did not agree, mostly for the reasons pointed out in answers to Question 2.2. They, alongside a number of respondents who agreed with the idea of integrating obligations placed upon metering agents by the BSC under the REC performance assurance framework, wanted to see further detail on how this would be approached.

Ofgem Response

We have carefully considered all stakeholder responses. We will continue with the plan to bring performance assurance for metering agents under the REC performance assurance framework. Our consultation on REC v2.0 describes in greater detail the options under consideration.⁴ This should provide further information as requested by some respondents.

1.10. Question 2.4. Do you agree that the RECCo should be required to develop and maintain a Strategy for the REC, including but not limited to digital transformation of the REC processes and data?

Consultation Response

⁴ <https://www.ofgem.gov.uk/publications-and-updates/retail-energy-code-v20-and-retail-code-consolidation>

Respondents overwhelmingly agreed that RECCo should be required to develop and maintain a Strategy for the REC, including digitalisation and data considerations. Some respondents highlighted that, in their view, this strategy process should coincide with the annual budget round and should help keep RECCo tightly focussed on strategic priorities. One respondent suggested that it should be left to RECCo to assign the right level of priority to digital transformation within the RECCo activities, rather than this requirement being formalised in the code.

Only one respondent did not agree with this proposal. Instead, this respondent argued that RECCo should focus in the first instance on developing core documents underlying the code, in particular with regard to Metering Equipment Managers.

Ofgem Response

We have carefully considered all stakeholder responses. We will require RECCo to develop and maintain a strategy for the REC, including on digital transformation. We trust that RECCo will be able to resource this activity alongside other priorities and that doing so will be a good use of resources.

1.11. Question 2.5. Do you agree that RECCo should apply zero-based budgeting from 2021/22?

Consultation Response

Respondents overwhelmingly supported the suggestion that RECCo should apply zero-based budgeting. Some respondents highlighted that this should include a focus on delivering value for money. A small number of respondents stressed that this shouldn't, however, create a burdensome, inflexible process or remove the possibility of in-year management of industry change requirements.

One respondent argued that the length of time given for budget consultations and appeals should be extended from the currently proposed periods and that the scope of appeals should be widened.

Ofgem Response

We have carefully considered all stakeholder responses. We will require RECCo to apply zero-based budgeting. We will expect and trust RECCo to develop a process for

this that will focus on value for money, be flexible and proportionate and allow sufficient time for consultation. We remain of the view that it is appropriate for an appeal to be limited to only to the cost item being challenged, as this will provide a greater degree of certainty to Parties and allow RECCo to continue with much of its financial planning while the specifics of the appeal are resolved.

1.12. Question 2.6. Do you agree that future RECCo budgets should be decided upon by the RECCo Board, subject to appeal by REC Parties?

Consultation Response

The suggestion that future RECCo budgets should be decided upon by the RECCo Board, subject to appeal by REC Parties had overwhelming support. Many respondents argued that this should, however, follow consultation with parties.

One respondent from the large supplier category felt that suppliers should have a direct role in approving budgets.

Ofgem Response

We have carefully considered all stakeholder responses. The RECCo Board will decide future budgets. We consider that the requirement to consult Parties and Parties' appeal rights in relation to the budget create important balances and constraints on the budget process.

1.13. Question 3.1: Do you agree with the proposed composition of the Performance Assurance Board (PAB), as set out in the terms of reference published with this document?

Consultation Response

We have carefully considered all stakeholder responses. The majority of respondents broadly agreed with the proposed composition and Terms of Reference for the PAB, with many taking the view that the PAB would contain broad expertise in the industry. The inclusion of a Citizens Advice representative received explicit support from a small number of respondents as a positive development.

One supplier trade body disagreed with the proposals put forward in the consultation on the basis that they felt that suppliers should not have a minority of votes on the PAB. Large and mid-tier supplier respondents also felt that it would be wrong to treat suppliers as a homogeneous group as far as supplier representation on the PAB was concerned. Some DNO and Gas Transporter respondents felt that they should not be jointly represented by a single representative, but would need a representative each to ensure that the right expertise was available to the PAB.

The suggestion that UNC Performance Assurance Framework administrators should have a role on the REC PAB polarised opinions. It was explicitly acknowledged by a small number of respondents that their experience could add value, but a small number of respondents explicitly opposed their involvement on the basis that they should have no voting rights in REC matters where they otherwise had no interests at stake.

Ofgem Response

We have carefully considered all stakeholder responses. We will encourage RECCo to continue preparing for the PAB to come into operation. Given the support for a Citizens Advice representation on the PAB, we will expect this to feature in the way the enduring PAB is set up.

RECCo has established an interim PAB to assist in the development of the Performance Assurance Framework. This interim PAB, which contains four supplier representatives is expected to operate under the Terms of Reference as drafted, until the Summer of 2021. At that point RECCo will undertake a further nominations process and look to appoint independent PAB members ahead of RCC, due to take effect on 1 September 2021. We expect the enduring PAB to have members who can provide expertise relating to the various constituencies of REC parties, and will ensure that PAB members associated with Parties will not be able to outvote independent members.

1.14. Question 3.2: Do you agree that any organisation undertaking an activity governed by the REC would be within scope of the performance assurance framework in respect of those activities?

Consultation Response

The vast majority of respondents agreed with the scope of the Performance Assurance Framework as proposed.

Two respondents in the Gas Transporter category felt that the scope as expressed might be too wide to be effective. They suggested that it should be narrowed to apply to REC Parties and to areas impacted to the REC. A small number of respondents felt that the performance assurance framework should only apply to REC parties, not to commercial entities that are not party to the code. These, the respondent argued, should be managed through commercial contracts and be held to account for the delivery of Service Level Agreements.

Ofgem Response

We have carefully considered all stakeholder responses. Given the widespread agreement with the proposal that any organisation undertaking an activity governed by the REC should be within scope of the performance assurance framework, we will expect this to be implemented by RECCo.

We continue to believe that providing the focus on overall performance assurance within the performance assurance framework makes the best use of the performance assurance expertise available to RECCo and provides consistency of approach.

1.15. Question 3.3: Do you agree that at least one of the PAB's priorities should be determined by Citizens Advice?

Consultation Response

The proposal that at least one of the PAB's priorities should be determined by Citizens Advice received widespread agreement from respondents.

Ten respondents from varying categories did not agree with the proposal. They felt that the implication that the membership of the PAB would not sufficiently take consumer interests into account was not merited and pointed to Citizens Advice membership of the PAB as a sufficient measure. They felt that all priorities should be determined by the PAB collectively. One of those respondents suggested that instead

it should be Ofgem that should determine a PAB priority, which it could choose to decide jointly with Citizens Advice.

Ofgem Response

We have carefully considered all stakeholder responses. As the proposal that at least one of the PAB's priorities should be determined by Citizens Advice received broad agreement, we will expect this to be implemented by RECCo. We consider that the confidence expressed by some that the PAB would in any case take consumer interests sufficiently into consideration, is not in itself a reason not to go ahead with this proposal.

1.16. Question 3.4: Do you agree that the PAB should have discretion to escalate liabilities within a defined range if the earlier application of charges does not achieve the desired effect?

Consultation Response

Respondents agreed with the principle that the REC PAB should be able to escalate liabilities within a defined range if the earlier application of charges does not achieve the desired effect.

A number of respondents wanted to see the detail of how charges and liabilities would be escalated set out in more detail and wanted further clarity on appeals routes.

Ofgem Response

We have carefully considered all stakeholder responses. We consider that the REC PAB should have the powers to escalate liabilities. It will be important that RECCo develop the detail of these proposals with full engagement of parties.

1.17. Question 3.5: Do you agree that suppliers with serious performance issues should face restrictions on their ability to acquire new customers until those issues are resolved?

Consultation Response

All respondents agreed that it should be possible for such a restriction to be applied. A number of respondents expressed the view that this restriction should not be applied lightly and that it should be used in a proportionate manner.

Ofgem Response

We have carefully considered all stakeholder responses. The strong agreement for the proposal to allow RECCo to impose restrictions on the ability to acquire new customers for suppliers with serious performance issues reinforces our view that this may be a proportionate remedy if used in appropriate circumstances. We will therefore provide the ability to impose such restrictions in the REC. However, we also agree that such action should not be undertaken lightly and would expect the PAB to demonstrate that alternative actions have not been, or would not be, effective.

1.18. Question 4.1: Do you support our proposals regarding the production of preliminary and detailed Impact Assessments?

Consultation response

This proposal had wide support from respondents who thought that it rightly recognises a problem in the current arrangements for assessing the impact of code changes.

However, a number of parties took issue with some of the detail in the proposal. Two large suppliers and a Gas Transporter felt that the suggested 40 working day period in the timelines for impact assessment might be too long. One medium supplier felt that the cost for the initial Impact Assessment should be paid by the change proposer. One respondent suggested that Preliminary Assessments would be unnecessary in most cases and should only be done where the solution to be implemented was generally unclear. They also felt that the cost of the Full Impact Assessment should be treated as a part of the overall cost of the change and paid when the change was accepted.

One large supplier was opposed to the extent to which powers for impact assessing changes were handed to the code manager and felt parties should have more of a say in the process. They were particularly concerned about the code manager's powers to stop a change proposal that the code manager felt had no merit.

One respondent suggested that it should be required by the code that the impact on Contract for Difference and Capacity Market schemes should be assessed.

Ofgem Response

We have carefully considered all stakeholder responses. We believe that the impact assessment process should be implemented as proposed in the consultation document. We will ask RECCo to keep monitor timelines and the extent to which the process allows change to happen with pace and flexibility. Without requiring this in the code, we expect REC change impact assessments to take impacts on a number of relevant other schemes into account.

Whilst we agree that it will be desirable for Impact Assessments to be completed as soon as practicable in facilitation of a more efficient change process, the 40 working day period provides only an upper limit and does not prevent the REC Code Manager and Service Providers agreeing to shorter timescales. If in practice, Impact Assessments are regularly completed sooner and without any detriment to their quality, we would expect these timelines to be revised accordingly.

1.19. Question 4.2: Do you agree that the Change Panel should be appointed by the RECCo Board, following a process overseen by the nominations committee?

Consultation Response

This proposal had very widespread support among respondents. A number of those supporting it, stressed that the nominations and appointment process would need to make sure that the change panel had expertise in the range of industry organisations affected by REC changes.

One large supplier and one mid-tier supplier disagreed with the suggestion, preferring instead an election process with each party having one vote to elect a candidate to represent them at the panel. A Gas Transporter suggested that Change Panel members should be nominated by their peers in the industry. A supplier trade body also felt that an election process would provide Change Panel members who had more of a stake in the decisions that were being made.

Ofgem Response

We have carefully considered all stakeholder responses. We remain of the view that it is best to allow the RECCo Board to appoint a Change Panel, following a process overseen by a nominations committee. We will expect the RECCo Board to want to ensure that the Change Panel can avail itself of the required expertise concerning the REC Party constituencies and this may, at the RECCo Board’s discretion, include an election process as some respondents have suggested.

1.20. Question 4.3: Do you agree that the REC should encourage shorter and more frequent Change Panels, to be held remotely where possible?

Consultation Response

There was overwhelming support for a more agile schedule of meetings and for the idea that meetings could be held remotely, even though some respondents also noted that occasional face-to-face meetings would still have value and a number noted that meetings should be scheduled with efficiency in mind.

One respondent disagreed that REC should hold more frequent shorter meetings and felt that it would be easier to plan for decision-making if monthly meetings were scheduled on a monthly basis with the potential for adding in further ad-hoc meetings if required.

Ofgem Response

We have carefully considered all stakeholder responses. We consider that it is best for the REC Change Panel meetings to be scheduled to be shorter and more frequent and held remotely where possible. This does not need to exclude the possibility for occasional face-to-face meetings and should also allow for efficiency and forward planning.

1.21. Question 4.4: Do you agree with the proposed categorisation of REC documents and associated change paths?

Consultation Response

Respondents overwhelmingly supported these proposals. A number of respondents stressed that the change processes in all categories should be transparent and open to appeal.

One respondent cautioned that the code manager was not a neutral party in the change, but a commercial organisation. This respondent also felt that DCC should not have control over category three documents, as this would take changes to such documents out of the control by REC parties.

Ofgem Response

We have carefully considered all stakeholder responses. We will implement the proposed categorisation of REC documents and associated change paths. We will expect RECCo to work with parties to implement a transparent, consultative and inclusive change process.

The change process is being established with appropriate checks and balances, including the ability to escalate and/or appeal any change proposal. In particular, the Change Panel provides a check and balance on the activities of the code manager. The potential impact of a change on any relevant party, including the code manager or any other service provider, will form part of the assessment of the change. Consideration will also be given on who can best deliver the change, as this may not necessarily be the code manager. A code roadmap showing future change will also be published for scrutiny.

1.22. Question 4.5: Do you agree that code administrators and managers should be able to raise any changes identified as necessary by the Cross Code Steering Group?

Consultation Response

The vast majority of respondents felt that this would be an improvement on current processes, increasing efficiency of code change. A small number of respondents stressed that this provision should be used in limited circumstances only.

One Gas Transporter did not agree that code managers should be able to raise changes to other codes, as they felt they might lack the expertise and be unaware of required consequential changes. One mid-tier supplier respondent felt that code

managers should only be able to raise modifications with minor impact that are associated with modifications that have already been consulted upon and been taken through governance processes.

Ofgem Response

We have carefully considered all stakeholder responses. We will put in place provisions in the REC and propose changes to other codes to allow code administrators and managers or raise changes identified as necessary by the Cross Code Steering Group.

1.23. We will expect code administrators and managers to work very closely together within the Cross Code Steering Group and outside of its discussion to ensure that the any changes are informed by the relevant expertise and that consequential impacts on codes are properly understood when changes are raised. We provided more information on how we envisage cross code working to be implemented in the consultation document for REC v2.0.

1.24. Question 5.1: Do you agree that we should extend the valid reasons for an objection to include ongoing and time-bound theft investigations, and subject to monitoring by the PAB? Do you have any suggestions for the period of time during which it should be possible to maintain investigations as a reason for an objection and what should trigger the start of that period of time?

Consultation Response

Respondents agreed with the principle of allowing objections for theft investigations and for the PAB to oversee this. A number of respondents pointed out that there are difficulties with providing a reason for the objection, if it alerted the person committing the theft to the investigation, and that therefore the detailed implementation of this proposal needed careful attention.

A small number of respondents provided views on the length of the period time during which it should be possible to maintain an ongoing investigation as a reason to object to a switch. A smaller number provided views on trigger points. There was little agreement among the views provided.

Ofgem Response

We have carefully considered all stakeholder responses. We can see merits in the proposal to allow an ongoing and time-bound theft investigation to be a reason for an objection. We will take into account the points raised concerning the need to provide a reason for an objection in the implementation of this proposal. We will also give further thought to the time-periods involved. This change will require licence changes and we will further consider how and when best to implement this.

1.25. Question 5.2: Do you consider that RECCo should be required periodically to review the effectiveness of the incentive scheme(s)?

Consultation Response

All respondents to this question agreed that RECCo should be required to review the effectiveness of the incentive schemes on a regular basis. One respondent pointed out that any review by RECCo should only cover the mechanics of the scheme, whereas they argued that any review of the effectiveness of policy and delivery should fall to Ofgem.

Ofgem Response

We have carefully considered all stakeholder responses. We will require RECCo periodically to review the effectiveness of the theft incentive schemes. Ofgem will continue to maintain overall policy responsibility for energy theft.

1.26. Question 5.3: To what extent, if any, do you consider that the Theft Target should be reduced pending the replacement of the Theft Risk Assessment Service (TRAS)?

Consultation Response

Respondents were split on this question with about half supporting a reduction and half being opposed to it. However, most respondents felt that the rationale for the target should be reviewed or changed.

Ofgem Response

We have carefully considered all stakeholder responses. Given that the consensus of respondents is that the current TRAS is delivering only a small proportion of unique theft leads, we do not consider that the theft target should be reduced pending the replacement of TRAS due to the absence of TRAS alone. However, we will ask RECCo to consider the rationale and nature of the target more generally and provide further information to parties when the 2021/22 target is set.

1.27. Q5.4: Do you agree that the RECCo should procure a theft methodology, and use that to assess the effectiveness of a Theft Reduction Strategy, which it should also develop?

Consultation Response

All respondents agreed that it would be a good idea for RECCo to do as proposed in the consultation document.

One respondent pointed out that RECCo may not have sufficient expertise in energy theft and therefore suggested a co-authorship or co-production approach with energy suppliers and law enforcement agencies.

Ofgem Response

We have carefully considered all stakeholder responses. We will require RECCo to procure a theft methodology and assess the effectiveness of a Theft Reduction Strategy which it should develop. We will expect RECCo to do this in a transparent and consultative way, working with parties, including, as suggested by one respondent, energy suppliers and law enforcement agencies.

This Strategy should take into account all relevant factors and also inform RECCo's actions in respect of associated theft services. For instance, we note that as part of the transition of the ETTOS service to REC governance, the RECCo Board is considering an increased marketing budget for 2021/22 to raise awareness of the service.

Given these broader considerations, we consider that the replacement of the TRAS service should be informed by a robust business case which assesses all practicable options that are open to RECCo to meet its strategic objective of reducing energy theft. We therefore consider that the timing of any replacement service would be

subject to such a business case being made and, as referenced in our consultation, a detailed project plan to be produced by RECCo. Whilst we would expect this to be completed as soon as practicable, in order to better manage the expectations of all interested parties we have removed the provisional date of 1 April 2022 from the legal text and will await further details from the RECCo Board.

In response to a specific comment on ETTOS, we have amended the REC drafting to reinforce the requirement that, information on the source of the theft lead coming from ETTOS must not be provided to customers and must be controlled by Parties. This will continue to protect the anonymity of the person that has provided the tip-off and retain public confidence in the service.