



**REC v2.0 and Retail Code Consolidation
Consultation
DCC Response**

Version: 1.0

Date: 22/02/2021

Document Classification: DCC Public

Ibex House
2nd Floor
42-47 Minories
London
EC3N 1DY

Rachel Clark

Switching Programme
Ofgem
10 South Colonnade
Canary Wharf
London
E14 4PU

By email to: switchingprogramme@ofgem.gov.uk

22 February 2021

Dear Rachel,

DCC welcomes the opportunity to respond to Ofgem's consultation on the Retail Energy Code (REC) version 2.0.

Our answers to the questions put forward by Ofgem, and other comments on the drafting of the REC schedules, are set out in detail in the annex to this letter. To note that we have only answered some of the consultation questions. Assume that we have no comment where we have not responded to a question. We have followed the general structure of the consultation document in structuring our response, as follows:

- Retail Code Consolidation – version 2.0 schedules
- Consequential changes to other codes
- Technical Specification.

There are two key areas we would like to bring to your attention in particular. Firstly, we note the data protection assessment proposals for REC Parties that have been added to the Qualification and Maintenance schedule. Our detailed response in the Annex covers concerns we have regarding the data protection compliance framework that has been proposed and, in particular, the use of 'Information Commissioner's Office (ICO) checklists' as a tool for compliance. We agree that the ICO's checklists are a valuable resource in understanding compliance, but the way in which they are positioned in the context of the schedule, is in our view open to misinterpretation and subjectivity. The ICO has recently published its 'Accountability Framework'; adhering to this framework, alongside using checklists will provide a more complete and thorough framework for data privacy governance as a whole.

Secondly, as a party to both the REC and SEC, coordinated cross-code change is an important matter for DCC. We welcome proposals to introduce a Cross Code Steering Group (CCSG) to facilitate improvements in cross-code change management. We believe a key consideration in the operation of the CCSG is ensuring that it has access to the relevant subject matter expertise to make decisions. On matters relating to Switching and Smart Metering, DCC's role in providing technical expertise and guidance to the CCSG will be important. We would therefore consider it essential that DCC attends CCSG meetings that discuss cross-code changes related to Switching and Smart Metering. We would welcome

early and regular communications with the CCSG to ensure DCC can provide advice in an effective manner.

If you have any questions relating to our response, please do not hesitate to contact Milan Neergheen (Milan.Neergheen@smartdcc.co.uk) in the first instance, or me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Siobhan Stanger', with a stylized, cursive script.

Siobhan Stanger
Chief Regulatory Officer

Annex

Contents

1	DCC Consultation Response.....	5
1.1	DCC comments on Retail Code Consolidation: REC v2.0 Schedules..	5
1.1.1.	Specific comments on the Interpretations Schedule.....	5
1.1.2.	Qualification and Maintenance Schedule	6
1.1.3.	Specific comments on the Market Exit Schedule.....	8
1.2.	Consequential Changes to Other Codes.....	9
1.2.1.	Cross Code Steering Group	9
1.3.	REC Technical Specification	9

1 DCC Consultation Response

1.1 DCC comments on Retail Code Consolidation: REC v2.0 Schedules

1.1.1. Specific comments on the Interpretations Schedule

Some of the definitions in the Interpretation Schedule will become active with REC v3 as they are terms used in the switching REC schedules. For clarity, it would be helpful if these definitions were highlighted.

Clause 1.3 – we suggest the following change is made for added clarity:

'In this Code, the words ~~preceding~~ "include", "including" ~~and or~~ "in particular" are to be construed without limitation to the generality of the preceding words ~~following these expressions~~.

Clause 2.4 – we suggest Gas is capitalised as it is a defined role; and that 'Provider' more accurately reflects their role:

'Gas Enquiry Service Provider User'

Company Governance Schedule – this definition is duplicated.

CSS User definition – we suggest the following is added to reflect the fact that Switching Data Service Providers will use the CSS but will not Qualify through the REC Qualification process:

'means each organisation which is Qualified to use the CSS Service and each Switching Data Service Provider (other than the CSS Provider).'

Data Controller definition – typo 'defined'.

Data Item definition – word missing 'Data Item Catalogue'.

Data Processor definition – typo 'defined'.

Data Protection Legislation definition – we propose the following changes for added clarity:

'means all applicable privacy and data protection laws in the United Kingdom, including the Data Protection Act 2018; and EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, (which is known as the General Data Protection Regulation), as incorporated into United Kingdom law pursuant to section 3 of the European Union (Withdrawal Act) 2018 (the UK GDPR), and any other law relating to privacy and data protection as a consequence of the United Kingdom leaving the European Union, each as amended, superseded or replaced from time to time it applies in the UK.'

Mandatory definition – we suggest the following wording is added to provide clarity that Non-Party REC Service Users that have entered into an Access Agreement will be obligated to comply with certain schedules:

'means, in respect of a REC Schedule and a Party Category, that compliance with the REC Schedule is mandatory for Parties in that Party Category and/or Non-Party REC Service Users, as further described in Clause 4 of the main body of this Code.'

Metered Data definition – typo 'Exported'.

PAB Secretariat definition – typo ‘REC PAB’.

Party Category definition – Metering Equipment Managers should be added as a party category.

Party Details definition – should Operational Contact (if different from Contract Manager) be added to Party Details?

Prepayment Meter Infrastructure Provider definition – typo ‘the contracted service provider for prepayment services for to support that Energy Supplier’s Prepayment Meters for that fuel.’

Recoverable Costs definition – the reference should be to Clause 9 of the Main Body.

User Entry Process Testing definition – we suggest the following addition is made to clarify that Switching Data Service Providers will not go through UEPT:

‘means the user entry process testing which CSS Users (other than the Switching Data Service Providers) must undertake before they can use the Central Switching Service, as described in the E2E Testing Plan.’

Voluntary definition – can a schedule be voluntary for a Non-Party REC Service User? If so, that clarification should be made in the schedule.

Withdrawal Date and Withdrawal Notice definitions – both of these are used in the Market Exit Schedule; have they intentionally been removed as definitions?

1.1.2. Qualification and Maintenance Schedule

Question 2.1: Do you agree with our proposed approach to information security and data protection assessment under the REC? In particular, do you agree with the requirement for all REC Service Users to notify the Code Manager of a security breach?

Whilst this version of the Qualification and Maintenance schedule has provided more detail on the data protection and information security assessment, DCC continues to have concerns (previously shared with Ofgem) on the proposals to use ‘up-to-date and relevant ICO checklists’ as a tool for compliance. We agree that the ICO’s checklists are a valuable resource in understanding compliance, but the way in which they are positioned in this context is open to misinterpretation and subjectivity.

More clarity should be provided on which ICO checklists are ‘relevant’ in the context of the REC and who decides what is relevant (Code Manager or applicant). Similarly, it’s not clear what is meant by ‘up to date’ in this context.

The schedule is not clear on what is meant by ‘completing’ a ‘checklist’. It is not clear how applicants might ‘evidence’ this because, with a few exceptions, working through checklists does not generate anything material. A ‘yes / no’ response (i.e. ‘yes, we confirm we’ve ‘completed’ a checklist’) tells the Code Manager nothing meaningful about compliance unless it is accompanied by tangible evidence of *how* the applicant judges that they meet the requirements of a particular subject area.

The ICO states the following in relation to its checklists: ‘*Use our checklists to assess your compliance with data protection law and find out what you need to do to make sure you are keeping people’s personal data secure.*’ Checklists are explicitly described as ‘assisting’ organisations with ‘understanding’ and ‘assessing’ compliance with the legislation. They are not badged as providing evidence of compliance, although we

do view them as useful in assessing, planning and building accountability and compliance overall. Simply confirming that an applicant has worked through checklists therefore means little, since they are subjective and may even reveal that an organisation's compliance is low.

The ICO has recently published its 'Accountability Framework'¹ and associated toolkit, including a 'self-assessment'. Adhering to this framework, alongside using checklists, will provide a more complete and thorough overview of data privacy governance as a whole.

We agree that REC Service Users should notify the Code Manager of a security breach. We propose that this requirement is extended to REC Service Providers.

Question 2.2: Do you agree with our proposal to extend entry qualification to new gas MEMs? If not, please explain why.

New gas MEMs will gain access to, and process, Personal Data therefore we agree that they should be subject to the entry qualifications.

Specific comments on the Qualification and Maintenance Schedule

Clause 3.2 – typo in 'Paragaraph'

Clause 4.3 – typo in 'Entry Ass~~essment~~'

Clause 7.2 – this clause states that the Code Manager will provide a report to the applicant outlining the test scenarios they need to test. Reference to these scenarios being defined in the Testing Specification would help provide clarity and ensure consistency with the first sentence of Clause 7.7.

Clause 8.2 a (i) – rather than asking applicants to demonstrate how they 'mitigate information security and data protection risk', we would suggest that applicants demonstrate how they comply with Data Protection Legislation. Demonstrating their compliance with Data Protection Legislation can contain mitigation of information security and data protection risk.

Clause 10.3 – typo 'personal data breaches and incidents to the Code Manager'.

Clause 11.2 – we suggest that the clause is split out and further clarity provided on the detail that will be asked for as part of the Maintenance of Qualification process:

'The Code Manager shall notify the Party or Non-Party REC Service User of the date by which it must submit its Annual Statement, and whether it is required to submit:

- (a) an Information Security and Data Protection Assessment, and, if so, shall provide a description of the scope of such assessment as detailed within the REC Service User Categorisation and Assessment Document;
- (b) a REC Service User Compliance Statement;
- (c) a REC Service User External Assessment; and/or

¹ <https://ico.org.uk/for-organisations/accountability-framework/>

(d) REC Service User Assurance Evidence,

alongside its Annual Statement in accordance with this Paragraph 11, by no later than [30 days] before the submission is due.'

Clause 11.3 – final sentence add: 'REC Service User'.

Above Clause 11.4 - we suggest a sub-heading is added 'Qualified Energy Suppliers and Distribution Network Operators' to assist in splitting up the various REC Service Users' obligations.

Above Clause 11.8 – we suggest a sub-heading is added 'EES Users, GES Users and CSS Users' to assist in splitting up the various REC Service Users' obligations.

We suggest clauses 11.8 and 11.11 are combined as they both contain Maintenance of Qualification requirements for EES, GES and CSS Users.

Clause 12.1 (a) - we suggest the following requirement is added to make sure the Code Manager is made aware of any ICO-notifiable personal data breaches:

'...and whether there have been any security breaches or relevant ICO-notifiable personal data breaches'.

Clause 12.1 (e) – for consistency with the rest of the schedule, we suggest 'ICO notifiable' rather than 'reportable'; and 'data breaches' rather than 'incidents' are used.

Clause 13.1 – for consistency with the rest of the schedule, we suggest 'ICO notifiable' rather than 'reportable'; and 'data breaches' rather than 'incidents' are used.

Specific comments on Appendix 1 - Access Agreement

Clause 7.3 – we suggest the following change is made to link the Access Agreement to the Main Body Data Processor Obligations:

'...To the extent that the User uses its rights under this Access Agreement to process personal data on behalf of a third party (such as an Energy Supplier), the provisions of clause 20 (Data Processor Obligations) of the main body of the Retail Energy Code shall apply on an Equivalent Basis ~~User shall agree processing provisions with such third party.~~

Therefore, if there are any changes to the Main Body obligations, there would not need to be a change made in the Access Agreement.

1.1.3. Specific comments on the Market Exit Schedule

We suggest clause 3.5 is moved to 3.3 for a better flow in the document.

Clause 3.7 - we suggest a line is added to clarify that the Party will have to go through the whole Withdrawal Notice period again:

'If the Party still wishes to withdraw, it must serve another Withdrawal Notice and paragraphs 3.4 to 3.6 will apply.'

1.2. Consequential Changes to Other Codes

1.2.1. Cross Code Steering Group

Question 3.1: Do you agree that the proposed text to embed the Cross-Code Steering Group will enable the intended improvements to cross-code change? If not, please suggest alternative or additional drafting.

We agree that the drafting should facilitate improvements in cross-code change management.

We believe a key consideration in the operation of the CCSG is ensuring that it has access to the relevant subject matter expertise to make decisions. On matters relating to Switching and Smart Metering, DCC's role in providing technical expertise and guidance to the CCSG will be vitally important. We would therefore expect to attend CCSG meetings which are discussing cross-code changes related to Switching and Smart Metering, and that we should not need to rely on a sole representative of the SEC to cover matters relating to the Smart Metering Systems. The nature of the arrangements in the Smart Energy Code are different to those of other codes where code administration and system management are undertaken by the same organisation (for example the BSC). SECAS, the SEC Panel and its sub-groups rely on DCC subject matter expertise on system impacts and we would expect this reliance to be required when also considering cross-code change.

We would welcome early and regular communications with the CCSG to ensure DCC can provide advice in an effective manner.

We recognise in drafting the REC and making consequential changes to other codes that Ofgem has been clear on which services are delivered under which codes. For ease of reference to stakeholders on which service is governed under which code, we suggest the REC Manager and the other code bodies develop a catalogue of services, clearly indicating under which code they are governed.

Currently coordination across code bodies on release management is done on an ad hoc manner and is reliant on individual relationships. We think that the CCSG is an opportunity for code bodies to develop a coordinated cross code release roadmap for the industry. Therefore, we consider that Ofgem should consider expanding the Terms of Reference to make reference to industry releases also being coordinated through the CCSG – with the requirement to develop a release roadmap.

1.3. REC Technical Specification

REC Data Specification

We have no comments regarding the material on which Ofgem has consulted.