



Making a positive difference  
for energy consumers

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Date: 16 April 2021

Dear David,

### **Derogation from requirements of SEC Section H**

This letter sets out the decision of the Gas and Electricity Markets Authority<sup>1</sup> (the "Authority") to grant Smart DCC Ltd ("DCC", the "Licensee"), a temporary and limited derogation from certain elements of Section H of the Smart Energy Code (SEC) that came into effect from February 25 2021, as implemented by SEC Modification Proposal 122A, pursuant to Licence Condition 22.33 of the Smart Meter Communications Licence.

The Authority may provide directions from certain requirements under the SEC to relieve the Licensee from obligations to comply with certain requirements in specific circumstances and to a specified extent. We consider the use of directions only in limited circumstances and carefully consider the implications for a given policy area.

The direction is attached to this letter and will be published on our website. It is effective as per the dates set out in the direction, unless revoked earlier or varied in writing by the Authority. Any change in circumstances relevant to the directions must be reported to the Authority without delay.

This letter constitutes notice, under section 49A of the Electricity Act 1989 and section 38A of the Gas Act 1986, of the reasons for the Authority's decision to issue the attached direction to provide relief from obligations under the Smart Energy Code.

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<sup>1</sup> The terms "the Authority", "Ofgem", "we" and "our" are used interchangeably in this document.

Capitalised terms used in this letter, which are not defined herein, have the meaning given to them in the Smart Meter Communications Licence and Smart Energy Code.

## **SEC Modification Proposals MP122A and MP122B**

SEC MP122 was raised by Western Power Distribution on 24 March 2020. The intention of the modification was for DCC to clearly articulate and accurately measure their performance, implementing the recommendations of the Operational Metrics Review submitted to the SEC Panel in April 2020. Ofgem set out its intention in its March 2020 Working Paper<sup>2</sup> to use a subset of the performance measures developed under this modification in the revised Operational Performance Regime (OPR).

To facilitate the implementation of MP122, two tranches of work were identified and set out in DCC's Preliminary Assessment of MP122, published on September 4 2020<sup>3</sup>. The two tranches separated the costs required to implement the modification requirements using data available to the DCC Technical Operations Centre (TOC), which could be implemented for a February 2021 SEC release; and costs required to implement modification requirements that required "external data" from service providers.

Given the separate costs and timelines associated with the different provisions in MP122, the Proposer, in discussion with DCC over its preliminary assessment, and with verbal agreement with the Working Group, took the decision on 9 September 2020 to split the modification into MP122A and MP122B to prevent delay for MP122A that was needed to implement the revised OPR. As set out in the context of DCC's Full Impact Assessment on MP122A<sup>4</sup>, it requires that DCC facilitate the necessary changes to the DCC system to implement and report on metrics outlined in the Operational Metrics Review, including the four areas targeted by the OPR.

In contrast, provisions of MP122 that would require further discussion and changes to DCC's service provider systems and contracts would be carried forward in MP122B, which would be implemented over a longer time frame, and was initially anticipated for the November 2021 SEC release. MP122B included such provisions as the change in the number of working days by which DCC would be required to produce a report under SEC

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<sup>2</sup> [Operational Performance Regime Working Paper \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/operational-performance-regime-working-paper)

<sup>3</sup> Preliminary Impact Assessment (PIA) – "August 2021 Release":  
<https://smartenergycodecompany.co.uk/download/24460>

<sup>4</sup> Resubmitted Full Impact Assessment (FIA) – February 2021 Release:  
<https://smartenergycodecompany.co.uk/download/28178>

sec. H13.4; more granular reporting on Alerts under code performance measure 3 and for Incident Categories 3, 4 and 5, relating to code performance measure 5 and 5A; as well as code performance measures 6B and 6C, relating to firmware management.

On 27 October 2020, the Authority adopted its decision to approve MP122A, bringing into effect from 25 February the amended legal text of Section H of the SEC. This legal text covered both provisions from the approved MP122A and from MP122B, on which a decision is now expected to be adopted in November 2022. During the Working Group discussions, it was understood that a derogation would be required to cover the MP122B requirements of the legal text until discussions on 122B had concluded, as well as a shorter derogation against the requirement to produce a Performance Indicators report to April 2021 to allow sufficient time for implementation.

### **Background to the direction request**

The Authority received a written application from DCC on 19 February for a derogation from various elements of SEC Section H13 that came into effect from 25 February 2021.

DCC made this application as, despite DCC proposing the use of TOC data to the SEC committees as a potential reporting solution, DCC have since concluded that this data cannot fulfil all the reporting requirements under SEC Section H13.1 and H13.1A.

DCC states this is because TOC data shows end-to end performance, including both DCC and energy supplier performance that cannot be disaggregated. DCC also emphasised that they are unable to use the TOC reports as a recognised trigger to take action with their service providers, following any drop in performance, as they do not form part of their contractual performance agreements. Nevertheless, DCC state that the TOC data will be useful in isolating why some parties do not get the level of performance they are expecting, and to act as a catalyst for further investigation and improvement. DCC note that the TOC data, that will be used to fulfil DCC's reporting obligation to produce a report on Performance Indicators under Section H13.5A, can only be delivered by the end of April 2021.

DCC underlined that its derogation request assumes that Ofgem recognises that the performance levels associated with Code Performance Measures 5, 5A, 6, 6A, 6B, 6C, as set out in Section H13.1, and all the new disaggregated Service Reference Variants (SRVs), in Section H13.1A, cannot be met until such time as DCC have negotiated with

its service providers to accept new liability for these performance levels. These contract changes would have a lead time of up to 12 months, in accordance with the discussions of MP122B.

DCC also highlighted their view that, as a principle, at the end of the OPR's grace period, DCC will not be incentivised on Code Performance Measures that cannot be delivered contractually. DCC stated that the incentive regime that seeks to incentivise performance delivered by DCC's external service providers must match DCC's contractual provisions.

Given the above context, DCC has requested derogations from the following provisions in the SEC:

- Requirement to provide a report on Performance Indicators until the TOC data is available end of April 2021, section H13.5A and H13.5B
- Requirement to report Code Performance Measure 6 by region, section H13.1
- Requirement to report on aspects of Code Performance Measure 6A where regional or meter type disaggregation is not possible or relevant, section H13.1 and H13.1A
- Requirement to report on Service Request Variant 11.1 on Update Device Firmware, section H13.1A
- Requirement to report Code Performance Measure 6B on firmware images successfully delivered to communication hub, section H13.1
- Requirement to produce the Performance Measurement Report (PMR) in 10 working days rather than 25 working days, as set out in section H13.4

### **The Authority's decision**

Based on the information provided by the Licensee, and having regard to our principle objective and statutory duties, we have decided:

- to issue a short-term derogation until 30 April 2021 against the requirement to provide a report on Performance Indicators under Section H13.5 of the SEC.
- to issue a longer-term derogation against the requirements of MP122B effective until 30 November 2022.
- to request DCC to produce a plan setting out how they intend to comply with their reporting obligations under Section H13.4 to report on the OPR measures, namely

Code Performance Measure 6 (service availability) and Code Performance Measure 6A (prepayment, install and commission). We expect this plan to be finalised by the end of April 2021.

We have set out in Schedule 1 how the individual SEC provisions map onto the above approach. Our decision is based on the following reasons:

- MP122A set out the requirement for DCC to produce a report on Performance Indicators under Section H13.5. DCC have set out a clear timeline to comply with this requirement to produce the first report by the end of April 2021. We understand SEC Panel has endorsed this approach and timeline for delivery. As such, we consider it appropriate to issue a derogation against Section 13.5 until 30 April 2021.
- Some of the requirements covered by the scope of MP122B were set out in the legal text that came into effect with the implementation of MP122A. Namely, provisions around firmware management - covered by Code Performance Measure 6B and 6C and SRV 11.1 - as well as the timing to produce the PMR in 10 working days. The discussions on MP122B are expected to be completed in November 2022. As these discussions are ongoing, we consider it appropriate to issue a derogation against these provisions until the Authority adopts its decision on MP122B, at which point DCC will need to implement and comply with these legal requirements.
- MP122A also set out reporting obligations for DCC on an amended Code Performance Measure 6 (service availability) and various business processes under Code Performance Measure 6A. The SRVs used in reporting for Code Performance Measure 6A are set out under Section H13.1A, and a subset of these - prepayment, install and commission – will be used for the OPR alongside service availability. We consider that DCC could fulfil its reporting obligation against the Code Performance Measures using service provider, TOC data or other reporting arrangements.
- At the time of consulting on the OPR Guidance<sup>5</sup>, we expected DCC to report against the OPR measures using the TOC data. This solution built on the work of the SEC Operations Group throughout 2020, in which DCC was fully engaged, and

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<sup>5</sup> [OPR Guidance Consultation January 2021 | Ofgem](#)

could be implemented for a February 2021 SEC release. This approach was set out in the context of DCC's Full Impact Assessment on MP122A, which required that DCC facilitate the necessary changes to the DCC system to implement and report on metrics outlined in the Operational Metrics Review, including the four areas targeted by the OPR. We understood that this would require DCC to establish exclusions to ensure the TOC data captured DCC-only performance, and expected DCC to consult on the Performance Measurement Methodology with industry to determine this approach.

- We are disappointed that DCC now states it cannot isolate DCC-only performance from the TOC data for the OPR, as originally envisaged during the SEC working group discussions. It is important that the reported performance levels under the OPR capture DCC-only performance and are not affected by the performance of other parties in the ecosystem. The aim of the incentive is to ensure DCC takes appropriate action to remedy issues in performance for which it is directly accountable.
- As the Code Performance Measures to be used in the OPR were in the scope of MP122A, and as DCC only identified it would not be able to comply with their reporting obligations late in the implementation process, we do not consider it appropriate to provide DCC with a derogation against these provisions. As DCC is non-compliant with these reporting obligations, as a first step we request DCC to submit a final plan by end of April 2021 with clear milestones and timeframes demonstrating how they will come into compliance within the 12 month grace period set out in our decision on the OPR Guidance<sup>6</sup>. Over the course of the grace period we will monitor DCC's progress to secure compliance against their obligations in the SEC. If DCC do not demonstrate sufficient progress towards this plan we may consider taking further action during the grace period in accordance with our Enforcement Guidelines<sup>7</sup>.
- We expect DCC to make every effort to implement the OPR over the 12 month grace period. If DCC is not in a position to report on these new measures for RY22/23, we have set out in the OPR Guidance that for any month that DCC is unable to report a value for its performance, performance for that month will be scored as zero. This means that in the case DCC is still unable to deliver a

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<sup>6</sup> [Decision on OPR Guidance March 2021 | Ofgem](#)

<sup>7</sup> Ofgem Enforcement Guidelines: <https://www.ofgem.gov.uk/publications-and-updates/enforcement-guidelines>

reporting solution for system performance in RY22/23, the default position is that DCC will lose all margin attached to those measures. We will make this determination as part of our price control decision for RY22/23, and as such we will take into account the wider context, including events outside of DCC's control, when making this decision.

- We note that DCC states that the OPR incentives must match DCC's service provider contracts. We consider contractual change to be one of several levers that DCC can use to improve its performance to achieve the service levels set out in the SEC and OPR Guidance. We encourage DCC to explore all options with its customers to identify improvements to service levels that represent value for money, which may not necessarily involve contract change. We note that the OPR framework as set out in the Licence, Direction and the OPR Guidance is independent from the service provider measures set out in DCC's contracts.
- Code Performance Measure 6, as set out in the SEC, requires DCC to provide regional reporting against each interface. The original intent of the OPR, as set out in our May consultation, was for service availability to be measured regionally. However, currently only regional reporting is available for the DCC User Interface, as such service availability is not to be broken down by region for the OPR. Nevertheless, we would like DCC to explore how regional reporting could be implemented for service availability under the OPR in future years. As this does not form part of the discussions around MP122B, we request DCC to consider regional reporting during the grace period.
- DCC set out which SRVs from Section H13.1A are not applicable to SMETS1. We found that this list was consistent with what is set out as SMETS1 applicable in the amended SEC legal text, and therefore do not consider any derogation or other action is required. If DCC identifies any further factual inaccuracies, we recommend DCC should bring this to the attention of SECAS.

Under this direction, DCC must inform the Authority without delay of any changes in circumstances that are relevant to the decision to grant this derogation.

If you have any questions about this decision, please contact the Smart Metering team, at [Smartmetering@ofgem.gov.uk](mailto:Smartmetering@ofgem.gov.uk).

Yours sincerely,

**Jacqui Russell**

**Head of Smart Metering**

**Signed on behalf of the Authority and authorised for that purpose**

**The Office of Gas and Electricity Markets**

10 South Colonnade, Canary Wharf, London, E14 4PU Tel 020 7901 7000

[www.ofgem.gov.uk](http://www.ofgem.gov.uk)



## **Attachment 1: Smart Metering Communications Licence**

The Data Communications Company  
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42-47 Minories  
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### **Direction issued by the Gas and Electricity Markets Authority under Licence Condition 22.33 of the Smart Meter Communications Licence granted under sections 7AB(2) and (4) of the Gas Act 1986 and sections 6(1A) and (1C) of the Electricity Act 1989 to Smart DCC Ltd**

To: Smart DCC Ltd ("the Licensee")

1. The Authority issues this temporary direction pursuant to Licence Condition 22.33 ("LC22.33") of the Smart Meter Communications Licence ("the Licence") granted under sections 7AB(2) and (4) of the Gas Act 1986 and sections 6(1A) and (1C) of the Electricity Act 1989 to the Licensee.
2. Capitalised terms used in this Direction which are not defined in this Direction shall have the meaning given to them in the Licence.
3. LC22.33 provides that the Authority may, after consulting with the Licensee and, where appropriate, any other person likely to be materially affected, give a direction relieving the Licensee of any one or more of its obligations under the Smart Energy Code ("SEC") to such extent, for such period of time, and subject to such conditions as the Authority may direct.
4. The considerations and rationale of the Authority's decision are set out in the accompanying letter to the Licensee, dated 16 April 2021.
5. The Authority directs that the Licensee is relieved of its obligations to comply with Section H13.5A and H13.5B of the SEC until 30 April 2021.
6. The Authority directs the Licensee is relieved of its obligations regarding Code Performance Measure 6B and 6C as set out in Section H13.1 of the SEC, and Service

Reference Variant 11.1, as set out in Section H13.1A of the SEC, until 30 November 2022.

7. The Authority directs that, subject to the condition set out below, the Licensee is relieved of its obligations to comply with the requirement to produce a report setting out the Service Levels achieved in respect of each Performance Measure within 10 Working Days following the end of each Performance Measurement Period, as set out in SEC Section H13.4. This Derogation will remain in force until 30 November 2022.
8. The Licensee may only rely on the derogation if it produces a report setting out the Service Levels achieved in respect of each Performance Measure within 25 Working Days following the end of each Performance Measurement Period.
9. This Direction shall take effect on and from 16 April 2021 and shall remain in force until the expiry dates set out above, unless it is revoked earlier or varied in writing by the Authority.

Dated: 16 April 2021

**Jacqui Russell**

**Head of Smart Metering**

Signed on behalf of the Authority and authorised for that purpose

## Schedule 1 – Derogations from section H of the Smart Energy Code

<b>SEC provision</b>	<b>Derogation approach</b>
Section H13.1 – code performance measures 6 (service availability) and 6A (install & commission; prepayment) and respective SRVs as set out in Section H13.1A	DCC must submit a plan by April 2021 with clear milestones and timeframes demonstrating how they will come into compliance within the 12 month grace period set out in our decision on the OPR Guidance
Section H13.1 Code performance measure 6B & 6C (firmware management)	This Derogation will remain in force until 30 November 2022
Section H13.1A – SRV 11.1 Update Firmware	This Derogation will remain in force until 30 November 2022.
Section H13.4 – produce a report setting out the Service Levels achieved in respect of each Performance Measure within 10 Working Days following the end of each Performance Measurement Period	This Derogation will remain in force until 30 November 2022.  This is subject to the condition that DCC produces a report within 25 working days
Section H13.5A & B – report on performance indicators, and relevant SRVs in Section H13.1A	Derogation until 30 April 2021