

Ofgem Consultation – Switching Programme: Regulation and Governance – way forward and statutory consultation on licence modifications

Executive Summary

Licence conditions

We support the introduction of a licence condition to cooperate with the planning, assurance and systems integration required to conclude a Significant Code Review. We think this is reasonable and will endeavour to engage the correct level of co-operation from industry parties to deliver changes sought by the Authority.

The Retail Energy Code

We acknowledge the vast amount of work that has gone into the drafting of the Retail Energy Code (REC) thus far and are mindful that, as development of REC V2.0 and REC V3.0 progresses, there will be amendments made to the drafting of the Schedules overall. However, as part of our assessment of the content of this statutory consultation, we have created Appendix 1 to outline our recommendations for the legal drafting that we believe should be considered as part of this review.

There are definitions used in certain Schedules which are not contained within the Interpretation Schedule. In addition, there are some terms contained within the Schedule which do not contain a clear definition but instead signpost to another defined term or to another Schedule; we do not believe this is user friendly. Our recommendation for an Interpretation Schedule is that it should be a comprehensive list of defined terms that is easy to navigate and includes a clear and simple definition of each term. We envisage that this could also support the delivery of the digitalisation of the REC.

We would like to request that, as part of the current drafting of Schedules, Ofgem is mindful of change proposals that are currently being progressed within the industry. For example, there has been a vast amount of work done at the MRA and SPAA on the Debt Assignment Protocol which we do not believe has been reflected in the proposed drafting of the REC Schedule. Likewise, there have been several change proposals relating to the Erroneous Transfers Schedules in the respective codes, and which we would anticipate seeing in the drafting of the REC Erroneous Transfers Schedule.

We would also like to highlight the work currently being undertaken by the Secure Communications Work Group to ensure that the personally identifiable customer information sent between suppliers whilst resolving escalations is sent in a secure and safe manner. We would ask that Ofgem takes this work into account in the development of the REC.

Overall, we believe the drafting of the Schedules to be in line with the Regulatory Design Principles; however, we believe there is a lot of legal jargon used which does not make it easy to understand. We would suggest that a review of the drafting should be undertaken to ensure it is in clear and simple language so that colleagues in the operational parts of businesses whose processes are directly impacted by the REC can understand what it means to them. If not, there could be a risk of misunderstanding or misinterpretations of the requirements. In addition, we would welcome the proposed approach that further industry work groups are established to support on the implementation of the REC.

Performance Assurance Board

We believe the idea of introducing a Performance Assurance Board (PAB) is positive and would be beneficial in ensuring compliance of parties to the code. However, we would request that learnings are taken from the establishment of the Performance Assurance Committee (PAC) under the UNC and the PAB under the BSC, as well as the Erroneous Transfers PAB. In addition, we would request that the various PABs work together in the event that a Party has been non-compliant, for example, in more than one code. It would seem unreasonable for the party to be held to account by two separate PABs, and effectively held to account twice for the same issue.

Consultation Questions

Our responses to the consultation questions are provided below.

Chapter 4

Question 4.1: We would welcome views on whether Ofgem should have an ongoing role in ratifying RECCo Board appointments after the appointment of the first board.

Potentially it may be a good idea for Ofgem to have an enduring role in ratifying RECCo Board appointments. This option may be useful in providing some oversight of the nominations process and to ensure it is working adequately to deliver the right sort of candidate to meet the objectives of the REC.

To avoid this becoming an overly administrative burden on the process it might be valid to maintain the right for Ofgem to veto an appointment rather than to require an affirmative ratification of every member.

Question 4.2: We would also welcome views on whether the REC parties should have a role in ratifying the first and/or subsequent boards.

Yes, a key risk of the proposed arrangements is that the governance bodies could become disenfranchised from the industry organisations that are signatories to the REC. Encouraging REC party engagement in the Board member appointment process will help prevent this and facilitate dialogue between the individuals on the Board and the organisations using the services provided by the governance arrangements.

Question 4.3: Do you agree that the REC should place less reliance on face to face industry meetings for modification development and instead empower the REC Manager to develop and analyse proposals, procuring expert support as and where required?

No, the support and engagement of organisations governed by the REC in the change process is critical in meeting the objects of good regulatory practice.

A process which lacks transparency, consultation and engagement would not be welcome and risk future potential legal challenges. This would not be in the interests of developing a change mechanism that meets the objectives of being efficient, nor in the best interests of consumers and the energy market.

The idea of getting the REC Manager to carry out more work in the change process, undertaking rigorous analysis on change and potentially engaging relevant experts where needed, are all sound ideas but these should not be at the expense of engagement with REC parties.

The reference to face to face meetings is somewhat misleading. Meetings can be facilitated using technology to make them more productive and easier to engage with. What is critical is that the meetings are chaired effectively and that filibustering and unnecessary delays are avoided. The REC Manager could provide a useful role in ensuring that best use is made of time during meetings and that all views are properly represented.

Clear expectations of the role need to be set out, and the REC Manager needs to be held to account to deliver.

Question 4.4: Do you consider that a recommendation to the Authority should be made by the RECCo Change Panel, with reference to the REC relevant objectives, or based on a vote of REC parties?

The recommendation to the Authority on a change to the REC should be made by the REC Change Panel based on a vote of all REC parties.

The driver for having a recommendation to the Authority on a change is linked to the rights of appeal on the ultimate decision by a REC party. It is also useful in providing clarity to Ofgem as to what REC parties views are regarding a change.

The numbers of modifications and changes to industry codes number into the many hundreds per year. It is difficult for individual industry parties to engage with such a high volume of change and therefore a mechanism that allows this to be undertaken as easily and simply as possible should be provided by the REC. A simple voting mechanism provides for this outcome and does not require parties to spend significant time articulating why they believe relevant REC objectives are met or not by a specific change.

The final modification report on a change should include an assessment of what relevant objectives it meets. Views on this can be derived via the consultation and assessment phases of the change and articulated in the change documentation that both parties and Ofgem will have access to. The documentation of these views is something that we would envisage the REC Manager being tasked with.

How well these objectives have been articulated and whether REC parties agree with these assessments will be clear from the way in which they vote on an individual change.

Question 4.5: Do you, in principle, support the approach to performance assurance outlined?

Yes, this seems a reasonable approach based upon the tried and tested methods applied in existing industry codes.

It is recommended that learnings are taken from current industry Performance Assurance Frameworks. As an example, timely reporting is a key issue along with 'self-reporting'. Centralised reporting would be recommended as it would remove any potential differences in interpretation and reporting. This is even more relevant if the reporting results in financial motivation or charges on the industry parties.

Chapter 5

Question 5.1: Would you support the development of a REC digitalisation strategy?

Yes, recent developments in the financial services sector have shown that there are options for the improvement of regulatory documentation. This should make it easier for REC parties and others to engage with and understand regulations and industry processes, ensuring that consumers ultimately receive a better experience from the energy sector.

While we support a fully digitalised code, we would like to raise a risk regarding any tailoring to specific business models or search criteria. Searching for key words or elements of a process could narrow down a search too much and not provide all code clauses and/or other related code governance documents.

Question 5.2: Do you agree that the draft Registration Services Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Broadly, we believe this draft of the Registration Services Schedule does meet the Design Principles as it is understood today, however we acknowledge that once the Central Switching Service (CSS) is procured, further development of this schedule will be required, notwithstanding changes for existing service providers. In Appendix 1 of this response we have provided specific issues we would like to raise concerning the drafting of this Schedule and elements that we believe may need reviewing.

Question 5.3: Do you agree that the draft Address Management Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Broadly, we believe this draft of the Address Management Schedule does meet the Design Principles as it is understood today, however we acknowledge that once the CSS is procured, further development of this schedule will be required. In Appendix 1 of this response we have provided specific issues we would like to raise concerning the drafting of this Schedule and elements that we believe may need reviewing.

Question 5.4: Do you agree that the draft Data Management Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Broadly, we believe this draft of the Data Management Schedule does meet the Design Principles as it is understood today, however we acknowledge that once the CSS is procured and the Technical Specification is drafted, further development of this schedule will be required. In Appendix 1 of this response we have provided specific issues we would like to raise concerning the drafting of this Schedule and elements that we believe may need reviewing.

Question 5.5: Do you agree that the draft Interpretations Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Broadly, we believe this draft of the Interpretations Schedule does meet the Design Principles as it is understood today, however we believe further development will need to be carried out on the defined terms as there are several terms that are used within the Schedules that are not in the Schedule which we believe need to be. In Appendix 1 of this response we have provided specific

issues we would like to raise concerning the drafting of this Schedule and elements that we believe may need reviewing.

Question 5.6: Do you agree that the draft Entry Assessment and Qualification Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Broadly, we believe this draft of the Entry Assessment and Qualification Schedule does meet the Design Principles overall, however we believe there is a conflict of information between what is contained in Section 4 of this Schedule and Paragraph 3.6 of The Retail Energy Code regarding the appeals process and who appeals can be made to. In Appendix 1 of this response we have provided specific issues we recommend the drafting of this Schedule be revised.

Question 5.7: Do you agree with our proposals that:

- ***PAB, as part of its role in mitigating risk to consumers and the market, should provide information to the REC Manager on the specific risks that it wants to be mitigated and assured against through Entry Assessment and Re-Qualification;***

Yes, the accountability for the delivery of the entry assessment and qualification activity should be undertaken by the REC Manager but they may not be best placed to fully understand all the risks that are relevant to the market.

This information is likely to be distributed amongst the various participants in the market. The PAB, which should be made up of individuals with knowledge of these market risks, is therefore well placed to help advise the REC Manager, and therefore we support the suggestion within the consultation that they work together to ensure that the process functions in an optimal way.

- ***The Code Manager should have clear obligations to support the Applicant and coordinate with other code managers;***

Yes, co-ordination of activity in this area will be crucial to ensure that parties do not incur unnecessary costs and delays to their business operations whilst they undergo entry and qualification assessment.

As a principle, it is useful to require the REC Manager to provide some support to an applicant REC party. However, there should be limitations to this to ensure they do not provide excessive consultancy activity for parties. Without limitations there is a potential risk that costs for this part of the REC Manager's service might be excessive and be an unnecessary cost for industry and consumers. It is better that this type of service is provided by the market where a thriving commercial service already exists.

- ***Suppliers that undertake a material change to their systems, processes or people should undertake Re-Qualification?***

Yes, it is a reasonable request that suppliers should undertake requalification ensuring that they provide a resilient service that is in the interests of the market and all consumers.

As with the performance assurance regime currently used in the Balancing and Settlement Code (BSC), the greatest challenge is with defining what constitutes a material change. This would need to be clear and prescriptive to avoid interpretation issues and would need to be further developed in line with the current drafting of the defined term. Furthermore, it would be useful if the REC

Manager could provide some detailed guidance and examples for the industry as to what constitutes a material change as one of their required activities.

Re-Qualification should also occur subsequent to change of ownership of a REC party. For example, in the energy supply market there are organisations that offer a 'supplier in a box' model; when a supplier takes ownership of such a model they should be required to undertake Re-Qualification in order to ensure the new owner has a full understanding of its REC obligations.

Question 5.8: Do you think that PAB and the REC Manager should work with service providers to identify and mitigate risks associated with material changes to their systems, processes or people?

Having the PAB and the REC Manager involved in the assessment of any material changes to the Switching Operator service providers is, in principle, a good idea. However, the PAB must remain impartial should the Appeals Process be triggered.

Transparency for the market and involvement by the independent REC Manager in significant changes within the service should help mitigate any risks and also encourage a collaborative working arrangement.

Question 5.9: Do you agree that the draft Service Management Schedule meets the required standards set out in the Regulatory Design Principles including whether we have set out clear and workable roles and responsibilities for Market Participants, service providers and the Switching Operator that will support the effective operation of the new switching arrangements? If not, please describe how you think it should be improved?

Broadly, we believe this draft of the Service Management Schedule does meet the Design Principles as it reads today; however, we acknowledge that once the CSS is procured, further development of this schedule will be required and the roles and responsibilities may change. We anticipate seeing more information on this throughout development, but in Appendix 1 we have provided details of specific issues regarding the drafting of this Schedule and elements that we believe may need reviewing.

Question 5.10: We also welcome views on the draft service levels set out in Appendix B of the draft Service Management Schedule.

In Appendix 1 we have provided details of specific issues regarding the drafting of this Schedule and elements that we believe may need reviewing.

Question 5.11: Do you agree that the draft Switch Meter Reading Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Broadly, we believe this draft of the Switch Meter Reading Schedule does meet the Design Principles as it is understood today; however, we acknowledge that further development of this schedule may be required. In Appendix 1 we have provided details of specific issues concerning the drafting of this Schedule and elements that we believe may need reviewing.

Question 5.12: We welcome views on whether we should retain or amend the remit of the proposed Switch Meter Reading Exception Schedule beyond domestic consumers and electricity NHH consumers.

We believe it would be beneficial to extend the remit of the Switch Meter Reading Exceptions Schedule to include non-domestic consumers as this will ensure there is a consistent approach for

consumer type as well as fuel type. In Appendix 1 we have provided details of specific issues concerning the drafting of this Schedule and elements that we believe may need reviewing.

Question 5.13: Do you agree that we should move any requirements to obtain and process meter reads for settlement purposes into the BSC and UNC?

Yes. This would make a clear demarcation in responsibilities between the retail customer switching-focused REC and the settlement orientated UNC and BSC codes, and will provide clarity to parties as to where regulations are located. This should make interpretation, understanding and compliance by industry parties more straightforward and help make any future changes easier to facilitate.

However, a result of keeping settlement separate means there could be a higher risk of imbalance to each supplier if the underlying processes between the two codes are not aligned. We advocate that there are synergies between readings used for certain industry processes, for example Change of Supplier, that should also be used within settlements.

Question 5.14: We welcome views on whether the Switching Meter Reading Exception Schedule should make specific provisions for consumers with smart gas meters.

We do not believe that the REC should make specific provisions for gas smart meters to ensure there is alignment for both fuels.

Question 5.15: Do you agree that the draft Debt Assignment Protocol Schedule meets the required standards set out in the Regulatory Design Principles? If not, please describe how you think it should be improved?

Broadly, we believe this draft of the Debt Assignment Protocol Schedule does meet the Design Principles as it reads today, however we acknowledge that once the CSS is procured, further development of this schedule will be required. In addition, in respect of Appendix B, we do not believe the Invoicing Process is included in this draft. However, we anticipate this will be included in a future version. In Appendix 1 we have provided details of specific issues concerning the drafting of this Schedule and elements that we believe may need reviewing.

Question 5.16: Do you agree that the REC should refer to existing security standards rather than develop separate and bespoke ones?

Yes, excessive and potentially overlapping requirements for security standards risks creating excessive costs for all industry parties. It is difficult to justify these costs, considering the risks presented by the switching services and the REC. Therefore, the proposals outlined in the consultation seem reasonable and we are supportive of the suggestion.

Question 5.17: Do you agree that a consolidated PPM Schedule should be developed and given effect as part of REC v2.0?

Yes, we agree that a consolidated PPM Schedule would be beneficial as all the relevant information will be contained in the same place; this would be more user-friendly for parties.

Chapter 6

Question 6.1: What do you think are the pros and cons of Model A and Model B and which do you think we should use to develop an Exceptions Schedule in the REC?

A benefit of Model A is that it is less prescriptive which could allow for greater innovation. However, a key risk is that without clearly defined performance measures it could be open to ambiguity and lead to inconsistent treatment of consumers.

Model B would be our preferred option as it would provide clearly defined performance measures that all parties would have to adhere to. Prescriptive targets can then be reviewed and revised via the PAB, allowing for ongoing improvements in the market and ensuring all parties are monitored and targeted consistently.

A risk with both Models is that by setting a minimum standard, parties may aim only to meet those standards rather than exceed them, thus the benefit of overall improvements in the market could be lost.

Question 6.2: Do you agree that the theft of gas and electricity provisions should be moved to the REC?

Yes, the current split of governance of theft prevention and detection activities between the DCUSA and SPAA is not ideal. The industry has developed mechanisms to manage this but these do present administrative costs and challenges.

If the gas theft arrangements are migrated to the REC from the SPAA and the electricity ones are left in the DCUSA the current inefficiencies would continue. It would be better to migrate all energy theft related activities to the REC as part of the Significant Code Review (SCR) proposed for the rationalisation of codes and the implementation of REC v3.0.

This would provide the opportunity to use the project resource and powers from the SCR and ensure the activity is undertaken in an efficient manner.

Having all theft related regulations contained within a single schedule to the REC will also make it easier for parties to understand what is expected from them.

Question 6.3: Do you agree that the REC Manager should undertake the (re)procurement of any services due to commence at or after REC v2.0 implementation?

Yes, SPAA and MRA will need to have started their re-procurement activity for all of their current substantive commercial contracts by the time REC v2.0 is due to commence. These contracts include the provision of services that are vital to the successful operation of the energy markets, including ECOES and TRAS.

The orderly and managed transition of the services that the existing codes provide will be a key component of the proposed complementary REC v3.0 SCR. Active oversight by Ofgem will be vital to ensure that the new REC Manager and RECCo Board work in a co-ordinated way with the existing SPAACo, MRASCo and DCUSA Boards and code administrators.

A comprehensive project plan needs to be developed to manage the transition. This should include the migration and re-procurement of all enduring services to remove the risk of a hiatus in services that the industry depends upon to function.

Options should be considered to motivate the current SPAA and MRA code administrators to engage with and help deliver the transition to the new REC and the REC Manager, as their support will be vital in making the process a success.

SPAA has already implemented contingency arrangements with the current code administrator to ensure that they will continue to provide administrative services up until the point the code

provisions are transferred to the REC and the supporting company is closed down. Consideration of how best the transition of services from SPAA and the MRA could be undertaken should be one of the first tasks for the complementary REC 3.0 SCR.

There are many options that could be assessed to reduce the risk of the process, such as the direct novation of contracts or, potentially, the RECCo acquiring SPAACo and MRASCo and operating them as subsidiary companies.

We note in the consultation that it is proposed that the development of the Market Intelligence Service (MIS) should remain outside of the Ofgem faster switching programme. We agree that this is a sensible option for the faster switching programme as it is not part of the implementation of the CSS and Switching Operator services.

However, the future of the ECOES service will need to be considered in the next few years as the current contract with the existing service provider comes to an end. What the scope and future of the ECOES service looks like is therefore something that the new REC Manager will need to consider and this should take into consideration developments within the MIS. This complexity should be factored into the MRA transition to the REC and be included within the complementary REC v3.0 SCR process.

Question 6.4: Do you support the establishment of an industry-wide data catalogue that all code bodies incorporate by reference into their own codes and collaborate on the maintenance of?

Yes, the idea of having a single data catalogue for electricity and gas would be a positive development for the energy market. It should facilitate easier understanding and engagement by industry parties and reduce overall costs to the industry from administrative management.

Consideration should be given to combining certain types of flow, for example, for agent appointments or metering. The data items in these flows are very similar, and minimal changes would be required by parties to facilitate processing of certain flow types. In this way the flow catalogue would be smaller and bring efficiencies between gas and electricity.

Question 6.5: Do you think that the REC should have the responsibility of hosting the industry-wide data catalogue?

Yes, as a dual fuel code that all licenced network companies and suppliers would be obliged to be signatories to, the REC would be ideally placed to be the governance home for an industry wide data catalogue.

Question 6.6: Do you think that an industry-wide data catalogue should be developed for REC v2.0 (to enable REC CSS messages to be incorporated from day 1) or should consolidation be undertaken as part of REC v3.0?

This could be undertaken in a phased approach with the initial development being the establishment of the new catalogue for CSS messages. This aspect of the new data catalogue is subject to the greatest time pressures as it is linked with the CSS implementation. It would be prudent to de-risk this aspect by uncoupling the transition of the existing industry data catalogues and allowing them to move at their own timescales.

It does not seem a particularly challenging exercise to migrate the existing data catalogues, therefore we would expect to see this happen quickly after the initial CSS data catalogue is introduced.

Question 6.7: Subject to further development, assessment and consultation, would you in principle support aligning the gas and electricity metering codes of practice under common governance?

Yes, rationalisation of industry codes was something that the CMA highlighted would be beneficial for the energy market; the inclusion of the MAMCoP and MACOPA into the REC could help facilitate this goal. Codes of Practice in the BSC, for example, could also be considered.

Question 6.8: If yes, do you consider that the REC would be a suitable vehicle for such common governance?

Yes, metering is the primary responsibility of energy suppliers but also has direct consumer impacts and affects other market participants such as network operators and meter asset providers. The REC will bring together all these parties and therefore it would seem a logical place for these codes of practice to be managed.

Question 6.9: Do you consider that the SMICoP should be incorporated into an industry code, and if so, do you agree that this should be the REC?

Yes, the justification for the inclusion of SMICoP is similar that for the other metering codes of practice and therefore would be a logical inclusion for REC v3.0.

Chapter 7

Question 7.1: Do you agree with the five incentivised milestones identified? Do you think any milestone should be given greater importance and therefore a larger proportion of margin placed at risk?

The proposed incentive milestones for the DCC all seem logical.

There may be a case for considering some of the sub-milestones within the plan for inclusion in this process. These may help drive the right behaviours in delivering some of the critical outputs that non-DCC parties need to ensure they can deliver the changes they need to make to their own systems and processes.

There is logic in weighting the Transition Stage 2 Exit milestone more highly than the others to ensure that there is an incentive on the DCC to drive the programme forward to implementation.

Question 7.2: Do you agree with our proposals for the shape of the margin loss curves. Do you have any suggestions for other margin loss curves which may better incentivise DCC to achieve its milestones in a timely manner while encouraging quality?

Yes, the proposed curve seems reasonable in encouraging a timely and quality delivery by the DCC.

Question 7.3: Do you agree with our proposal for a potential recovery mechanism? Please give reasons. What types of criteria could be considered for demonstrating clear, transparent communication and what portion of lost margin should be available to be recovered?

Yes, a recovery mechanism controlled by Ofgem is a good approach to take and should make DCC approach the programme and its stakeholders with the right set of behaviours.

The proposed portion of lost margin that would be recoverable, potentially up to 50%, might seem generous; however, from experience from the smart metering programme it is important from a

stakeholder perspective that the DCC provides a good overall service and not one that is motivated simply to achieve a series of project milestones for a regulator.

The criteria for clear and transparent communication may be a little arbitrary. The idea of engaging with stakeholders is good, but it may be better to use a more rounded measure of customer satisfaction. There are a number of industry-recognised approaches to measuring customer satisfaction, such as Net Promoter Score (NPS), and it would be our preference for one of these to be used. Parties' impressions of DCC performance could be obtained through surveys, and a target level could be set for the DCC to achieve. This would have the advantage of incentivising the DCC to think more broadly with regards to its engagement with industry parties and not just about how it could achieve the specific milestone targets that Ofgem has set for it.

Question 7.4: Do you agree with our proposals for a discretionary reward where it can be demonstrated that DCC has gone above and beyond established requirements for REL Address matching? Please give reasons.

In theory this sounds a useful idea and one that should see the DCC strive to deliver a good service rather than one that is simply adequate. The challenge will be determining what this looks like for something as nebulous and vague as property addresses.

If it proves successful in this instance it could be used in the future to incentivise the delivery of outcomes by the DCC, and therefore would be a useful test case.

Chapter 8

Question 8.1: Do you agree with the proposed collaborative approach to consultation and modification report production?

Yes, this is a welcome development by Ofgem. It should ensure that the consequential changes to the various industry codes, that are critical to implement the REC, happen in a co-ordinated and efficient manner. This should reduce the burden for industry parties in assessing the change proposals and ensure that the relevant legal text for changes is accurate.

Question 8.2: Would you in principle support REC v3.0 code consolidation being progressed as a SCR separate to, but run in parallel with, the Switching Programme SCR?

Yes, the use of the SCR process and the central oversight of the implementation of the goals for REC v3.0 by Ofgem are vital in ensuring that it will be a success and be delivered on time.

The scope, objectives and timescales for the two SCRs are different; we believe this justifies them not being combined. A single SCR would suffer from competing priorities and it is very likely that the switching reforms would take priority and risk REC v3.0 not being delivered.

There would be overlaps between the two SCRs, but with good planning and project management these dependencies should be possible to manage and any risks could be mitigated.