

Consultation

The Retail Energy Code – proposals for version 1.1

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The Retail Energy Code (REC) will govern the new, faster and more reliable switching arrangements, as well as bringing together and updating the governance of existing gas and electricity retail arrangements as part of the Retail Code Consolidation (RCC) Significant Code Review (SCR). The bulk of the new governance arrangements will come into effect in September 2021, while the new switching arrangements will form a further release mid-2022.

In preparation for those new governance arrangements, there are a number of changes which we propose to make to the interim document, which would be given effect as a version 1.1 release. This will also facilitate the early transition of energy theft arrangements to the REC from April 2021.

We would like views from people with an interest in the REC, its delivery and operation. We particularly welcome responses from market participants, those representing consumers' interests and other stakeholders.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). If you want your response – in whole or in part –

to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

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Executive summary

The current version of the REC was introduced in February 2019 in order to provide effective governance of key aspects of the switching programme. The early introduction of the REC also facilitated the establishment of the REC Company (RECCo).

Although the REC was originally conceived as a means of providing governance for the new dual fuel switching arrangements, its creation has also provided the opportunity to consolidate and simplify wider retail governance. In particular, the REC will wholly replace the Master Registration Agreement (MRA) in electricity and the Supply Point Administration Agreement (SPAA) in gas, together with a number of smaller codes and agreements, such as the Smart Meter Installation Code of Practice (SMICoP). This consolidation will be progressed through the SCR procedures and will come into effect on 1 September 2021. At that point the operational content of the old codes will be removed.

In developing the REC, a number of activities have been identified which either must be, or would benefit from being, undertaken and completed in advance of the cutover to the new arrangements. In particular, the transition of responsibilities from the existing code bodies to the RECCo will require several services provided pursuant to the code arrangements to be novated to, or re-procured by, the RECCo. We also consider that it would be beneficial for the key institutions of the REC to be formed early, allowing those bodies to mobilise ahead of September 2021, in order to be fully effective from day one of the new regime. This document sets out our proposed changes to the REC, to form an additional version 1.1 release, in facilitation of those mobilisation activities.

RECCo Governance

This document sets out our proposed approach to the further appointment of RECCo directors, to augment and in due course succeed the interim RECCo board. This will include the identification of competencies required by the RECCo Board in order to deliver its strategy, the requirement for which we have also codified. The selection of suitable candidates will be undertaken by a nominations committee in keeping with good corporate practice. However, as the interim RECCo Board is composed of representatives of REC Parties, appointments will continue to be subject to direction of the Authority until such time as the majority of the RECCo Board members are independent non-executive directors, at which point the nominations committee's recommendations will be submitted to the board for decision.

In order to support the early appointment of independent directors we propose that the nominations committee should be established under REC v1.1, facilitating a phased transition to the enduring board by September 2021. This will ensure continuity and an orderly handover of responsibilities.

REC Parties

We propose to extend the scope of REC participation to include non-licensed market participants. Where participation is necessary only in order to receive a REC service such as data enquiry services, this will be facilitated through a limited scope access agreement, referencing only the relevant schedules and provisions of the REC. We will shortly publish further details on such access agreement, which will form part of the REC v2.0 release. However, given the reliance that retail arrangements have on metering and associated data, we propose that Metering Equipment Managers (MEMs)¹ should become full Parties to REC, fully enfranchised as part of the change management procedures and fully integral to the performance assurance framework.

Change Management

Our final proposals for REC Change Management allow for targeted and proportionate consultation, and devolved decision-making. We also set out arrangements for more effective cross code working. This will include greater collaboration on impact assessments (IAs), and reciprocal rights for the code managers/administrators to raise any consequential changes to other codes identified as being necessary in order to give full effect to proposals.

Giving early effect to the Change Management Schedule as part of REC v1.1 rather than await September 2021 will allow for a gradual approach, giving the appointed Code Manager a certain basis for mobilisation, and where appropriate, the potential to start activity to enable the effective transition of any in-flight change proposals from the legacy codes, and/or early start on new REC changes that are out of scope of the SCRs.

Performance Assurance

¹ ¹ Metering Equipment Manager: defined in the REC (v1.0) as being either:
(a) for electricity, the 'Meter Operator Agent' appointed by an Electricity Supplier under the BSC; or
(b) for gas, the 'Meter Asset Manager' appointed by the Gas Supplier under the SPAA.

The REC will provide robust performance assurance of the industry arrangements which it governs. As set out in our June 2019 consultation, we propose that the Performance Assurance Board (PAB) is established early in order to give time for it to take ownership of and further develop the framework in advance of the substantive REC requirements becoming binding upon Parties. We have published alongside this consultation the Performance Assurance Schedule which will be given effect through REC v1.1. That schedule will be supplemented by a number of further documents to be developed by the REC Code Manager and the PAB, to include a Risk Register and Risk Methodology. The PAB and Code Manager will also develop a range of Performance Assurance Techniques (PATs), which may include liability payments and other sanctions, which will take effect upon a later release of the REC.

The work of the REC PAB will in due course incorporate the Erroneous Transfer PAB recently established under the SPAA and MRA.

Theft arrangements

The current energy theft arrangements are coming to a natural watershed, both in terms of the migration of code arrangements from the SPAA and the Distribution Connection and Use of System Agreement (DCUSA) into the REC, and also as the contracts with existing service providers come to an end. This presents a challenge in terms of the orderly transition of arrangements, but also an opportunity to enhance those arrangements from the outset of their operation under the REC.

The Theft Reduction Schedule published as part of this consultation clarifies the services that will now be procured or otherwise delivered by RECCo in order to support the discharge of REC Parties' licence obligations relating to theft arrangements. These changes will be given effect through REC v1.1 in order that RECCo, and indeed the other code bodies and Parties involved in theft arrangements are clear on what is required and of whom, allowing succession planning to be undertaken with a greater degree of certainty.

1. Introduction

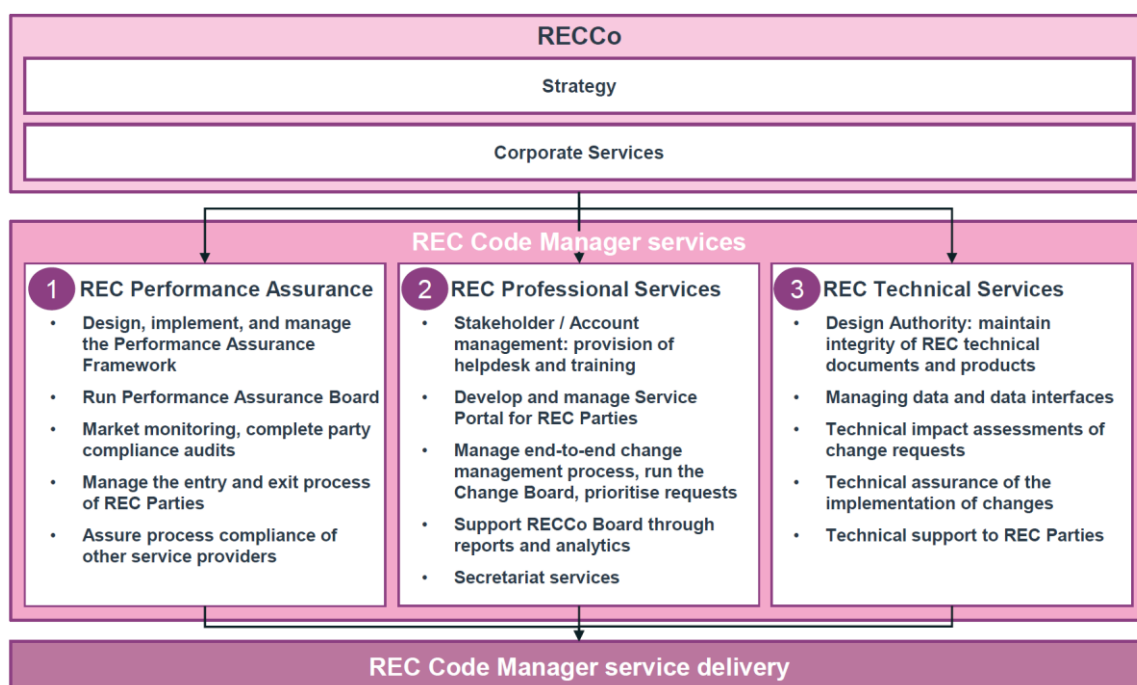
- 1.1. We designated version 1.0 of the REC on 1 February 2019.² That initial version of the REC was intended primarily to provide effective governance of the transition towards the new switching arrangements, particularly those to be delivered via the new Central Switching Service (CSS). The ability to place transitional requirements upon market participants through formal governance addressed an identified weakness of previous Ofgem sponsored programmes.
- 1.2. Having previously consulted on whether we should close down the MRA and SPAA and consolidate retail governance under the REC, we planned to give effect to those changes through the implementation of a next version of the REC, delivered through a SCR subsequent and separate to the Switching Programme. In February 2019 we confirmed our intention to launch a second SCR to deliver Retail Code Consolidation RCC. The RCC SCR was subsequently launched on 29 November 2019.
- 1.3. The original intention was to implement RCC on 1 April 2021. The prioritisation of other work in order to deal with the Covid-19 situation in the spring and early summer of 2020, led to a re-plan of the RCC-related regulatory changes and those related to faster, more reliable switching. The intention is now to implement RCC on 1 September 2021, and the switching changes in line with the go-live of the new switching systems and processes in 2022.

Why a v1.1?

- 1.4. In addition to the new code itself, the implementation of REC v1.0 also allowed for the establishment of the Retail Energy Code Company (RECCo). The RECCo has, amongst other things, provided support to both the Switching Programme and our RCC SCR, either indirectly through providing funding for the Programme Coordinator and Licensed Party Assurance, and more directly through provision of contractors to help develop the REC. Those contractors have been instrumental in the development of the REC.

² See: <https://www.ofgem.gov.uk/ofgem-publications/147200>

1.5. The main focus of the RECCo Board has been the development of service requirements enabling the procurement of REC Code Manager Services. The RECCo Board took an innovative approach to the procurement of the REC Code Manager, adopting a “best in market” approach for each of the main activities shown below to ensure that it appointed service providers best placed to support RECCo in delivery of its vision and objectives. The services were therefore procured through three separate lots, relating to performance assurance, professional services (e.g. change management) and technical services. Each of those services, together with the functions retained in house by RECCo, will combine to deliver comprehensive and seamless code management as follows:



1.6. Whilst bidders were free to tender for either or a combination of Lots 2 and 3, these lots are mutually exclusive to Lot 1. Following a competitive process, with the evaluation of tenders undertaken by a Procurement Evaluation Panel independent of the RECCo Board, contract were awarded to three separate service providers, who will now collaborate to deliver a unified and seamless Code Manager function for REC Parties and stakeholders. Further detail are available on the REC website.³

³ See: www.retailenergycode.co.uk/code-manager/

- 1.7. The service descriptions which formed the basis of the procurement documentation and are now embedded within the service providers contract were developed in parallel with the draft legal text for the REC. We consider that these documents should be considered as a package, with the REC drafting setting out the legal requirements that will bind REC Parties, including the RECCo itself, to be discharged through contract. Now that the procurement has concluded, summary service definitions reflective of and complementary to the agreed contracts will be completed and inserted into the REC as part of v2.0. As those service definitions will be subject to REC change management, this will ensure an appropriate degree of transparency and provide REC Parties a direct means of influencing the future evolution of those services.
- 1.8. Establishing the REC performance assurance regime early, through the implementation of REC v1.1, will allow for the PAB to be established and take ownership of and develop relevant documentation, such as the risk register and methodologies. This will also allow it to identify and assess existing sources of data, and if necessary commission further reports and analysis as may be required to provide oversight of and mitigate those risks from September 2021.

Context and related publications

- 1.9. This document focuses only on the new content of REC v1.1. Further details on the wider scope of the REC can be found in previous publications as follows:
- Nov 2019 - Retail Code Consolidation Significant Code Review – Launch Statement: https://www.ofgem.gov.uk/system/files/docs/2019/11/rcc_launch_statement.pdf
 - Nov 2019 – Retail Energy Code: Technical Specification approach consultation
 - https://www.ofgem.gov.uk/system/files/docs/2019/11/rec_technical_specification_approach_consultation_1.pdf
 - Jun 2019 - Switching Programme and Retail Code Consolidation: Proposed changes to licences and industry codes
https://www.ofgem.gov.uk/system/files/docs/2019/06/june19_switching_programme_and_retail_code_consolidation_consultation_final2.pdf
 - Feb 2019 Designation of the Retail Energy Code Company and related matters: <https://www.ofgem.gov.uk/ofgem-publications/147200>
 - Feb 2019 - Way forward on the development of the Retail Energy Code and retail code consolidation: <https://www.ofgem.gov.uk/ofgem-publications/147179>

How to respond

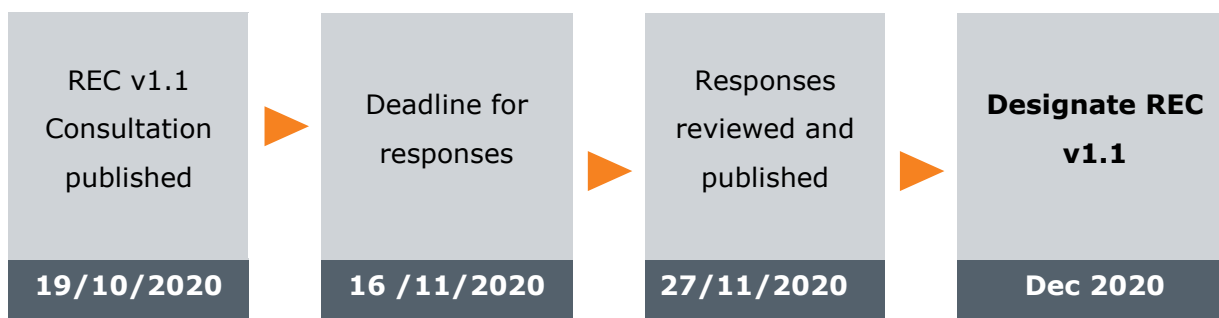
- 1.10. We want to hear from anyone interested in this consultation. Please send your response to the person or team named on this document's front page. We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.
- 1.11. We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

Consultation stages

- 1.12. Subject to responses to this consultation, we intend to designate REC v1.1 by December 2020. We would not expect to give effect to further substantive releases until the implementation of REC v2.0, but for the avoidance of doubt Change Requests may continue to be made via, and subject to sign-off by, the Ofgem led Switching Programme governance.
- 1.13. The majority of schedules which are expected to be given effect as part of REC v2.0 and v3.0, including the REC Technical Specifications, have already been subject to consultation. Most recently, in the summer of 2020 they were published as working drafts on the Ofgem website and comments invited. Those schedules, will continue to be revised in light of consultation feedback where appropriate, before being re-published as a revised baseline. In the case of the switching (v3.0) schedules that baselining will occur mid-November 2020, at which point we will also publish and consult upon the consequential modifications required to the other industry codes and to licences to give effect to the SCRs. Drafting for the v2.0 RCC will be consulted upon in December 2020.
- 1.14. Subject to any further revisions that are identified as being appropriate and agreed through Switching Programme governance, that baselined text will form the modification proposals that give effect to our conclusion of the SCR process.
- 1.15. We aim to make coterminous decisions on the RCC consequential code modifications and licence modifications and to designate v2.0 of the REC in July 2021 in order that all the changes can take effect 1 September 2021.

- 1.16. Whilst the process that the SCR modifications follow will as far as practicable be in line with the normal procedures of each code, we previously highlighted that some bespoke arrangements may need to be adopted in order to meet the timelines set out above. In particular, we envisage that each of the code administrators will collaborate in the production of a single modification report which can be used to fulfil the consultation requirements of each code. This will reduce the burden upon code parties, who might otherwise be asked to respond to up to eight separate consultations, but it will also negate the risk that any given part of the proposals may become misaligned.
- 1.17. This may also mean that we have to request some of the Panels to hold an extraordinary meeting in order that they can provide their recommendation on the proposal(s) within the required timescale. We will work with the relevant code administrators to further develop the planning for this part of the SCR process and communicate it to Parties in due course.
- 1.18. We set out below a visual representation of how the three phases of consultation outlined above will proceed. These dates represent only the key milestones for formal publications and/or decisions.

Figure 1: Consultation stages



Your response, data and confidentiality

- 1.19. You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

- 1.20. If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.
- 1.21. If the information you give in your response contains personal data under the General Data Protection Regulation 2016/379 (GDPR) and domestic legislation on data protection, the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 1.
- 1.22. If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

2. Company and Code Governance

Section summary

Both the REC and RECCo itself were established in February 2019 to provide governance for the transitional period of the Switching Programme. As such, some elements were expected to apply only on an interim basis. This chapter sets out how we will revise those interim arrangements with provisions which we expect to endure. In particular, RECCo directors should be recruited via a nominations committee in keeping with normal corporate practice, with a view to ensuring the necessary blend of experience and competencies required to deliver the RECCo strategy and business plan. We also consider that this is an opportune time to reconsider the scope of participation in the REC.

- Q2.1 Do you have any comments on the process for appointing additional RECCo directors?
- Q2.2 Do you agree that MEMs should be Party to the REC?
- Q2.3 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?
- Q2.4 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 REC processes and data?
- Q2.5 Do you agree that RECCo should adopt zero based budgeting from 2021/22?
- Q2.6 Do you agree that future RECCo budgets should be decided upon by the RECCo Board, subject to appeal by REC Parties?

RECCo Board

- 2.1. The establishment of RECCo included the appointment, on an interim basis, of several directors drawn from the Boards of MRA and SPAA companies (MRASCo Ltd and SPAA Ltd) given the obvious overlap in required expertise and competencies, and the fact that those individuals had already been through an industry selection process. We also considered that those individuals would be well placed to ensure a collaborative

approach to the transition of functions from the MRA and SPAA to the REC. So far, this has proven to be the case.

- 2.2. Since its appointment, the interim board has made great progress in establishing RECCo and supporting the development of the REC itself. Not least, in September 2020 it appointed three service providers who will collectively discharge the role of REC Code Manager. The successful completion of this important milestone will allow sufficient time for the mobilisation of the new service providers and a thorough and robust transition of roles and responsibilities from the existing codes to the REC. To further facilitate its readiness, RECCo has also recruited Transition and Mobilisation Managers to oversee this process. We would like to put on record our thanks the RECCo Board for these achievements in creating the REC institutions.
- 2.3. When making the appointments, we anticipated that the interim directors would be in place until such time as there is sufficient business for the enduring RECCo Board to be fully constituted, i.e. in time for REC v2.0. However, we also recognised that there is a need for a greater breadth of experience in setting up the REC for efficient operation. We must also ensure that there is an appropriate degree of continuity, suggesting that the interim Board should *evo/ve* into the enduring Board, rather than there being a handover from one group of directors to another at a given point in time.
- 2.4. We therefore share the desire of the RECCo Board to appoint additional directors who may bring areas of expertise not currently available on the the board. Two areas that have been identified which we and the Board would like to see addressed quickly are in consumer advocacy and digital transformation.
- 2.5. In our June 2019 consultation we proposed that these, and other competencies required on the board, should be identified and subsequently recruited through a nominations committee process. We consider that this nominations committee should be given formal effect through REC v1.1. While changes to the REC remain subject to Switching Programme governance and/or until such time as the board has a majority of directors who are independent of REC Parties, we propose that the appointment of directors continues to be subject to a direction of the Authority, on the recommendation of the nominations committee. This would further evolve when a majority of the board members will have been appointed through an independent nominations committee process. At that point we would then expect recommendations of the nominations committee to be made to the RECCo Board for approval.

- 2.6. We therefore propose to change the provisions relating to the RECCo Board as shown in Clause 5 of the changed tracked revisions to the REC Main Body published with this consultation (see Appendix 2). We have also published draft Terms of Reference for the nominations committee (see Appendix 2). Those Terms of Reference are based on the model produced by the Chartered Governance Institute⁴ and therefore bear close resemblance to those of other companies that have followed their model, such as the BSC Company (BSCCo).
- 2.7. To the extent that any of the changes made to the REC need to be reflected in the RECCo Articles of Association we will liaise with the RECCo Board to progress these once we have considered responses to this consultation.

Q2.1: Do you have any comments on the process for appointing additional RECCo directors?

REC Parties

- 2.8. We have previously signalled that we intend to ensure that the REC is sufficiently agile to respond to the challenges facing the retail energy market, and to accommodate innovations and non-traditional business models that may emerge to address those challenges. In particular, we consider that the digitalisation of the REC will better facilitate its requirements being targeted to a particular market role, or according to the products or services a market participant offers to the consumer, rather than solely by the category of licence held.
- 2.9. In developing the REC documentation, we have come to appreciate the integral role that metering data has in the majority of the processes that the REC will govern. Whilst existing governance seeks to assure the integrity of this data, this is generally through indirect arm's length arrangements with varying degrees of success.
- 2.10. In October 2018 we consulted on bringing the governance of the various metering codes of practice into the REC. This was in part necessitated by the closure of the SPAA, which currently provides governance for the gas codes of practice. However, another objective is to improve the degree of assurance around the provision and

⁴ See: www.icsa.gov.uk

integrity of data. We also stated that it would seem appropriate for those organisations to be properly enfranchised, rather than having to rely solely on their contractual relationships with suppliers to effect change. We consider that both of these aims would be better facilitated if relevant metering agents are Party to the REC.

2.11. We formally launched the RCC SCR on 29 November 2019. The launch statement confirmed our intention to bring all of the metering Codes of Practice (CoPs) under the governance of the REC. For the avoidance of doubt, this includes:

- the Meter Asset Managers Code of Practice (MAMCoP);
- the Approved Meter Installers Code of Practice (AMICoP);⁵
- the Meter Operators Code of Practice Agreement (MOCOPA);
- the Automated Meter Reading (AMR) Service Providers Code of Practice for Gas Meters (ASPCoP); and
- the Smart Meter Installation Code of Practice (SMICoP).

2.12. Each of these codes referenced in bullet points above has a slightly different status under licence and distinct governance arrangements. However, they all share a common theme insofar as they document regulatory standards and/or best practice to be applied by metering agents when undertaking works at a consumer's premises. In the case of the MAMCoP and MOCOPA, some of the technical standards set out in those documents are separately captured in applicable Regulations or engineering standards.

2.13. For the avoidance of doubt, we are not proposing to change any of the prevailing technical standards set out in any of the codes as part of this consolidation exercise. However, in bringing them under a single REC governance umbrella we aim to reduce the burden on both metering agents and their customers of assuring compliance with those codes, and generally improve the efficiency of their administration. The

⁵ Work is underway under the auspices of the SPAA to consolidate the MAMCoP and AMICoP, both of which relate to gas only. Subject to confirmation of progress and timetable for implementation, we are minded to allow this work to be completed and given effect under SPAA, with further consolidation to target implementation as part of REC v2.0 in 2021.

assurance point is particularly important as we recognise that some activities undertaken by the metering agents can have impacts on downstream industry processes if not undertaken correctly. For instance, we are aware that a significant number of failed customer switches each year are a result of missing or incorrect metering technical details.

- 2.14. We also consider that making suppliers and metering agents part of the same performance assurance regime should have benefits for the effective competition in the metering market. For instance, in our review of the non-domestic gas metering market⁶ in Great Britain, we identified that the competition in the metering market was not working as well as it should be, typified by unnecessary asset exchanges and high rental charges.
- 2.15. One of the root causes of the problems was determined to be the inability of market participants to access quality data relating to the meter and/or AMR assets installed at each meter point. This reduces the scope for incoming providers to adopt the assets in situ. The lack of reliable data may also mean that some meter providers do not get fully recompensed for the meter assets they do provide.
- 2.16. We consider that the consolidation of the metering CoPs within the REC will give the REC performance assurance regime scope to oversee any metering activities insofar as they have a direct relevance to achieving positive consumer outcomes. This should include reducing the cost of transferring between suppliers and the unnecessary replacement of metering assets.
- 2.17. Whereas in the past, metering agents may have been concerned that they would be disenfranchised by the inclusion on the metering CoPs within a wider governance framework, we consider that the REC framework will address this issue. In much the same way that we propose to make certain documents subject to delegated decisions by the relevant sub-group of the REC, such as the PAB, we would similarly see a role for a technical group made up primarily of metering agents to assist with the governance of the metering elements of the REC. This has been included in the list of

⁶ See: [Review of the non-domestic gas metering market in Great Britain, March 2016](#)

Responsible Committees in Appendix 2 of the Change Management Schedule, published alongside this consultation.

- 2.18. The RECCo Board has provided funding for further work on the consolidation of the metering CoPs, which we expect to commence shortly. We expect that the initial focus will be on streamlining the accreditation processes. Bringing the CoPs into the REC framework will align and simplify the applicable change control, such that if we are not able to complete the consolidation of the CoPs themselves by the time REC v2.0 takes effect, Parties have all of the necessary tools to achieve this convergence incrementally as time allows or necessity requires.
- 2.19. As noted above, the metering provisions would not form part of the REC until v2.0 is given effect. It is only at that point that accession to the relevant part(s) of the REC would be a formal requirement of metering agents. However, it would also be appropriate to give clear and adequate notice of this new requirement. We also would welcome the full engagement of metering agents in the development of the consolidated provisions and applicable PATs ahead of their implementation. This would appropriately include a role for a metering representative on the PAB. We consider that both of these aims can be achieved through extending REC participation to relevant metering agents with effect from v1.1.
- 2.20. We therefore propose to change the categories of REC Party to include MEMs. This obligation would not apply to other categories of Supplier Agent such as Data Collectors or Meter Asset Providers. In making this change as part of REC v1.1, MEMs will initially be able to accede on a voluntary basis. However, subject to the requirements of any consolidated accreditation scheme, it is likely accession to the REC will become a mandatory requirement of any organisation wanting to perform the MEM role once the metering codes have moved to the REC as part of REC v2. We do not consider this to be an extension of existing regulation given the mandatory requirements currently placed on Meter Operator Agents in electricity and Meter Asset Managers in gas.

Q2.2: Do you agree that MEMs should be Party to the REC?

Impacts on the Balancing and Settlement Code

- 2.21. We are also considering the extent to which the requirements that are currently placed upon metering agents by the BSC could instead be provided through the REC

performance assurance regime, while maintaining if not improving upon the levels of assurance required for settlement purposes. However, we recognise that migrating metering agent assurance from the BSC would of itself be a significant change, and that BSC Parties will reasonably want to be assured that there will be no detrimental impacts on electricity settlements resulting either through the transitional period or the longer term change in assurance provider.

- 2.22. We will therefore continue to develop the REC metering provisions and the accompanying performance assurance regime with the further integration of BSC requirements in mind. We will consult further on these specific proposals in due course.

Q2.3: 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?

REC Strategy

- 2.23. As happens on several of the other industry codes, the RECCo Board has on occasion met outside of the normal Board meetings to develop its strategy for the forthcoming year or more. Some of these discussions have been shaped in large part by the requirements of the REC itself and have understandably focused primarily on the appointment of the Code Manager. Certain other aspects which might ordinarily form part of the RECCo strategy have been included procurement specification for service providers. Specifically, the REC Technical Service provider will be required to deliver a digitalisation strategy. Consistent with the views we expressed in our previous consultations, this will be an overarching digitalisation strategy which seek to transform the delivery of REC processes and data, rather than simply making the code document web-enabled. This forms part of the RECCo service requirements from the Code Manager.

- 2.24. Although this aspect of our proposals has been picked up proactively by RECCo, we note that the requirement for the Code Manager, or indeed the RECCo itself, to produce and report progress against its strategy is not yet codified. Given that RECCo has already taken steps to fulfil this requirement, it is at least arguable that no further requirement is necessary. We have adopted a similar light touch to such requirements elsewhere. For instance, in September 2019 as part of the RIIO2 business planning, Ofgem asked network companies to publish their strategies for how they are Modernising Energy Data through digitalisation. We also set the expectation that the

strategies should continue to evolve in response to ongoing feedback from stakeholders. Whilst these requirements were not formally set out in licence or code, they were duly delivered by the network companies, and are published on the Ofgem website.⁷

- 2.25. However, we are concerned that in the absence of a formal requirement for such a strategy to be published and periodically reviewed, this could in future be seen as a discretionary activity and made a lower priority. At best, without being codified, there will be little transparency for Parties on how and when such a strategy may be revised, and what the objectives of that review may be. We have therefore inserted a relatively light touch requirement into the Main Body of the REC, requiring that a RECCo strategy should be published and consulted on as part of its annual business planning and budget consultation. This would not require the strategy itself to be revised each year, but would help to ensure that the annual business plan and budget are contributing towards the delivery of that strategy.

Q2.4: 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 REC processes and data?

Document precedence

- 2.26. We recognise that notwithstanding our aim of consolidating all relevant retail governance within the REC, there may be instances where an inconsistency arises between the prevailing REC and an external document. We propose to modify REC Main Body Clause 10 to clarify that should a Party find itself subject to conflicting requirements between the REC and a document of equivalent or greater status, that is legislation, licences or another industry code to which they are required by licence to adhere, they shall not be considered in breach of the REC by complying with those other requirements for any period until the conflict is resolved. This is provided the Party notifies the REC Manager of the conflict and takes whatever steps it can to resolve the conflict as soon as possible.

⁷ See: <https://www.ofgem.gov.uk/publications-and-updates/digitalisation-strategies-modernising-energy-data>

- 2.27. We have also sought to clarify that in the event a conflict is identified between the REC and a document that *does not* have equivalent or greater status, the REC shall take precedence and no derogation against REC requirements will be applied. In the event that the conflict is between the prevailing REC and a document produced by a Party or service provider outside of the REC framework, we would expect those documents to be brought into line with the REC at the Party's or service provider's expense.
- 2.28. This would not preclude the Party or Service Provider from first seeking to modify the REC through a change proposal, but for the avoidance of doubt, neither RECCo nor any REC Party will be liable for any external costs incurred prior to the change proposal being raised and/or duly approved in accordance with the REC Change Management Schedule.

Administrative changes

- 2.29. Now that the REC and RECCo are established, some of the original provisions have either served their purpose and/or could appropriately be revised in order to reflect the enduring situation. We set out proposed changes to those provisions below.

Shareholding

- 2.30. REC v1.0 was drafted to reflect each original Party being a shareholder, with each subsequent new Party also being allocated a share. This mirrored the arrangements of some other companies set up specifically to administer an industry code. However, this requirement was not explicitly set out in our consultation documents, and we had separately indicated in response to a query during RDUG discussions that the shareholding could be discretionary for network operators.
- 2.31. It is important to ensure that the RECCo is not, and cannot be, controlled by a single or small number of organisations. Whilst under the REC the holding of a share does not convey any particular influence to the holder of that share, with any rights and obligations of shareholders being limited to those set out in Schedule 4: Company Governance, this is further assured through the distribution of shares being limited to one per Eligible Party. An Eligible Party is defined as meaning: "each Party other than RECCo".
- 2.32. Feedback from some of the original Parties who acceded to REC v1.0 suggested that the requirement to hold a share in RECCo Ltd had been disproportionately onerous, as

their own company governance required Board level approval, despite the share having a notional value of £1, which is not transferrable. Given that we are also proposing to allow non-licensees such as MEMs to become REC Parties, we consider it appropriate to rethink the approach to eligible shareholders.

2.33. In order to mitigate this regulatory burden, we propose to change Clause 1.1 of Schedule 4: Company Governance, such that it reads:

~~"It is intended that e~~ Each Eligible Party ~~will~~may become a shareholder in RECCo, and ~~that~~ the shareholders in RECCo shall be limited to the Eligible Parties."

2.34. Dealings with shares are dealt with in Clause 7 of Schedule 4 and will continue to preclude the sale or transfer of a RECCo share other than in accordance with that Clause, which is limited to the shareholder ceasing to be an Eligible Party.

Accession

2.35. When REC v1.0 was given effect 1 February 2019, all holders of a relevant licence were required to accede to the REC using the form provided, by no later than 28 February 2019. Those licensees together with the RECCo itself, became the *Original Parties*. Any organisation acceding after the effective date of REC v1.0 would have the same rights and privileges, but would not be treated as an Original Party and would be required to submit a slightly different version of the accession form

2.36. Although Schedule 3 of REC v1.0 set out the legal framework for the accession of New Parties, it did not include the form to be completed by applicants. This had been intended to be completed by the Code Manager based on information provided by the applicant. It is envisaged that in future, such accessions may be completed online through the REC Portal.⁸ In order to avoid any confusion on the part of market participants who may wish to accede to the REC in the meantime, we will add a form to Schedule 3 capturing the same detail as were required of the Original Parties.

⁸ This is a requirement of the Code Manager procurement specification.

RECCo Budget

- 2.37. Like the SPAA and MRA which it will replace, the REC currently requires the budget for the forthcoming year to be consulted upon and approved by Parties. Both the SPAA and MRA failed to pass their 2020/21 budgets at the first time of asking owing to the scheduled Forum failing to be quorate. In each case, if the budget cannot be approved by the Forum, it is referred to the Authority for approval. Parties may also appeal any decision taken, or failed to be taken, by the Forum to the Authority.
- 2.38. Both Ofgem and the RECCo Board recognise that under the default tariff cap, suppliers are under increasing pressure to reduce costs. Whilst we consider that the funding of the REC and other industry codes is business critical, being a fundamental requirement of the relevant licences, suppliers rightly expect the code bodies to be cost-efficient and actively manage their finances to minimise the burden on suppliers while also ensuring the organisation has sufficient resources to meet their operational requirements. In support of this, each budget line item should have ~~has~~ a clear rationale, supporting business case and directly contributes to furthering the code relevant objectives. It is therefore important that each budget line item has a clear rationale, supporting business case and directly contributes to furthering the code relevant objectives.
- 2.39. Some codes have traditionally had a high cost baseline, with the challenge for the relevant code administrators being to deliver year on year reductions. This reflected the fact that those codes were fully developed upon their introduction. In contrast, the REC was initially introduced to support the Switching Programme, and expected to operate alongside the SPAA and MRA for the first two years of its existence. The initial 2019/20 REC budget was therefore comparatively small. The greater part of the 2020/21 budget, reflecting the anticipated costs of mobilisation of the Code Manager and transitioning governance of retail arrangements from the SPAA, MRA and SMICoP to the REC.
- 2.40. Some of the efficiencies of code consolidation will be obvious, such as having all provisions subject to the same change control with a commensurate reduction in the number of industry meetings, publications and websites, etc. This also provides an opportunity to re-assess the value of some activities and functions that may have endured as custom and practice, rather than being subject to periodic evaluation. In keeping with objective c) of the REC, as set out in Standard Condition 11 of the Gas and Electricity Supply licence, we envisage that RECCo will drive continuous

improvements and efficiencies in the operation of the REC and services it governs. We therefore propose that the RECCo Board should adopt a *zero-based budgeting* approach.

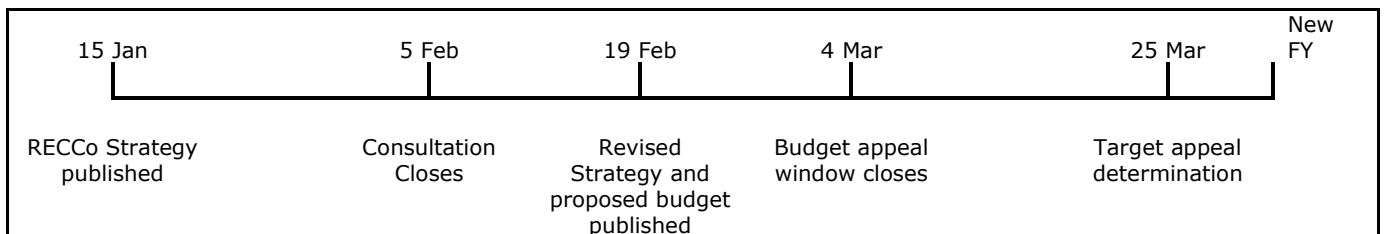
- 2.41. Under such an approach, rather than use historic information from the previous year(s) as a starting point, RECCo would be required to develop a business case to support proposed budget expenditure, not simply any additional expenditure. Whilst some of these costs may be unavoidable, such as those which are necessary in order to comply with a legally binding obligation or determined elsewhere, such as a price controlled allowance for the CSS, all optional and discretionary expenditure can be scrutinised. Further, in accordance with sound financial management and good corporate governance, we would expect the RECCo Board to regularly scrutinise any expenditure against the approved budget.
- 2.42. This may require greater effort on the part of RECCo each year, but would be more relevant to an organisation that we wish to proactively and continually evolve and seek ways of delivering value to REC Parties and consumers. This would also increase the degree of accountability to Parties for the expenditure and ensure that priorities are aligned.

Q2.5: Do you agree that RECCo should adopt zero based budgeting from 2021/22?

- 2.43. We also propose to change the decision-making process on the budget. Specifically, the budget will still be subject to consultation with Parties, but should be subject to approval of the RECCo Board rather than the vote of a specifically convened forum. This would be closer to the model currently used under both the BSC and DCUSA. We consider that this would be appropriate given the roles and responsibilities we expect of the RECCo Board going forward, and the likely extension of REC Parties. However, like the DCUSA process, the decision of the RECCo Board to approve or not to approve the budget may be subject to appeal. We have therefore also specified grounds on which an appeal against a budget decision may be allowed, which we consider should be available only to REC Parties.
- 2.44. Our proposed changes to the budget setting and approval shown in Clause 9 of the REC Main Body, is set out in Appendix 2. This process is predicated on activities being completed by no later than certain calendar dates, allowing for both the strategy and accompanying budget to be determined ahead of the financial year to which they relate. The dates indicated in Figure 2 below are therefore indicative of the latest date

by which these activities should be undertaken, but we would expect that RECCo Board to confirm the consultation timetable in advance each year, taking into account matter such as Easter, etc.

Figure 2: Strategy and budget consultation timeline



Q2.6: Do you agree that future RECCo budgets should be decided upon by the RECCo Board, subject to appeal by REC Parties?

3. Performance Assurance

Section summary

The licence modifications which came into effect in February 2019 and introduced the REC, included amongst other things the requirement to set up a Performance Assurance Board (PAB). In June 2019 we set out our high-level proposals for how the PAB will monitor performance of REC Parties and service providers and hold them to account. This would include the imposition of sanctions where appropriate. This chapter sets out further detail of the proposed performance assurance framework, including the establishment of the PAB.

Q3.1: Do you agree with the proposed composition of the PAB, as set out in the Terms of Reference published with this document (see Appendix 2).

Q3.2: 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?

Q3.3 Do you agree that at least one of the PAB's priorities should be determined by Citizen's Advice?

Q3.4: 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?

Q3.5: Do you agree that suppliers with serious performance issues should face restrictions on their ability to acquire new customers until those issues are resolved?

Introduction

3.1. In our June 2018 document we set out the outline of the performance assurance framework that would be included in the REC. This included the establishment of a PAB.

3.2. We proposed that scope of the performance assurance framework would include those service providers who have obligations under the REC, e.g. the CSS service provider, as well as REC Parties. Whilst service provider obligations will be documented and

monitored through their contractual relationships, where appropriate, key aspects of those obligations should also be backed off within and/or discharge the requirements of the REC. The REC will therefore place obligations on the Data Communications Company (DCC) in its capacity as CSS Provider, reflecting those which it has in place in contracts with its own service providers. Similarly, the services procured directly by the RECCo may also be subject to performance standards set out in the REC.

- 3.3. REC Parties will already be familiar with the performance assurance regimes of the BSC and UNC. The REC framework will have some elements in common with existing regimes and adopt relevant lessons learnt. We have also sought to use the comparable terminology with the existing regimes where appropriate, in order to maintain this familiarity. For instance, we have retained reference to *Performance Assurance Technique* rather than adopt another broadly comparable term such as 'risk mitigation measure'.
- 3.4. Again taking lessons from both the BSC and UNC regimes, which required a period of time to establish themselves even once in effect, we consider that it is important to establish the REC PAB early. This will allow both the PAB and the Code Manager appointed to support it a reasonable period to familiarise themselves with the requirements, establish ways of working and commission necessary reports, etc. in preparation for the new arrangements taking substantive effect in September 2021.
- 3.5. The introduction of the Performance Assurance Schedule is intended only to provide a framework within which the experts on the PAB and from the Code Manager can operate, and as far as we have been able to identify them, an initial set of tools. Both the PAB and Code Manager are invited to review and suggest additions to the Performance Assurance Schedule, which may be incorporated into future versions. They are also expected to develop the supporting documents such as the Risk Register.

The Performance Assurance Board

- 3.6. We have published draft Terms of Reference for the PAB with this consultation (see Appendix 2). Those Terms of Reference include a proposal for the initial composition of the PAB, though we would expect the membership of the PAB to evolve as the REC itself evolves. Therefore, whilst we may assist RECCo in with the initial appointment of PAB members, this could in future be a role for the nominations committee, as set out in its own Terms of Reference (see Appendix 2).

- 3.7. The greatest challenge to custom and practice may come from outside of the energy industry. We therefore consider that the PAB would be most effective if made up of a mix of people from within and outside of the energy industry. The non-energy members should be recruited from diverse backgrounds, who nonetheless have relevant operational or customer service backgrounds, potentially having faced and ideally having overcome, comparable challenges to those facing the retail energy market.
- 3.8. There will also be a role for a consumer advocate and we are pleased to confirm that Citizens Advice has accepted an invitation from us to serve on the PAB. This may in due course facilitate a degree of triangulation between the data that the PAB procures and the complaints statistics compiled by Citizens Advice, in order to enrich the Risk Register and better target the efforts of the PAB towards positive consumer outcomes.
- 3.9. It is also important that the PAB has direct and relevant knowledge of the challenges faced by REC Parties. The PAB will contain a number of representatives from Parties that are subject to the performance assurance regime. This will not only be Suppliers, but should include network operators and a MEM. We also consider that the REC framework will be most effective if it works in collaboration with, rather than in isolation from, the assurance regimes of other industry codes. This will not only facilitate the end to end assurance of industry arrangements, but will also better facilitate the sharing of lessons learnt. We have therefore invited attendance from Elexon in its role as administrator of the BSC PAB, and also UNC PAF Administrator.
- 3.10. With respect to the industry members, we have sought to identify roles rather than individuals. We would expect those appointments to initially be made following a nomination and (if necessary) election process. However, once the framework is established, the RECCo Board will have the opportunity to take a different approach; for instance, inviting participation from those organisations recognised as being the best performing in certain relevant (consumer focused) metrics, as monitored and assured by the PAB itself. This may allow those individuals to impart practical knowledge and best practice, but also provide a firm basis on which to challenge arguments and assumptions about what is, and is not, achievable by their peers. The PAB would then be better placed to ensure that industry norms move towards the better performers, rather than vice versa.
- 3.11. Noting that the PAB may evolve, and that its immediate role will be limited to working with the REC Code Manager to develop the performance assurance framework as set

out above, nothing in our proposals should preclude the PAB from being inaugurated in interim form during this mobilisation period. However, we would expect the PAB to be fully constituted, including the appointment of independent experts, ahead of REC v2.0 taking effect on 1 September 2021.

Q3.1: Do you agree with the proposed composition of the PAB, as set out in the Terms of Reference (see Appendix 2)?

3.12. As noted in Chapter 2, we propose that the RECCo Board should be required to produce and publish its business plan and strategy each year. Part of this business plan and/or strategy could suitably include improvements to market arrangements, which the RECCo Board considers that it has the mandate and necessary means to deliver. Some of these may be discharged through delegation to the PAB. However, the PAB will generally be expected to determine its own priorities for the coming year based on an objective and risk-based approach.

3.13. It will aid clarity and mitigate the risk of challenge to PAB decisions if its Risk Register and/or accompanying documentation spell out who is responsible for mitigating each risk (through discharging specific rules and/or achieving certain outcomes) and the consequences of not doing so. This may include the application of specified remedies and sanctions as set out above. Any decision to apply a sanction should be accompanied by clear next steps, which includes further assessment of whether the remedy was successful. The PAB will be required to ensure that any 'case' it embarks upon reaches a clear conclusion, which may include confirmation that:

- the remedy was effective (with supporting evidence);
- the remedy was not effective and the next stage of escalation is required; or
- the required outcome cannot be delivered (to the required standard) through the existing procedures and change is required.

3.14. The onus will therefore be on the PAB to justify why it has *not* taken action where application of the risk register and methodology indicates that it is required, rather than vice versa. There may be instances where actions are not pursued for reasons of administrative efficiency and/or prioritisation, though it should also be an option to request additional resource or to re-prioritise existing commitments if appropriate.

These trade-offs should help ensure that the PAB's activities remain proportionate, targeted and avoid unnecessary scope-creep.

Escalation and Appeals

3.15. The application of sanctions is likely to be contentious, particularly if they involve substantive liabilities and/or reputational damage. One of the ways of mitigating against the risk of external challenge is to ensure that there is a robust and objective process, and means of recourse within the code if a Party wishes to challenge a decision.

3.16. For example, the BSC provides for appeals to the BSC Panel if a Party considers that the PAB:

- has not followed due process;
- has placed over or under emphasis on certain circumstances or evidence submitted; or,
- has misinterpreted all or some of the evidence submitted.

3.17. These grounds for BSC appeals closely resemble those of the Competition and Markets Authority (CMA) appeal process. However, whilst any party who can demonstrate a legitimate interest may appeal a decision of the Authority to accept or reject a modification decision to the CMA, the BSC appeal process is limited to BSC Parties. As the performance measures within purview of the REC PAB will have a direct bearing on wider stakeholders rather than being limited to REC Parties, we propose that appeals against PAB decisions should (subject to certain criteria around the grounds for an appeal) also be open to any interested party. This would be in keeping with the open access to the change process.

3.18. We further propose that the appellate body should be the RECCo Board. In order to ensure that there is sufficient separation between the RECCo and the PAB, the latter should be chaired by a member of the RECCo executive team rather than a member of the Board.

3.19. In order to mitigate the risk of litigation (and ensure that the RECCo directors are willing to take difficult decisions) the REC indemnifies them against this risk.

3.20. Although the PAB, along with the Change Panel, would also be covered by this indemnity as they are sub-committees of the RECCo Board, we seek to avoid any doubt by specifically referring to the PAB and Change Panel within Clause 8 of the REC Main Body, which we have now entitled 'Protections for RECCo Board and Sub-committees' as shown in Appendix 2.

3.21. As with other decisions taken under the REC, Parties and service providers will also have opportunity to appeal a decision of the PAB. In the case of PAB decision, such appeals will be raised to the RECCo Board.

Approach to drafting

3.22. In drafting the REC text, we have sought to limit prescriptive text, providing a clear distinction between mandatory and enforceable (and outcome-based) REC rules and the non-obligatory processes that may be used to discharge that obligation. This should allow the PAB to more effectively target its activities, but also provide scope for Parties to innovate in the means of delivering their obligation. Conversely, being able to demonstrate that all procedural boxes have been ticked would carry little weight if the desired outcome has nonetheless not been achieved.

3.23. Each such requirement should also have a very clear process for reporting and consequence of it not being met. This could be in the form of a liability or application of another Performance Assurance Technique as set out below. As importantly, the drive to achieve outcome rather than simply *compliance* should engender continual improvement, i.e. if the prevailing rules do not assure the desired outcome, they should be changed or removed.

3.24. An important part of the PAB's, and the Code Manager's role will therefore be to review change proposals and provide recommendations on how they should be assured, measured and potentially enforced. Where further improvements are identified after the designation of REC v1.1, the PAB and the Code Manager will be empowered to progress improvements through the REC Change Management process.

Scope of the REC Performance Assurance Framework

3.25. Whereas the BSC and UNC performance assurance regimes are focused on the reducing the risk to settlement accuracy, the scope of the REC performance assurance framework may extend to all services and processes defined in and governed by the

REC. It will therefore extend to each of the categories of market participant below, to the extent that the activities they undertake may have a bearing on overarching outcomes that the PAB aims to assure.

Suppliers

3.26. In addition to the governance of the new switching arrangements, the REC will consolidate and simplify all rules currently placed upon gas and electricity suppliers through the SPAA and MRA respectively. This simplification will include the alignment of previously separate gas and electricity requirements and terminology where appropriate.

Network operators

3.27. Whilst the REC will be focused on the retail space, there are certain activities undertaken by network operators which will remain in or be migrated to the REC, rather than being part of their network codes. For example, both network operators and suppliers have obligations with respect to the detection and prevention of theft. These obligations are currently spread across several industry codes. Bringing all related obligations under the governance of the REC and the purview of the PAB would facilitate a more holistic and effective theft strategy, but also prevent duplication and/or misalignment of incentives. It would also provide more effective monitoring of performance with respect to consumer data handling, such as the Priority Services Register.

The CSS and other Service Providers

3.28. Whilst service provider obligations will be documented and monitored through their contractual relationships, where appropriate, it is proposed that details of the key obligations will be included within the REC. Service providers will be required to report against Key Performance Indicators (KPIs) and the Code Manager will review these reports and escalate issues to the Panel / Board and to the relevant licensed party if required. The DCC will be responsible under its licence for provision of the CSS according to the obligations set out in the REC and subject to their licence and associated price control regime, including any incentive regime. We expect that the Code Manager will also monitor CSS performance against agreed KPIs and report to Ofgem as appropriate so that performance can be reflected in the relevant incentive arrangements.

Third parties

- 3.29. Historically, interfaces between gas and electricity market participants and central services have utilised either Xoserve's Information Exchange (IX) or the Data Transfer Network (DTN), with users gaining access through accession to the Uniform Network Code (UNC) or Data Transfer Service Agreement respectively. Additionally, access to data via the Gas and Electricity Enquiry Services has been granted to UNC and MRA Parties as part of their accession arrangements; with third parties signing standalone access agreements.
- 3.30. Going forward, those enquiry services, along with a number of others which relate to the transfer of data, will be governed under the REC. We are therefore proposing to take the opportunity to consolidate a number of provisions in order to minimise the number of separate agreements that organisations are required to sign, whilst still ensuring there are strong protections in place. Aligning the terms and conditions of use where appropriate should better facilitate the provision of assurance over those conditions, e.g. preventing and/or dealing robustly with any breach of confidentiality or data protection.
- 3.31. We propose that users of these REC services who are not already acceded, or required to accede, to the code should instead enter into a standalone short form agreement, binding them to the relevant REC Schedules. For example, a TPI that wishes to access the Enquiry Service would sign an agreement requiring them to comply with the Data Access Schedule. For each service, terms of access would be included within the appropriate REC Schedule and therefore subject to the standard REC change process and performance assurance, as applicable to both REC Parties and Non-REC Parties.

Metering agents

- 3.32. Much of the data upon which switching and other processes depend, originates from metering agents. Whilst these agents are not currently licensed, they are subject to arms-length governance provided through a number of metering codes of practice. Ofgem currently requires licensees to ensure that their agents are accredited as being compliant with those codes of practice. This is generally held to be an inefficient and ineffective means of governance. As set out in Chapter 2, we therefore propose that MEMs should become Party to the REC in their own right.

Q3.2: 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?

Risk Register

- 3.33. The PAB, supported by the Code Manager, will be expected to have or to gain an understanding of each of the processes and services that fall within their purview, together with the risks to delivery associated with each of those activities. It will not be practicable or proportionate to provide assurance over and mitigate each and every risk, but it may be necessary to establish the complete picture before undertaking any methodological and evidence based approach to assessing the potential likelihood and impact of each risk. This exercise, in consultation with relevant stakeholders, will help to establish the PAB's priorities, which will then be set out in a report detailing its plans.
- 3.34. The final aspect of prioritisation may appropriately be around the expected cost and effectiveness of any Performance Assurance Techniques that the PAB may seek to employ. It may for instance, be more cost effective and produce greater overall benefit to address a number of smaller risks, than to mitigate one large risk. This would also recognise the limitation of the PABs role and the PATs at their disposal. For instance, the most effective means of mitigating a given risk may be to invest in an IT change. The PAB may not be able to directly make such an investment decision, but it could ensure that any associated incentives are appropriately targeted and proportionate.
- 3.35. As set out above, the PAB should also consider different sources of data and frames of reference when setting its priorities. Given our intention that the PAB focus on consumer outcomes and that *Citizens Advice* has accepted an invitation to sit on the PAB, we propose that at least one of its priorities should be selected at *Citizens Advice's* discretion, perhaps based on analysis of its own complaints statistics, rather than subject to the weighting PAB applies to the rest of the risk register. A similar discretionary 'pick' could also be made available to the Authority. This would ensure that the PAB serves the interests of wider stakeholders in addition to those of REC Parties.

Q3.3: Do you agree that at least one of the PAB's priorities should be determined by Citizens Advice?

Performance Assurance Techniques

- 3.36. In the June 2019 document we set out that in order to be effective, the PAB should have discretion to apply a range of possible remedies. Whilst these remedies must be proportionate, they must also be capable of escalation if further action is required to effect a change in parties' behaviour. For instance, it may be more cost-effective for a party simply to pay any liabilities rather than remedy the situation. An alternative *Performance Assurance Technique* may therefore be required in order to deliver a better consumer outcome.
- 3.37. Under the existing performance assurance regimes of the BSC and the UNC these remedies are referred to as *Performance Assurance Techniques*. Under the BSC they are categorised into one of either an incentive, preventative, detective or remedial activity. We consider that this is a useful framework, though in practice a single activity may fall into more than one of these categories.
- 3.38. We remain of the view that it would be appropriate for the PAB to develop its own approach to remedies following review and completion of the initial risk register and methodology. These documents may help inform the most appropriate measures to mitigate identified risk. However, as stated in June 2019 we also consider that it would be appropriate to provide the PAB with an initial tool kit to draw from. We have therefore set out in the Performance Assurance Schedule a number of Performance Assurance Techniques that the PAB may, but is not required, to draw upon in order to mitigate the risks identified. These are set out in Annex B of the Schedule and so not repeated in full here, and will include but not be limited to:
- published performance tables;
 - requirement to produce remedial plans;
 - liabilities and incentive payments; and
 - restriction of services.

3.39. These are considered in further detail below.

Published performance tables

- 3.40. Performance tables are a way of readily comparing how well an individual or organisation is doing against certain key measures, as compared to their peers. These are primarily designed to encourage performance improvements from those who may be lagging behind (whilst also identifying those who may be adopting good practice that can be learnt from). When accompanied by a minimum standard they can also be used to monitor and assure compliance.
- 3.41. The BSC currently provides for two types of peer comparison, depending on whether the data contained within the tables is suitable for publication in the public domain, or circulated only to authorised contacts. To date, the UNC Performance Assurance Committee (PAC) has used anonymised reports which do not reveal the identity of the relevant shipper. Ofgem also publishes data on supplier performance in respect of customer service and complaints handling, though this data is aggregated into specific supplier categories. In contrast, organisations such as *Citizens Advice, Which?* and *Money Saving Expert* publish qualitative ratings for each supplier.
- 3.42. Whilst we consider that peer performance tables are likely to be more effective when the organisations are named, as this increases their incentive to improve performance, we recognise that this may not always be appropriate. We therefore consider that the PAB should assess both the need and manner of publishing performance data. In keeping with the principle of transparency, we consider that the default position should be that named performance tables should be published unless the PAB has a strong justification not to, rather than vice versa.
- 3.43. Given that the objective of the PAB is in part to improve consumer confidence in the market as a whole, we also consider that the PAB should publish aggregated performance statistics, accompanied by an explanation for any year on year movement, and targets for any forthcoming year or other reporting period. For instance, the PAB could set a target of reducing erroneous transfers, or another specific category of consumer complaint, by x% year on year. This will help to demonstrate whether the PAB itself, and the REC PAF more generally, is effective.

Remedial plans

- 3.44. We recognise that the immediate application of liabilities or other sanctions may have a perverse effect insofar as it may encourage REC Parties to withhold information and avoid bringing attention to any failures to meet standards. As set out above, we are more interested in improving standards across the board and improving the experience

of consumers rather than punishing past performance. The initial focus of the PAB should therefore be on identifying the root causes of any failure, and if appropriate offering assistance to remedy the situation. This could take the form of sharing best practice or inviting suggestions from peers on how they have resolved particular issues (to the extent that this does not impinge upon appropriate competitive differentiation).

- 3.45. Once a root cause has been identified, the next step in any potential enforcement process should be the production of a collaborative and mutually agreed remedial plan. Such plans are already part of the BSC arrangements, and are envisaged under the UNC. Where appropriate these remedial plans could be accompanied by a time-bound derogation against REC requirements, in order to provide the Party some breathing space in order to bring their processes up to standard. However, we would also expect the PAB to factor in the length of time that the participant has been in the market and whether the issue relates to a new or longstanding requirement.
- 3.46. In the event that the REC Party does not cooperate in the production of the remedial plan, does not subsequently stick to that plan, or demonstrates repeated failures against the same measure, further escalation may be required.
- 3.47. We would expect each investigation the PAB initiates to be brought to a definitive conclusion. Whilst we consider that all PAB determinations should be evidence based, we also recognise that in the past industry groups may have been reluctant to take action against their peers. We consider that the escalation process should follow a pre-prescribed timetable by default. The burden of evidence upon the PAB is therefore to demonstrate that the situation has been remedied to its satisfaction and that further escalation is therefore unnecessary or otherwise inappropriate, rather than needing to make a decision to escalate. This will mitigate against protracted non-compliance.
- 3.48. The PAB will also have the opportunity to extend any previously agreed timetable for remedial action(s) to be completed, but we would expect the relevant Party and subsequently the PAB itself to demonstrate that all reasonable endeavours to comply with the original plan have been made.
- 3.49. The default escalation route will provide a timeline for the Code Manager and the PAB to review the rules that the Party is in breach of. In some circumstances the PAB may determine that further action is not appropriate, as non-compliance has not resulted in a detrimental outcome for consumers or other REC Parties. In such cases the PAB would be expected to raise a Change Proposal to remove any superfluous prescription;

this will help maintain the relevance of the REC over time and ensure that the efforts of the PAB are appropriately targeted.

Liabilities and incentives

- 3.50. Financial incentives in the form of Liquidated Damages are currently provided for in both the MRA and the BSC. In the case of the MRA these are limited to failures in the part of the MPAS provider. These may be payable to suppliers or to Elexon as the BSC Agent. More extensive liquidated damages are provided for in the BSC in the form of a number of *Supplier Charges*. Those Suppliers Charges are derived from performance data held in the BSC Performance Assurance Reporting and Monitoring Systems (PARMS). The UNC also contains a small number of provisions for compensation to be paid in the event that GTs have not met prescribed standards.
- 3.51. As with other liquidated damages, those provided for in the industry codes are based on the principle of pre-estimating the loss or damage that a counter-party will suffer as a result of a Supplier failing to fulfil a given obligation, with the liability being prescribed in the code. They are not (and cannot in law be) penal, though the distribution of the charge is intended to provide a degree of compensation to the affected Parties.
- 3.52. We consider that there will be lessons to be learnt from the application of liquidated damages under the existing industry codes and from any conclusions that may emerge from the ongoing review of the BSC Performance Assurance Framework⁹, initiated in 2016.
- 3.53. For example, BSC modification P393¹⁰, which was raised following a review of Supplier Charges. BSC Supplier Charges are capped. However, the systemic failure of supplier's to submit routine performance monitoring reports meant that 90% of the capped liability was being allocated to the *SP01* Supplier Charge associated with those reports. This was demonstrably not having the desired effect on supplier behaviours, while also severely limiting any available incentive that could be applied to other performance measures. Some BSC Parties also considered that the failure to submit those reports¹¹

⁹ Issue 69: ['The Performance Assurance Framework Review'](#)

¹⁰ P393: [Disapplication of Supplier Charge SP01](#)

¹¹ Performance Assurance Reporting and Monitoring System (PARMS) reports

should not be subject to liquidated damages, as this did not directly disadvantage or damage other parties. While P393 did not remove the SP01 charge entirely, it set the charge to zero.

3.54. In the short term at least, it is likely that the REC PAB will also rely heavily on the timely and accurate submission of reports from Parties and Service Providers. This will include reports on theft investigations, which we are aware is an existing compliance issue under the SPAA and DCUSA. Whilst we have had regard to the rationale and outcome of P393, we nonetheless consider that financial incentives may play a key part in ensuring the timely submission of reports. However, P393 raises two questions that may have relevance to our development of the REC performance assurance framework:

- 1) would the SP01 Supplier Charge have been more effective in encouraging the desired behaviours if set at a higher level; and
- 2) if there is genuinely no disadvantage to other parties resulting from the non-submission of the PARMS report, should it be subject to a PAT at all?

3.55. With respect to the first question we have previously noted, for instance in our decision on P320,¹² that we consider the capping of Supplier Charges dampens the incentive, making them less effective. In addition to the quantitative evidence assessed as part of that decision, members of the P320 workgroup themselves suggested that in many instances suppliers choose to be non-compliant and pay the Supplier Charge, as it can be cheaper than investing to resolve the cause of the non-compliance.

3.56. If suppliers faced accumulating and possibly escalating charges, they will inevitably reach a point at which it is preferable to expend the resource required to comply, rather than face a greater liability. We recognise that this tipping point is likely to differ from party to party. The REC PAB will therefore need to take into careful consideration the appropriate level of each incentive charge, where this Performance Assurance Technique is to be applied to assure the appropriate standard of service and/or

¹² P320: [Reporting on Profile Classes 5-8 Metering Systems after the implementation of P272](#)

mitigate risk. We also consider that PAB must have discretion in order to determine the necessary tipping point to encourage the desired behaviours.

- 3.57. However, it is also important that the performance related charges are known, and agreed to, by REC Parties in advance. This will not only ensure that they have the desired effect on performance, but also ensure that they are enforceable; liabilities cannot be penal.
- 3.58. Whilst liquidated damages work well in bi-lateral contracts, with a clear customer-service provider relationship, the need to objectively estimate the damage to each party in a multi-party agreement such as the REC could make this a disproportionately complex and expensive to administer. However, we therefore consider that the same effect could be achieved through targeted REC Charges. For instance, failure to submit a report could result in a follow up action on the part of the Code Manager, reminding the Party of their obligations to submit the report, etc. These activities would create cost that would otherwise be avoidable. It seems appropriate and proportionate that those costs fall solely or predominantly to the parties that generated them.
- 3.59. We envisage that with the implementation of REC v2.0 there will be a REC Charging Schedule setting out the methodology of how RECCo will recover its costs, including for the provision of elective or additional services. This could include the application of liabilities. Whilst this would have the effect of lowering the costs that would otherwise be recoverable through normal REC charges and therefore shares much in common with liquidated damages, it would be a simpler approach.
- 3.60. We are also keen to ensure that any payments that may be payable to the DCC for a failure on the part of the CSS provider for instance, are passed through to REC Parties.
- 3.61. It is envisaged that further details on the actual “*menu*” of required standards and applicable levels of liability (where in the form of a charge or a service credit) if they are not met will in due course be set out in a statement appended to the Performance Assurance Schedule, as published with this document (see Appendix 2). This would include the conditions that may prompt an escalation of the applicable liability with a prescribed range, reflected the increasingly intensive efforts that the PAB and Code Manager may undertake to influence the Parties’ or service provider’s behaviour. This would give the PAB discretion to find the appropriate ‘tipping point’ as described above, though this must in all circumstances represent a reasonable estimate of the damage caused to other REC Parties and/or consumers, and agreed as such by REC signatories.

3.62. If the PAB reaches the top of the applicable scale and a Party is still not demonstrating the required behaviours, a different and additional PAT will be required.

Q3.4: 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?

Restriction of services

3.63. Both the SPAA and MRA currently have very limited sanctions that can be applied to Parties, being limited largely to the withdrawal of voting rights on change proposals.

3.64. We consider that the PAB should have the ability to restrict services both as a sanction against the failure of a Party to adhere to certain standards, or as a safeguard against its misuse. For instance, if the PAB was to be made aware that the data available via the enquiry services was being used for a purposes not permitted under the REC and other Performance Assurance Techniques had not remedied the situation, it may be appropriate to restrict or remove that Party's access to further data.

3.65. Several industry codes including the DCUSA and UNC, allow for the restriction of new supply point registrations, this is generally only applicable where a Party has defaulted on payment of network charges.^{13 14} Whilst this would have no impact on the supplier's existing customers and does not of itself do anything to reduce the amount of indebtedness, it has an obvious impact on the sustainability of the supplier's business. All else being equal, the supplier would soon start to lose market share if they were unable to actively acquire new customers to at least replace those that it is losing through natural churn. This is therefore a very strong sanction.

3.66. Ofgem can use a similar sanction, to restrict a supplier from gaining new customers in the event that there are serious performance issues.

3.67. The MRA also includes failure to pay its charges amongst the potential default events which could result in the withdrawal of services.¹⁵ We consider that this ability to

¹³ DCUSA Clause 54.2

¹⁴ UNC Section S 3.5.3 allows the GT to restrict new nominations where an invoice of £10,000 or more remains unpaid.

¹⁵ MRA Clause 36: Events of default and consequences of default.

determine a default event and applicable sanctions should be available to the RECCo, both to manage its own finances and mitigate the risk of bad debt (which may otherwise be socialised across all other suppliers through a reapportionment of any unrecovered REC cost) but also in the event other Performance Assurance Techniques have proven to be ineffective in correcting the Parties behaviour, and further escalation is warranted and proportionate.

3.68. Such a restriction of new supply point nominations will in future be carried out through an instruction to the CSS. To this end the RECCo will be able to require, upon recommendation of the PAB, that new registrations are withheld. This process will be governed through the REC.

3.69. Instructions to the CSS to suspend registrations may also be provided by the REC Board on instruction of a DNO/IDNO Party (via the DCUSA Panel), replacing the equivalent provision in the MRA. This provides the opportunity to use this not only as a possible remedy for non-payment of REC charges, but also for serious and systemic performance issues.

Q3.5: Do you agree that suppliers with serious performance issues should face restrictions on their ability to acquire new customers until those issues are resolved?

Sandbox

3.70. Ofgem created a regulatory sandbox in 2017 for small-scale innovative propositions to be trialled. However, the scope of this tool is limited by Ofgem's remit and therefore focused on the licensing framework; it did not extend to industry codes. In January 2018, we therefore engaged with code administrators and panels, inviting them to discuss innovation and the adoption of the sandbox approach.

3.71. Since that time, we have accepted modifications which introduce a sandbox tool into the BSC¹⁶ and DCUSA¹⁷. We have also accepted the introduction of the new principle

¹⁶ BSC Modification P362: 'Introducing BSC arrangements to facilitate an electricity market sandbox'.

¹⁷ DCUSA CP345: 'Sandbox application'.

14: *'Code Administrators shall support prospective energy innovators'* into the Code Administration Code of Practice (CACoP).

- 3.72. In February 2020 we further refreshed the Innovation Sandbox Service, bringing together an extended Ofgem offer with the tools available through the codes.
- 3.73. Although the REC currently contains derogation provisions, we propose to expand upon these to more closely reflect the approach taken with respect to the sandbox. However, we propose two key differences for the REC sandbox.
- 3.74. Firstly, whereas the sandbox under the BSC and DCUSA requires the initial assessment to be undertaken by Ofgem before being passed on to the relevant Panel, we propose to remove this step where it is evident that the scope of sandbox support requested does not extend beyond the REC, is not dependent on or impact other codes or licensing considerations. Given that compliance with the REC will be subject to the oversight of the PAB, we consider that the assessment of REC only sandbox applications should be undertaken by the PAB in the first instance, supported as necessary by the Code Manager. This will reduce the red tape and timelines involved in a sandbox application. Where a sandbox request involves other codes and licensing considerations, the PAB (supported as necessary by the Code Manager) will participate in the sandbox assessment processes coordinated by Ofgem.
- 3.75. Secondly, as drafted neither the BSC nor DCUSA provide for any specific actions to result from the sandbox, though the BSC does provide for a 'lessons learned' report to be produced. In effect, things will otherwise return to the pre-sandbox status quo, with the sandbox participant being required to raise a code modification (if they are entitled to do so) and want the terms of the sandbox to endure. This again creates further delay and uncertainty, not least as there would be no guarantee that such a modification would be accepted. We consider that sandbox participants – and their investors – would benefit from the increased certainty of the sandbox process having some clearly defined outcomes.
- 3.76. Whereas preservation of the status quo has hitherto been the default position of the industry codes, with the burden of proof lying solely with the proponents of change, this will not be the case under the REC. In particular, we consider that the PAB should consider and progress an enduring and uniformly applicable change to the REC rules if the relief offered during the trial is demonstrated to have had no detrimental impact upon REC Parties or the achievement of the REC objectives. This will not only relieve

the trial participant of any immediate further burden, but may be of benefit to all REC Parties. The assessment of any lessons learnt from sandbox trials will, alongside the results of any other periodic or targeted review, contribute to the PAB's role in ensuring that all obligations imposed by the REC remain relevant and proportionate.

Erroneous Transfer Performance Assurance Board

- 3.77. Gas and Electricity Suppliers are obligated under Standard Special Condition 14A(10) of their Supply Licences to take all reasonable steps to ensure that there is a valid contract in place at the point they apply to supply energy to a premise. If the supplier subsequently becomes aware that a valid contract is not in place, they must take all reasonable steps to ensure that its transfer request does not take effect. These obligations are intended to ensure that customers are not transferred erroneously.
- 3.78. The Gas and Electricity Licence conditions referenced above refer respectively to the Network Code and the Master Registration Agreement. These references will shortly be replaced with reference to the REC, though the obligations will otherwise remain substantively unchanged.
- 3.79. In 2019, a Performance Assurance Board was established under the joint auspices of the SPAA and the MRA to assist suppliers in the discharge of their obligations under licence. The aim of the Erroneous Transfer PAB (ET PAB) is to reduce the number of erroneous transfers and minimise the time taken by suppliers to resolve any that do occur. The ET PAB will monitor energy suppliers' performance in relation to their obligations as set out in SPAA and the MRA, based on data obtained via the Data Transfer Network (DTN). The ET PAB also aspires to identify and share practice approaches.
- 3.80. We consider that the ET PAB is a welcome initiative and in some ways a helpful building block towards the REC PAB. We are keen to ensure that any momentum is maintained and any learnings carried over into the new regime. Whilst funding for the ET PAB has been agreed through the SPAA and MRA through to the end of the current financial year, with RCC now taking effect 1 September 2021 it is not currently clear whether and how the ET PAB will continue to function in the interim period. We look forward to this being resolved by the relevant code bodies.
- 3.81. However, to the extent that the ET PAB has found value in the data sourced via the DTN and provided to it, we would expect to replicate those arrangements under the

REC and for the necessary data sharing agreements to be put in place. We understand that good progress on this has already been made as part of the RECCo transition activity.

4. Change Management

Section summary

We aim to ensure that the REC change management (modification) procedures are the 'best in class', addressing many of the criticisms that have been levelled at the existing industry codes. In some areas our proposals represent a radical departure from the existing code modification rules, though we also sought to maintain a consistency with the high level principles set out in the Code Administration Code of Practice (CACoP). This chapter sets out the revisions to the Change Management schedule that have been made since the June 2019 consultation, incorporating respondents' views where appropriate. The Change Management schedule is published alongside this consultation.

Q4.1: Do you support our proposals regarding the production of preliminary and detailed IA?

Q4.2: Do you agree that the Change Panel should be appointed by the RECCo Board, following a process overseen by the nominations committee?

Q4.3: Do you agree that the REC should encourage shorter and more frequent Change Panels, to be held remotely where possible?

Q4.4: Do you agree with the proposed categorisation of REC documents and associated change paths?

Q4.5 Do you agree that code administrators and managers should be able to raise any changes identified as necessary by the CCSG?

Background

4.1. The June 2019 consultation set out the latest position regarding the REC change management provisions, together with a draft Change Management Schedule.¹⁸ The consultation proposed that, as with existing codes, a Change Panel be established which would be responsible for reaching decisions on self-governance changes, and for making recommendations on changes requiring an Authority decision. However, decisions relating to the timetabling, and where relevant the prioritisation of a change, would be a matter for the Code Manager to determine, with the Change Panel

¹⁸ <https://www.ofgem.gov.uk/publications-and-updates/switching-programme-and-retail-code-consolidation-proposed-changes-licences-and-industry-codes>

providing quality assurance and advice as appropriate. We also proposed that the development of change proposals would no longer be dependent upon industry populated working groups, but could instead be undertaken by the appropriately resourced Code Manager, with the support of independent Subject Matter Experts where appropriate. This would not prevent the Code Manager from convening a group of industry representatives if they consider that would be beneficial to the development process.

- 4.2. Since that consultation we have undertaken further work to develop the technical documentation, which will form part of the overall suite of REC documents. This will include a number of operational documents defining key REC processes such as entry assessment.¹⁹ As with our proposals on performance assurance, these technical documents envisage a role for expert groups, whether in the form of a REC *institution* as with the PAB, or a sub-group that may be established by RECCo for a particular purpose.
- 4.3. Consistent with the tiered approach that we originally proposed for REC governance, we consider that it would be efficient and proportionate for certain functions, including relevant determinations, to be devolved to those specialised groups, rather than all requiring a determination of the Change Panel. However, the Code Manager will have a role across the full breadth and depth of the REC architecture, ensuring that there is consistent and robust governance throughout. The Code Manager will also determine whether escalation into a higher tier of governance is appropriate.
- 4.4. This chapter does not seek to repeat the content of previous consultation, but summarises and seeks views on the key features of our proposals that have been developed since the June 2019 document.

Change Management in the transitional period

- 4.5. Whilst these change management rules are not intended to come into full effect until September 2021, the appointment of the Code Manager provides an opportunity for a mobilisation approach whereby the Code Manager potentially assumes responsibilities gradually over the course of the mobilisation period. We anticipate that November

¹⁹ This will not form part of the Entry Assessment and Qualification Schedule

2020 will be the last *ordinary* release of the SPAA and MRA, with any changes being made as part of the February 2021 and June 2021 releases being made by exception, where they cannot appropriately be deferred and do not present an additional risk to the Switching and/or RCC SCRs. In particular, there may be changes which are pursuant to Regulations or other legal requirement, or may themselves facilitate the RCC.

- 4.6. In order to prevent this transition from presenting an unnecessary or prolonged delay to any initiatives that would be beneficial to consumers, any new or residual *in-flight* change proposals, could be picked up as part of the nascent REC Change Management procedures to continue their development. There may therefore be a pipeline of Change Proposals under development REC v2.0 takes effect, rather than having to start wholly new at that point.
- 4.7. For the avoidance of doubt, any changes requiring determination before v2.0 takes effect will continue to be subject to determination by Ofgem under the relevant programme governance.

Accessibility

- 4.8. The ability to raise changes to industry codes is generally restricted to code parties. Where there are exceptions, such as for consumer bodies and designated third parties, there can often be restrictions on the nature of change that such parties can raise, or they can be restricted to a specific area of code. As the REC will be a consumer-centric code, with potential to provide governance for market activities beyond those of traditional licensees, we have removed this qualification. Change to the REC may be proposed by any person.
- 4.9. However, the Code Manager will be required to dismiss any change proposals that it does not consider to be valid, for instance if they are materially the same as an existing change proposal, deal with a matter that is outside the scope of the REC or otherwise have no reasonable prospect of success. These criteria form part of the Change Management rules.
- 4.10. We recognise that accessibility is not simply about the rules of who can and cannot raise a change proposal. The language used in many industry documents can make them impenetrable to an interested stakeholder who is not sufficiently familiar with industry jargon and legal terms. A design principle for the REC was therefore that it

should be drafted in 'plain English'. Given our intention that the change process be accessible, we consider that the Change Management Schedule is a key area for testing whether we have achieved this aim. RECCo has therefore engaged with the Plain English Campaign to review this schedule, with a view to it carrying the *Crystal Mark* standard when REC v1.1 comes into effect.

- 4.11. Further REC schedules may be submitted for Crystal Mark accreditation where appropriate, though it is recognised that in order to be effective the code must contain technical details that are intended only for a specialised and expert audience. The requirement to meet and maintain Crystal Mark standards for documentation has also been included in the RECCo requirements of the Code Manager.

Impact Assessments

- 4.12. One of the areas that have hampered the timely progression of industry change proposals is the production of IAs.
- 4.13. The REC will also be heavily dependent upon the provision of IAs from service providers in order to inform determinations on whether or not a given change proposal is implementable, over what timescales and whether it would achieve the proposer's intent in a cost effective manner. We have therefore sought to address the issues arising from production of IAs in two ways.
- 4.14. First, the REC Change Management Schedule sets out a clear timetable of when a preliminary IAs, and if subsequently required a more detailed IA will be provided. In all cases we would expect the preliminary IA to be completed within 15 working days of being requested by the Code Manager. These high level reports will be completed free of charge.
- 4.15. In some cases, where the change has been identified as having an impact on more than one set of industry systems, more than one preliminary IA may be requested. This will be facilitated through the Cross Code Steering Group (CCSG) (see below), which we envisage will be a circulation list of contacts in each relevant organisation, who may be called upon as required, rather than a standing group which meets physically. Those relevant organisations will generally be service providers such as the Central Data Service Provider, but may also include the administrators of other codes.

- 4.16. If a detailed IA is commissioned by the Code Manager, the standard timetable for its completion will be 40 working days, though an alternative timetable can be agreed between the Code Manager and the Service Provider. The cost of producing the detailed IA will be invoiced by the Service Provider(s) to RECCo. In either case, the production of the IA will be a critical component of the timetable that the Code Manager produces for each change proposal, and submits to the Change Panel and wider interested parties for review.
- 4.17. The adherence or otherwise of the Service Provider(s) to these timetables will be a matter which the Code Manager reports on to both the Change Panel and to the PAB. Subject to agreement of the PAB, the production of these IAs may attract liabilities. In effect, each detailed IA that the Code Manager commissions is a new work order, and payments against that work order should be subject to work having been completed on time and to the necessary standard. Late delivery could result in a reduced fee, thereby incentivising the Service Provider to manage their resources appropriately.
- 4.18. Secondly, the REC will not be solely dependent upon the existing Service Providers for the production of IA. If a relevant Service Provider informs the Code Manager that they are unable to provide a view, preliminary assessment or detailed IA in accordance with the requirements of the REC, or if they are unable to reach an agreement with the Code Manager over the timing or cost of producing a view, preliminary assessment or detailed IA, the Code Manager may procure an independent assessment. In such cases we would expect the relevant Service Provider to provide (free of charge) all reasonable co-operation and assistance in relation to the production of that independent assessment.
- 4.19. As customers of the IA, we also expect the Code Manager to provide a quality assurance role in respect of the IA. If the Code Manager or the Change Panel consider that the IA is not fit for purpose, they may send it back for further work or withhold payment until it is complete.
- 4.20. Whilst we would only expect these options to be exercised in exceptional circumstances, we consider that this would address an existing asymmetry in the relationship between codes and service providers. We also consider that this option may prove beneficial to service providers, who may otherwise be obligated to dedicate resources to the production of IA at a time that is not of their choosing and may coincide with peaks of activity within their own business.

- 4.21. Taken together, we consider that the application of clear timelines that are subject to performance assurance measures, and the option to procure an independent IA should mitigate the problems that we have historically seen on other codes.

Q4.1: Do you support our proposals regarding the production of preliminary and detailed IAs?

The Change Panel

- 4.22. We remain of the view that the REC Change Panel should have a relatively limited role. The Change Panel will not have any role in operational matters as sometimes occurs in other codes, which have a Panel or Executive Committee with a wider remit. As previously stated, we consider that those traditional functions of a Panel will be undertaken by the Code Manager under the REC.
- 4.23. Our June 2019 document reiterated our earlier view that the Change Panel should be appointed by the RECCo Board, being made up of a mix of relevant expertise. We suggested that this would involve a membership with constituency responsibilities, such that all categories of REC Party can be assured that their interests will be represented in all decision making processes. However, we were also keen to ensure that the Change Panel should have independent members in sufficient number or with sufficient voting rights that decisions could not be taken against the consumer interest.
- 4.24. The Ofgem-BEIS consultation on the reform of energy industry codes contained proposals that were broadly consistent with the approach we had suggested for the REC Code Manager and Change Panel. However, that document placed greater emphasis on much of the decision making being undertaken by the Code Manager unless delegated to industry, rather than vice versa.
- 4.25. There is currently a mix of independent and representative panels and equivalent bodies amongst the existing industry codes and each model has advantages and disadvantages. However, we consider that the nature of the REC lends itself more towards a panel that acts independently rather than in the interests of particular constituencies. In particular, the REC is intended to provide effective governance of the energy retail market as a whole, rather than of any specific set of procedures or link in the value chain. It would be very difficult to constitute a Change Panel which was genuinely reflective of the energy retail market as a whole while remaining small enough to be effective.

- 4.26. We also agree with those respondents who suggest that any decision taken by the Change Panel should be made against clear and objective criteria, rather than the often undisclosed interests of a given organisation.
- 4.27. We remain of the view that it would be appropriate for the Change Panel to be appointed by the RECCo Board rather than seek to hardwire its composition into the REC legal drafting. We consider that composition of the Change Panel could suitably form part of its Terms of Reference in a similar manner to the PAB, and utilising the nominations committee for appointments where necessary. This would allow for a more dynamic approach to appointments than the current periodic election process. This will be particularly important as the REC continues to evolve and provide governance for a retail market which is itself evolving and increasingly made up of non-traditional participants. This would also allow for the early replacement of members who for whatever reason cannot fulfil the terms of their appointment. It may even be appropriate to appoint individuals on a temporary basis where they can offer specific insight on a particular issue of relevance.
- 4.28. Whether or not to remunerate Change Panel members would appropriately be a matter for the RECCo Board to consider. A small allowance for time committed to the Change Panel and/or any expenses incurred may allow for the participation of individuals who might otherwise be precluded. This may be particularly appropriate for consumer representatives or other independent experts whose involvement would benefit the Change Panel and wider change process.
- 4.29. Whilst, as noted above, we would not expect to prescribe the composition of the Change Panel on an ongoing basis, we have to start somewhere. We consider that the initial Change Panel should match the composition of the PAB, as set out in the PAB Terms of Reference (see Appendix 2).
- 4.30. As with the PAB, we consider that an effective and independent chair of the Change Panel could be member of the RECCo executive team. This would also facilitate their effective oversight of the Code Manager in their support of the Change Panel.
- 4.31. We propose that the Change Management Schedule will form part of the REC v1.1 in order to facilitate a rolling start to the arrangements in September 2021. As part of this, we would expect the Change Panel to be appointed by Summer 2021.

Q4.2: Do you agree that the Change Panel should be appointed by the RECCo Board, following a process overseen by the nominations committee?

Change Panel frequency

- 4.32. Another objective we set for the Change Panel was that it must be capable of acting quickly, and reaching decisions without undue delay. Whilst much of this will depend on the expertise of the individuals appointed to the Change Panel and in the quality of information it is presented on which to base any decision, we have also considered the mechanics of Change Panel determinations.
- 4.33. As we have noted in previous consultations, the length of time currently required to progress code modifications is due to the need for and relative infrequency of face to face industry meetings. In the case of meetings of a panel or equivalent body, these are typically monthly. This in turn drives the work schedule of the code administrators, determining deadlines for the completion and submission of reports, etc. Whilst this is entirely reasonable, particularly given the need to give panel members sufficient time to read and consider papers, this can considerably extend the time required to complete the change process.
- 4.34. This batching together of determinations also places a considerable burden on both the panel members and code administrators. Each meeting typically takes a full day out of attendees' diary, not to mention travel and preparatory reading time.
- 4.35. In the revised Change Management schedule, we have sought to balance the needs of timeliness and Change Panel members' commitments. We propose that the Change Panel convene on a fortnightly basis, alternating between a firm scheduled agenda and a buffer meeting, to be held only when required.²⁰ To further reduce the burden on participants, meetings should continue to be held by video or teleconference as the norm rather than by exception.
- 4.36. Change Panel determinations should be better informed and expedited by the production of quality reports by the Code Manager, which give a very clear and

²⁰ The decision on whether or not to convene a meeting should be taken by the Code Manager, in discussion with the Change Panel Chair, based on the likely agenda content and their previously agreed timetable.

evidenced recommendation on all matters to be determined. This should facilitate more efficient and time-bound meetings which can more readily be accommodated within Change Panel members' diaries rather than requiring a whole day to be devoted to it. This may be of particular benefit to smaller parties who have traditionally been unable to commit the necessary resource to fulfil such roles.

Q4.3: Do you agree that the REC should encourage shorter and more frequent Change Panels, to be held remotely where possible?

Devolved decision making

4.37. It is important that a robust and transparent change process is in place to deliver changes to all REC documentation. However, the process should be proportionate, with effective decision making by individuals with the relevant skills and expertise. It is therefore proposed that each document is categorised, taking into account the impact to market participants or service providers of any change. For example, an operational schedule containing obligations on parties will require a higher level of scrutiny than guidance documents with optional requirements. The decision making provisions will differ, depending on the categorisation.

4.38. The following categories of document and associated change path have been developed:²¹

- Category 1 – The main body of the REC and operational schedules which include obligations on market participants or service providers and will be subject to the full REC change process overseen by the Change Panel;
- Category 2 – Technical documentation relating to REC services or industry data such as the REC Technical Specification, or documentation which does not directly and materially impact industry parties. Various REC committees will be established which will govern these documents, for example the Performance Assurance Board or a dedicated Metering Group.

²¹ These categories broadly follow the approach taken with configurable items under the BSC.

- Category 3 – Operational documentation and guidance which is required to support market participants but does not include any obligations of market participants. These will be maintained by the Code Manager or other relevant REC Service Providers.

4.39. The categorisation of each document will be set out in a REC Baseline,²² which will form part of the Change Management Schedule. However, regardless of categorisation the Code Manager will retain oversight of ultimate responsibility for all change control. As noted above, this could include the escalation of a change into a higher tier of governance if they reasonably consider it is warranted, or *vice versa*.

Category 1 documents

4.40. We would ordinarily expect the documents classified as Category 1 to follow the full process set out in the Change Management Schedule, as overseen by the Change Panel.

4.41. We agree with those respondents to the June 2019 consultation who suggested that there should be less recourse to the Authority to make decisions. Change Proposals are often referred to us simply due to their being a lack of consensus rather than it being warranted by the materiality of the proposal. This is not a good use of resources and can undermine confidence in the Change Panel. We would expect the Code Manager to act as a filter in such referrals, ensuring only those which have a material impact upon consumers or competition come to us.

4.42. We consider that there is scope to give a substantive role in decisions to both the Change Panel and the Code Manager. Given that the Code Manager will have developed the proposals and engaged extensively with stakeholders, it seems appropriate that the Code Manager should recommend whether or not the proposal is accepted. They will reach this position not only having regard to the development of the proposal itself, but with the wider REC objectives. In the event that the Change

²² Some of the terms used in REC v1.1 may change ahead of REC v2.0 in order to achieve consistency and uniform use; for instance, references to the REC Baseline are currently interchangeable in development discussions with terms such as *REC artefacts*.

Panel agrees with the Code Manager recommendation, we consider that their determination should take effect, without further involvement of the Authority.

- 4.43. If the Change Panel does not agree with the Code Manager recommendation, there should be opportunity to defer the determination but only if they consider that there is further evidence or rationale that the Code Manager could reasonably provide which would better inform their decision. Otherwise, if the Code Manager and the Change Panel do not and cannot come to an agreement *and* the matter is considered to be of sufficient materiality, it would be escalated to the Authority. In effect, there would therefore be a dual key on self-governance decisions.
- 4.44. Similarly, we consider that some documents will also require the approval of the RECCo Board; for instance, where they directly impact upon contracts that the RECCo has struck with service providers, or with its own Articles of Association. Such changes would follow the standard category 1 change process, but will require the 'dual key' of approval by the RECCo Board in order to be given full effect.

Category 2 documents

- 4.45. As noted above, Category 2 provisions will be progressed through a streamlined change process, with a proportionate adherence to key principles such as IAs and consultations.
- 4.46. The key difference between Category 1 and 2 processes is the decision making body, with specific committees established to agree Category 2 documents. It is proposed that, as a minimum, there will be:
- a technical group with expertise to make decisions in relation to technical requirements set out within the technical specification;
 - the PAB to make decisions on the documentation that complements the performance assurance framework including service provider service levels; and,

- a metering group with expertise to make decisions in relation to meter operation requirements set out within the metering code(s) of practice.²³

4.47. These, and other such groups, may not be required to meet on a regular basis as is currently the norm, but essentially act as a contact list of relevant individuals who should be engaged as and when required.

Category 3 documents

4.48. Although Category 3 documents will be subject to the formal REC change management arrangements, we propose that responsibility for their maintenance be delegated to the Code Manager, or another appropriate REC service provider, such as the DCC in its role as Switching Operator, where appropriate. This will allow these documents to be maintained in a dynamic and agile manner. However, it will also be important to ensure that changes to those documents are managed transparently and with a clear focus on accessibility and usability by market participants.

4.49. Where a proposed change is likely to impose a material cost or other burden upon market participants, we would expect the change to be escalated and follow a more formal change path, including the wider consultation with stakeholders and decision making model that would apply to a Category 1 or 2 change. Conversely, if a clearly straightforward and non-contentious change is required to a Category 1 document, we would expect this to be subject to delegated authority to the relevant group, and follow a lighter touch process, proportionate to the matter at hand.

Q4.4: Do you agree with the proposed categorisation of REC documents and associated change paths?

Application of proposals to the REC Technical Specification.

4.50. In November 2019 we published our consultation on various documents which will form the Technical Specification for the switching arrangements, and form part of the REC. Those Technical Specifications will incorporate:

²³ The inclusion of the metering Codes of Practice was set out in the RCC SCR launch statement.

- A data specification;
- Security and data protection requirements;
- Testing arrangements for market entrants and to support market innovation; and,
- Service definitions for each of the services specified in and to be governed by the REC.

4.51. In keeping with the categorisation of other documentation which forms part of the REC architecture, each of the Technical Specification documents will be assigned a relevant decision maker as set out in the Change Management Schedule.

Cross Code Change Management

4.52. Notwithstanding the consolidation of codes being undertaken as part of the RCC, and without prejudice to the potential for further consolidation through the Ofgem-BEIS codes review, we expect that there will still be a need for effective management of changes that impact upon more than one code. In developing the REC we have sought to address those problems.

4.53. In particular, the REC Technical Specification includes provisions that impact on the operation of other industry codes. For example, the REC will host the Data Item and Message Catalogues. The scope of these catalogues includes the data items and messages required under the BSC, DCUSA, SEC, UNC and IGT INC. The REC Code Manager will be responsible for publishing these catalogues and implementing updates. However, it is important to ensure that the overall governance framework places responsibility and control over the actual metadata held within the Data Specification on the relevant organisations that create and/or use it, and the codes that manage the related processes.

- 4.54. Other examples include the close working required by the REC Code Manager and the BSC Code Manager on entry assessment, and the Joint BSC and REC *Storyboards*.²⁴ This document is governed under the REC but will include information related to the BSC.
- 4.55. It is likely that the sharing of resources and reliance on other codes to provide assurance over key dependencies will require a more structured and effective approach to the cross code working than has traditionally been the case. Whereas some of these arrangements have been codified,²⁵ others have relied on ad hoc voluntary coordination between the various code administrators, in accordance with CACoP principle 13: '*Code Administrators will ensure cross Code coordination to progress changes efficiently where modifications impact multiple Codes*'.²⁶ This results of this have been mixed.
- 4.56. As part of the RCC SCR we will establish an enduring governance framework to enable robust cross code working, including on the assessment and development of changes that impact upon two or more industry codes. The key principles to be reflected within this cross code governance framework are:
- Requirements to send messages to reflect the content and format defined in the REC Technical Specification (and specifically the Data Specification) will be included in the REC and any other industry code that relies on the metadata held within the Data Item and Message Catalogues. Each code will include a statement that where a conflict exists, the REC Data Specification will take precedence.
 - Each data item and message will have a defined metadata owner which identifies the industry code which has overall control of the metadata. Changes to these data items and messages may be considered under other codes with industry IAs where required; however, the lead code, being the one which the

²⁴ 'Storyboards' refer to the internal and external testing that applicants are required to undertake, based on certain defined scenarios. These storyboards are currently set out for the MRA and BSC, but will in future be set out for new market entrants in the REC.

²⁵ For example the MRA's relationship with the BSC Agent, which has traditionally held a seat on its Executive Committee, this nonetheless resulted in duplication and a rigid hierarchy of documentation rather than genuine collaboration.

²⁶ See: CACoP v5.0 at: https://www.ofgem.gov.uk/system/files/docs/2019/01/cacop_v5.0_final.pdf

change proposal primarily impacts, will be responsible for deciding whether a change should be made. This approach reflects the fact that code objectives may differ, therefore it is appropriate for the change to be considered under the relevant code(s).

- Where a single industry change requires modification to multiple industry codes ie. the end to end switching process amends switch request messages owned by the REC and settlement flows owned by the BSC / UNC, the relevant change proposals should be progressed in parallel and implemented at the same time, and with a 'one fail all fail' approach so that the codes cannot inadvertently be modified out of kilter.
- Where changes are approved which impact multiple codes, parties to any of the impacted codes may appeal the decision to the Authority, based on defined criteria.

4.57. The June 2019 consultation proposed the establishment of a CCSG to oversee the assessment of changes that impact multiple codes. It is proposed that these key principles are reflected within the CCSG Terms of Reference, the draft of which is provided with this document (see Appendix 2). They have also been reflected in the RECCo Code Manager requirements.

4.58. We also want to reduce the dependence and burden upon individual code parties in facilitate this cross code working. The REC will not have any restrictions on who can raise a change proposal. This would therefore permit the code administrator of another code to raise a REC change, if necessary.²⁷ However, this ability to raise change proposals does not extend to other industry codes such as the BSC and UNC. We consider that these rights should be reciprocal, allowing the Code Manager to raise changes to the other industry codes in limited circumstances, where such an impact has been identified through the CCSG. We have sought to address these asymmetries

²⁷ The REC Code Manager will maintain the Energy Market Architecture Repository (EMAR). Upon being given notice of a relevant change, which does not have any cross code impacts and has been decided upon and given effect through another code, they will make the necessary updates to the EMAR to reflect that change, as if it had been made under the REC.

within the RCC consequential drafting changes that will be consulted upon in December 2020 and given effect alongside REC v2.0.

Q4.5: Do you agree that code administrators and managers should be able to raise any changes identified as necessary by the CCSG?

Authority decisions

- 4.59. To the extent some REC decisions will still come to us for a decision, we recognise that we will also have a role to play in ensuring the overall timeliness of the REC change process. Ofgem has for a number of years had a Key Performance Indicator (KPI) on its modification decision making. The KPI requires that at least 90% of modification decisions are made within 25 working days of receipt of the Final Modification Report (FMR), or where applicable, the close of consultation on an IA or other consultation we may carry out subsequent to receipt of the FMR. The timeline is also reset if we have to send the modification back to the relevant panel for further work.
- 4.60. We would ordinarily expect to have made a determination on a REC change proposal within 25 working days, or set out the timetable required for us to do so. We expect to be aided in meeting this target through the submission of thorough and substantiated FMRs produced by the Code Manager.
- 4.61. However, if we consider that a change to any code would have a significant impact upon parties or other stakeholders, we have a duty to undertake an IA prior to making any decision on it. We would reasonably expect the potential for such impacts to have been identified early on in the process, and that we would signal well in advance of the expiry of the 25 working days that we will undertake an IA and the timetable within which it will be undertaken. The same would apply to any other consultation we wish to undertake prior to making a decision, such as any consequential modification we may minded to make to the licence. An open dialogue with the Code Manager would therefore enable any process that we may undertake as part of our decision making to be factored into the Code Manager's timetable for the change proposal and communicated to Parties accordingly.

5. Theft Arrangements

Section summary

The current energy theft arrangements are coming to a natural watershed, both in terms of the migration of code arrangements from the SPAA and DCUSA into the REC, and also as the contracts with existing service providers come to an end. This presents a challenge in terms of the orderly transition of arrangements, but also an opportunity to enhance those arrangements from the outset of their operation under the REC. This chapter outlines the position in respect of the existing services and the role of the RECCo in those changes, with accompanying legal text set out in a draft Energy Theft Reduction schedule, published alongside this document.

Q 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?

Q5.2: Do you consider that the RECCo should be required to periodically review the effectiveness of the incentive scheme(s)?

Q5.3: To what extent, if any, do you consider that the Theft Target should be reduced pending the replacement of the Theft Risk Assessment Service?

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?

Background

- 5.1. Theft of energy is estimated at around £400m per year. Very little of this is recovered, with the remainder being passed through to bill-paying consumers. In addition to the economic cost of theft, meter tampering can pose a major risk to life and property.
- 5.2. In 2012 we strengthened the licence obligations on gas suppliers to prevent, detect and investigate theft. This was followed by a modification to electricity supply licences in 2014. Those licence modifications introduced new theft arrangements which included a Theft Risk Assessment Service (TRAS), a new tip-off line, financial incentives to off-

set the cost of investigations and codes of practice for handling suspected theft situations. Those arrangements are currently set out in broadly equivalent provisions in the SPAA and the DCUSA. The provisions were therefore an early and non-contentious candidate to migrate to the REC.

- 5.3. Our intention to migrate the theft arrangements to the REC was confirmed in the February 2019 Way Forward document, as we considered that this would facilitate a more holistic and complementary theft reduction strategy. This was subsequently included in our RCC SCR launch statement.
- 5.4. Our June 2019 document recognised that a strategic review of the theft arrangement was being undertaken by the Theft Steering Group (TSG), which reports jointly to the SPAA and DCUSA. That strategic review has produced various documents and conclusions which have helped to shape the direction of travel for the theft arrangements, and in particular the need for RECCo to have a clear and early role in the procurement of associated services. There is also a clear role for the PAB.
- 5.5. Our proposals for the transition of theft arrangements, building upon the work of the TSG, are set out below together with cross-references to the accompanying draft Energy Theft Reduction schedule where appropriate.

Objections to a switch

- 5.6. The effective investigation of a potential theft situation is likely to require early access to the premises and to the meter. Concerns have been raised to Ofgem through the Theft Issues Group and Theft Best Practice Forum that the introduction of faster switching arrangements will inhibit suppliers' ability to gain access and complete an investigation, once a switch is initiated. It was therefore suggested that the instance of an active and ongoing theft investigation should be added to the valid reasons to object to a switch. This would require a minor modification to Standard Condition 14 of the Gas Supply Licence and Electricity Supply Licence, and we understand could be given effect with minimal change to suppliers' systems.
- 5.7. Under the current model of theft arrangements, each supplier takes responsibility for the detection and investigation of potential theft on their own portfolio. This poses challenges both for the initial collection and analysis of data, but also in completing investigations if the customer subsequently transfers to another supplier. Whilst there may be alternative solutions to this problem that may be progressed in the longer

term, such as the investigative team continuing to act as the agent of whomever is the relevant supplier, we consider that the ability to object due to an ongoing and active investigation is a practical and proportionate measure.

- 5.8. We would therefore support such a modification to the gas and electricity suppliers' licence in principle. However, we also consider that it should be subject to certain safeguards to prevent misuse. For instance, we consider that any objection on these grounds should be subject to there being an active theft investigation being carried out in accordance with prevailing code of practice, and that this should be strictly time-bound, allowing the supplier sufficient time to complete their initial investigation. This restriction would be in line with prevailing best practice for investigations, but could be subject to an extension if theft is proven, and the supplier requires more time to pursue the recovery of money owed. The use of such objections and timely completion of investigations could be subject to oversight through the REC performance assurance regime.
- 5.9. This proposal will be included in the proposed licence modifications which we will consult upon in November 2020.

Q5.1: 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?

Theft Risk Assessment Service

- 5.10. Prior to our strengthening of the obligations to prevent, detect and investigate theft in the supply licences, there was a great disparity in the level of theft investigation and revenue protection activity being undertaken by suppliers. For many, the costs of conducting an investigation far outweighed the benefit, not least as the costs of an investigation are borne directly, while energy that is "lost" to undetected theft is socialised across all suppliers. This placed an unfair and unsustainable burden on those suppliers who were pursuing investigations. There was (and to an extent still is) a risk of "safe havens" being created, where theft at supply points registered to some suppliers would not be detected, let alone proven.

- 5.11. The objective of the TRAS was therefore *“to develop, maintain and operate a service in a consistent manner across all Suppliers, such that any Consumer that undertakes Theft of Gas and Electricity will have a reasonable chance of being detected, regardless of which Supplier supplies them”*.
- 5.12. In particular, the TRAS takes consumption data from all suppliers and through the use of profiles and other analytical tools, identifies anomalies in consumption patterns for that property and/or household type. Although such analytics had previously been available to larger suppliers, TRAS ensures that smaller suppliers also had access to potential theft “leads”. The current service provider also has access to wider data sets and experience of profiling for credit scoring, etc. However, it is important to make a distinction between the proprietary service that is currently provided under contract to Suppliers, and the generic and generally defined TRAS.
- 5.13. The current version of the TRAS was implemented in April 2016. Since then, the service has developed and improved, but many suppliers are unconvinced that its cost is justified by the additional number or quality of leads it generates over their own traditional methods. A report recently undertaken in 2019 by BDO International, an accounting and business advisory firm, found that the expected cost-benefit ratio of the current service through to March 2021 does not justify a continuation of the scheme in its current form.
- 5.14. We are grateful to the TSG for providing a redacted version of the BDO report. Whilst it is possible that the value for money assessment of the service will improve over the remaining term of the contract, and/or that the relative value achieved is more reflective of Supplier’s ability or willingness to use the leads generated than of the quality of leads themselves, the TSG was keen to consider alternative approaches before the service is re-procured. This could include a revised and more cost-efficient version of the TRAS, or a different approach entirely. However, for the avoidance of doubt, the licence obligations in respect of the prevention, detection and investigation of theft will remain.
- 5.15. One alternative to the currently TRAS arrangements may be a National Revenue Protection Service (NRPS). An NRPS was one of the options considered by Ofgem in its 2012 IA, but was not pursued, in favour of the TRAS. In summary, like the TRAS the NRPS would involve data analytics to determine appropriate theft leads. However, suppliers may then be required rather than simply incentivised to investigate the highest risk cases identified. The NRPS would also socialise the procurement of the

revenue protection services needed to tackle theft (such as field investigators and debt collection) making them available for use by all Suppliers on an elective basis.

- 5.16. Whilst we welcome the development of alternative approaches to detecting and investigating theft, the proposed trial could not be established and produce any conclusive results in time to inform the replacement of the current TRAS. However, we are also of the view that any TRAS replacement is likely to have elements in common with the NRPS, insofar as both would require the initial collection and analysis of relevant data. The main impacts of adopting an NRPS arrangement would therefore be to the existing theft incentives schemes, and potentially the requirement to centrally procure a revenue protection team available to all suppliers on equivalent terms. We therefore consider that further evaluation of the NRPS proposal should best be undertaken as part of the REC Theft Reduction Strategy (see below).
- 5.17. Given that any replacement of the current TRAS could now only be given effect through the REC, we wrote to the SPAA Ltd and DCUSA Ltd Boards to confirm that the procurement of that service and subsequent negotiation of the contractual terms should be managed under the auspices of the REC by the RECCo Board. We also note that a provision was made in the 2020/21 RECCo budget for this purpose. However, it is still hoped that the requirements gathering exercise undertaken by the TSG will help inform that procurement. This will ensure continuity and minimise any potential gap in service provision.
- 5.18. In order to provide further clarity on the relevant responsibilities for theft arrangements going forward and to ensure that RECCo has clear vires to undertake this work while the legacy codes for the time being retain ownership of "business as usual" theft activities, we propose that a framework theft schedule should be given effect as part of REC v1.1.
- 5.19. Whereas the original TRAS was given effect pursuant to a Direction of the Authority²⁸, rather than issue a further Direction we propose to include the same outline principles on the nature of the service as part of the Energy Theft Reduction schedule. This drafting is expected to be transitional only, being replaced with a detailed service definition once nature of the replacement service is known. However, taking a lesson

²⁸ See: <https://www.ofgem.gov.uk/ofgem-publications/88712/trasdirectioncoveringletter2.pdf>

from the original roll-out of the TRAS, we have included a requirement that the replacement version should be in place from 1 April 2022, or such later date as may be agreed by the Authority following the submission by the RECCo Board of a detailed project plan for the development, procurement, and provision of that service. This should ensure that the gap in service provision will be no longer than absolutely necessary, and that the RECCo Board will have ownership of and responsibility for delivering against that timetable.

- 5.20. We are aware that the gap in provision of a data analytics service may impact upon some Parties' ability to identify potential instances of theft, and therefore their ability to meet theft investigation targets. This is further considered below.

Incentive Schemes

- 5.21. The Gas Theft Detection Incentive Scheme (GTDIS) was introduced in June 2017 setting out yearly theft targets for participating Suppliers to report confirmed thefts. A further scheme based on the same design principle, the Electricity Theft Detection Incentive Scheme (ETDIS) was introduced in June 2018. Both schemes followed a model set out by Ofgem following its consultations into gas and electricity theft respectively.
- 5.22. Under both schemes, Suppliers are incentivised to ensure that in cases of a confirmed theft, appropriate remedial steps shall be undertaken to stop the theft of gas from continuing. They are then able to make a claim for payment from one of two (per fuel) separate funds into which all suppliers pay, pro rata to their market share. Those funds are split into Domestic and Non-Domestic pots, with payments from each being pegged approximately to the expected cost of investigation. In effect, they seek to compensate Suppliers for undertaking theft investigation activities for which they may otherwise receive little or no direct economic benefit, but are in the interest of the market and consumers as a whole.
- 5.23. The existing incentive schemes were also subject to review by BDO, who found that whilst the relatively recent introduction of the schemes made it hard to draw definitive conclusions as to their effectiveness, there was some evidence of adverse distributional effects. Specifically, whilst the scheme appeared to provide effective incentives to larger suppliers, there was little or no incentives for smaller Suppliers. This may be partly due to the relevant capabilities of such suppliers and their revenue protection teams, but also because their theft targets were proportionately harder to meet. Whilst

the schemes may therefore be achieving the overall objective of encouraging more theft to be found than would otherwise be the case, for smaller Suppliers the schemes take up resources that may have been better utilised spent elsewhere.

- 5.24. The BDO report also highlighted a concern that had previously been raised by some Suppliers, that the schemes were structured in a way that rewarded only positive identification of theft, rather than efforts made on theft prevention and other detection methods associated with best practice.
- 5.25. The IAs which led to the original incentives scheme model are now several years old, being produced in 2012 in gas and 2014 in electricity. We have previously recognised that those schemes could be improved upon, and had originally anticipated that they would evolve and become more refined in light of operational experience and evidenced lessons learnt. However, each of the proposed changes to the schemes raised since their introduction have been rejected, in part due to lack of supporting evidence. The Theft Steering Group considered that it was appropriate to reconsider the structure of the scheme, and has asked Ofgem to facilitate this through issuing a consultation.
- 5.26. Given the evidence presented in the BDO report of the operational impacts of the schemes, we agree that it is appropriate to review the operation of the schemes. However, we also consider that it would be appropriate for the design of the incentive scheme to be informed by and complementary to the nature of the replacement data analytics service, and vice versa.
- 5.27. We further consider that the changes to the schemes may be incorporated into the work of the PAB as part of the Theft Reduction Strategy (see below) and if appropriate, progressed through the REC Change Management procedures. We consider that such an independent review of the schemes would be more likely to result in change proposals that deliver the original intent of the schemes than those raised by the parties who are subject to the scheme. We further consider that such a review should be carried out periodically in order to ensure that the schemes are, and remain, effective.
- 5.28. For the avoidance of doubt, we are therefore not seeking to revise the fundamentals of the incentives schemes that are part of the immediate transition to the REC. Any substantive further development of those schemes would appropriately be taken forward under normal REC governance rather than as part of the Switching or RCC

SCR. We would expect this to be considered as part of the RECCo Theft Strategy. However, it would be relatively straightforward to change some of the parameters of the scheme, as set out below.

Q5.2: Do you consider that the RECCo should be required to periodically review the effectiveness of the incentive scheme(s)?

Transition of the incentive scheme(s)

- 5.29. Earlier this year, when we anticipated that the RCC modifications giving effect to REC v2.0 and winding down SPAA and MRA would occur 1 April 2021, we sought views from the RDUG on how best to handle the transition of the incentive schemes, given that the scheme years run from June to May, and would therefore extend beyond the anticipated end date of existing governance, and of the TRAS contract support. We were concerned that, unless clearly signalled and carefully managed, the premature curtailing and/or migration of the scheme year could have unintended consequences for the distribution of payments.
- 5.30. We therefore presented a number of options to, and sought views from, the RDUG on how best to manage this transition, one of which was to curtail the 2020/21 scheme year to ensure that it would come to an orderly end under existing governance. We subsequently accepted Change Proposals to the SPAA²⁹ and to the DCUSA³⁰, which gave effect to this option. In parallel, preparation were made for the schemes to commence under the REC from 1 April 2021 as part of the originally scheduled RCC. Although the RCC effective date has now been moved back to 1 September 2021, the RECCo Board has agreed that it should continue to assume responsibility for the schemes from the original 1 April 2021 date, thereby avoiding the sort of mid-year transition of the scheme which we originally set out to avoid.
- 5.31. Given the expiry of the current TRAS contract at the end of March 2021 and the anticipated April 2022 delivery of a replacement service, some suppliers have queried whether there should be a reduction in the Theft Target, being the number of instances of energy theft which they are incentivised to detect in the 2021/22 scheme year. Our

²⁹ SCP491: 'Amendment to the Gas Theft Detection Incentive Scheme (GTDIS) Timing'

³⁰ DCP368: 'Amendment to the Electricity Theft Detection Incentive Scheme (ETDIS) Timing'

current view is that the absence of TRAS generated leads would not necessarily have a bearing on the balance of payments under the scheme. Leads will continue to be provided by the TRAS up to the end of March 2021 and will remain relevant and available for use in the schemes. Whilst these leads alone may not be sufficient for suppliers to meet their targets, all other aspects of the theft arrangements, including the tip-off service will continue to be in place (subject to the re-procurement of that service having completed in time). We therefore consider that Suppliers should continue to be in a position to meet their annual theft detection targets. However, we are also conscious of the fact that some suppliers place a greater reliance on the TRAS generated leads than others. We therefore invite views on whether, and to what extent, the 2021/22 Theft Target should be reduced to reflect the absence of the TRAS.

Q5.3: To what extent, if any, do you consider that the Theft Target should be reduced pending the replacement of the Theft Risk Assessment Service?

Energy Theft Tip Off Service

5.32. The Energy Theft Tip-Off Service (ETTOS) enables members of the public to report suspected instances of energy theft, and works in a similar fashion to other tip-off lines. This service is currently delivered by Crime-stoppers, which receives the calls and uses existing enquiry services to match each tip-off with the Supplier it potentially affects. The ETTOS then passes this information on to the Suppliers to investigate. In instances when the relevant Supplier cannot be identified, the information is passed on to the relevant network operators to investigate.

5.33. The report by BDO referenced above found that the tip-off service does produce a positive economic benefit. While the TSG considers that the service could benefit from some small changes, these are at a contractual level rather than requiring a change to the existing ETTOS schedule(s). We therefore do not propose to make any substantive changes to this arrangement as part of the transition to the REC, beyond those necessary to reflect a dual-fuel service and replace defunct references. The ETTOS legal text is set out in Annex 1 of the Energy Theft Reduction schedule, accompanying this document.

5.34. The exception to the above is the inclusion of an escalation process to cover situations where a party fails to complete the required reporting. This is currently provided for in the DCUSA version of the schedule but was omitted from SPAA. We have included this

as part of the Energy Theft Reduction schedule for completeness, but as with other such reporting requirements would expect them to be subject to review by the PAB. The escalation process as drafted is therefore only expected to be a transitional arrangement, potentially being replaced with a more general PAB approach to reporting as part of REC v2.0.

- 5.35. We have also clarified for the avoidance of doubt that it will be RECCo's responsibility to procure the ETTOS service from 1 April 2021. We understand that this is already well underway.

Theft Reduction Strategy and Methodology

- 5.36. As noted about, a strategic review of theft arrangements has been undertaken by the TSG and prompted several initiatives. We are keen to ensure that any momentum that has slowly built can be retained, and carried over into the new regime.
- 5.37. We consider that reductions in energy theft and the associated costs to energy suppliers and consumers should appropriately be a feature of the PAB risk register, and that it should have a comprehensive strategy to reduce it. However, we also recognise that this may need the concerted efforts of all of the RECCo and its institutions. We therefore propose to place an obligation on RECCo to develop and maintain such a Theft Reduction Strategy, which it may discharge as it considers appropriate, including through delegation to the appropriate sub-groups, which may include the PAB.
- 5.38. We consider that the REC Theft Reduction Strategy would be complementary to the existing Distribution Losses Strategy that Electricity Distributors are required to maintain under the conditions of their licence.³¹ That condition requires the licensee to ensure that Distribution Losses from its Distribution System, which include theft of electricity, are as low as reasonably practicable, and to maintain and act in accordance with its Distribution Losses Strategy.
- 5.39. We have included within the draft Energy Theft Reduction schedule a principle-based obligation which requires the REC Board to produce a Theft Reduction Strategy, similar to that placed upon the Distribution licensees above, but does not prescribe what

³¹ Electricity Distribution Standard Licence Condition 49: Distribution Losses Management Obligation and Distribution Losses Strategy

measures that strategy should contain. However, noting the concerns raised by some TSG members and consistent with the drafting of the Distribution Losses Strategy, we consider that the Theft Reduction Strategy should be based on an up-to-date cost-benefit analysis. Noting that energy theft can impose a risk to life and property as well as impose economic cost on bill-paying consumers, we would reasonably expect that cost-benefit analysis to include some qualitative measures, including impacts on safety and a reasonable assessment of any deterrent effect. We note that Code Manager support for the PAB in delivering a Theft Reduction Strategy was included in the RECCo procurement requirements.

- 5.40. One of the problems that has been identified, at least anecdotally, with the progression of the various initiatives that have emerged from the TSG since it undertook its strategy review is that whilst they all come with a tangible cost, it is much harder to quantify their benefits.
- 5.41. Our own estimates of energy theft stem from the IAs that were carried out several years ago, many of the industry submissions to which were themselves anecdotal and/or suppliers' estimates of theft on their own portfolios. Whilst our estimates were broadly in line with later estimates, for instance those produced by the Allocation of Unidentified Gas Expert under the UNC, they remain a poor basis on which to make investment decisions or give appropriate weight to the issue as compared to other matters which may be competing for the same resources. We are also concerned that in the context of the default tariff cap, suppliers may increasingly look at theft reduction and revenue protection measures as a discretionary cost that they are under pressure to reduce, rather than an investment that mitigates greater costs being incurred through energy losses that are indirectly recovered through socialised energy charges.
- 5.42. In order to determine whether the RECCo or more specifically the PAB is making gains in any objective to reduce energy theft, there must be a robust and comparable basis of quantifying the prevailing extent of theft each year (or such other reporting period as the PAB may consider appropriate). We therefore consider that the PAB should initially develop a methodology by which to arrive at its own estimates of theft, which may also assist REC Parties and the Code Manager in assessing the relative cost and benefits of any given theft initiative. The basis for the methodology and the data from which it is derived would be a matter for the PAB to determine.

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

Appendix 1 – Privacy notice on consultations

Delete this box when producing your document.

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Contact the Data Protection Officer dpo@ofgem.gov.uk if you are unsure about any of the information to be provided to those responding to your consultation.

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, “Ofgem”). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. I.e. a consultation.

3. With whom we will be sharing your personal data

Unless you indicate otherwise, we will make your response, as provided, available online.

4. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for as long as an audit trail on decision-making relating to the questions discussed in this document should reasonably be available

5. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

6. Your personal data will not be sent overseas (Note that this cannot be claimed if using Survey Monkey for the consultation as their servers are in the US. In that case use “the Data you provide directly will be stored by Survey Monkey on their servers in the United States. We have taken all necessary precautions to ensure that your rights in term of data protection will not be compromised by this”.

7. Your personal data will not be used for any automated decision making.

8. Your personal data will be stored in a secure government IT system. (If using a third party system such as Survey Monkey to gather the data, you will need to state clearly at which point the data will be moved from there to our internal systems.)

9. More information For more information on how Ofgem processes your data, click on the link to our “[Ofgem privacy promise](#)”.

Appendix 2 – Subsidiary Documents

Link

[Proposed changes to REC main body](#) (redlined text)

[Nominations Committee Terms of Reference](#)

[Performance Assurance Schedule](#)

[Performance Assurance Board Terms of Reference](#) (Please note this subsidiary document was updated on 16th October. This link provides the correct version to be read)

[Change Management Schedule](#) (redlined against version published as working document in summer 2020)

[Change Panel Terms of Reference](#)

[Cross Code Steering Group Terms of Reference](#)

[Theft Reduction Schedule](#)