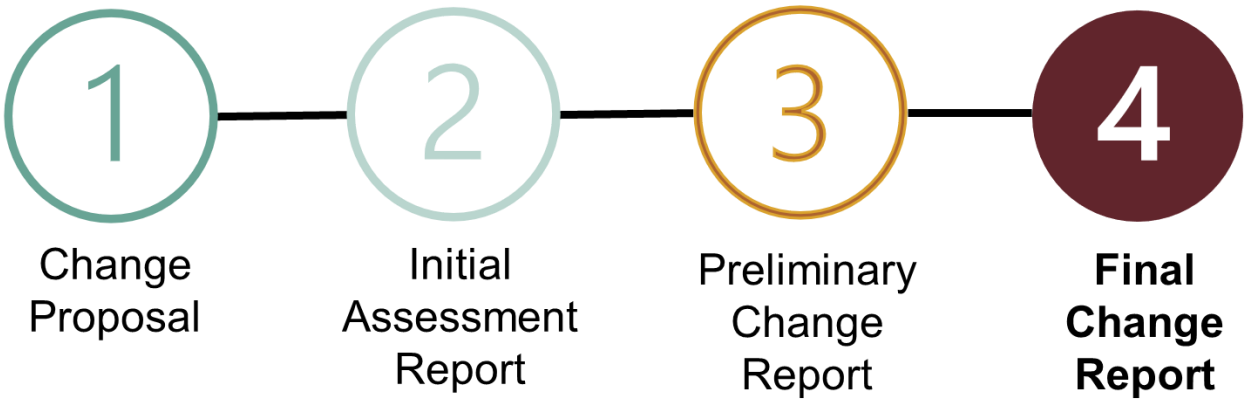
RETAIL ENERGY CODE

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Information is for public, unrestricted dissemination and publication.

# FINAL CHANGE REPORT




| | |
|---|---|
| **PURPOSE:** | The Final Change Report sets is the final stage of the Change Proposal, following consultation of the Preliminary Change Report. The Code Manager will set out their final assessment and recommendation, clarifying any changes made from the Preliminary Change Report. |
| **NOTES:** | There are three versions of the Final Change Report: one is issued the Responsible Committee for decision; one is published after the vote; and (if Authority Approval is required) one is published after the Authority determination. |
| **NEXT STEPS:** | The Final Change Report will be issued to the Responsible Committee who will vote to either approve or reject the Change Proposal, considering the recommendation of the Code Manager. |

RETAIL ENERGY CODE

| | |
|---|---|
| 01 | Initial Assessment Report |
| 02 | Preliminary Change Report |
| 03 | Final Change Report |

# FINAL CHANGE REPORT

## R0046A - GOVERNANCE OF DATA UNDER THE REC (ALTERNATIVE)

| | |
|---|---|
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| DATE ISSUED | 26/07/2022 |
| DOCUMENT APPROVAL STATUS | POST-VOTE |

| | |
|---|---|
| RESPONSIBLE COMMITTEE | CHANGE PANEL |

| | | |
|---|---|---|
| LEAD ANALYST | Jonathan Holland | EMAIL |
| TECHNICAL LEAD | Rosaland Timperley | EMAIL |

## CHANGE OVERVIEW

This Change Proposal has been raised by RECCo and seeks to clarify, update, and extend the requirements of the REC which govern the use of data.

## CODE MANAGER'S RECOMMENDATION

On 26 July 2022, the Change Panel voted to recommend to the Authority that Change Proposal R0046A should be **APPROVED** for implementation on 03 August 2022, subject to the Authority making a determination by 02 August 2022.

| | |
|---|---|
|  | High Impact:<br>N/A |
|  | Medium Impact:<br>N/A |
|  | Low Impact:<br>Energy Suppliers, Gas Transporters, Distribution Network Operators, Metering Equipment Managers, Data Communications Company, REC Service Providers and Non-Rec Party Service Users |

RETAIL ENERGY CODE

## CONTENTS


| | | |
|---|---|---|
| **BACKGROUND** | | |
| **1.** | SUMMARY | **4** |
| **2.** | PROBLEM STATEMENT | **4** |
| **3.** | USER STORIES | **4** |
| **PROPOSAL** | | |
| **4.** | SUMMARY OF ANALYSIS UNDERTAKEN | **5** |
| **5.** | SUMMARY OF IMPACT ASSESSMENT ACTIVITY | **5** |
| **6.** | DELIVERY AGAINST CHANGE PROPOSAL PLAN | **7** |
| **7.** | KEY RISKS, ASSUMPTIONS, ISSUES AND DEPENDENCIES | **7** |
| **8.** | PROPOSED SOLUTION | **7** |
| **9.** | DRAFT LEGAL TEXT | **9** |
| **10.** | PROPOSED IMPLEMENTATION DATE AND APPROACH | **9** |
| **11.** | CHANGE PATH | **9** |
| **12.** | RESPONSIBLE COMMITTEE | **10** |
| **13.** | SUMMARY OF CONSULTATION RESPONSES | **10** |
| **14.** | SUMMARY OF AMENDMENTS MADE FOLLOWING CONSULTATION | **10** |
| **15.** | BUSINESS CASE ASSESSMENT | **11** |
| **16.** | CODE MANAGER'S RECOMMENDATION | **13** |
| **17.** | APPENDIX | **13** |

# BACKGROUND

## 1 SUMMARY

This Change Proposal has been raised by the Retail Energy Code Company (RECCo) and seeks to clarify and update the requirements of the Retail Energy Code (REC) which govern the use of data.

The existing Data Protection Clauses 19 and 20 of the REC Main Body are being updated, to ensure that data governed under the REC is treated in accordance with the Ofgem's Data best Practice Guidance and ensure closer alignment with United Kingdom General Data Protection Regulation (UK GDPR) requirements following developments in the legal and regulatory landscape, since the GDPR came into force in 2018 (including updated guidance issued by the Information Commissioners Office (ICO).

## 2 PROBLEM STATEMENT

The current Data Protection and governance provisions in the REC have the potential for ambiguity. Changes have been identified, following legal review, to provide more clarity for REC Parties who are Data Controllers and/or Data Processors, and to enable RECCo to maintain a comprehensive approach to the governance of data under the REC.

## 3 USER STORIES

| REF. | USER STORIES |
|---|---|
| **CONSUMER USER STORIES** | |
| C1 | As a Consumer, I want to have the confidence that my data is being handled compliantly in accordance with the Data Protection Act 2018. |
| **MARKET PARTICIPANT USER STORIES** | |
| M1 | As a REC Party, I want to achieve compliance and have clarification on my obligations in the context of REC Services. |
| M2 | As a REC Party/Service User, I want to understand the reporting obligations I need to meet if I have suffered a personal data breach, to ensure that RECCo Board is made aware. |
| M3 | As a REC Party/Service User, I need to understand that I will still need to independently assess and document my respective Data Protection roles under the REC. |
| M4 | As a REC Party/Service User, I need to understand the roles and responsibilities of a Data Controller and/or Data Processor to be able to carry out my obligations under the REC. |

## 4 SUMMARY OF ANALYSIS UNDERTAKEN

The proposed legal text changes were identified by RECCo in conjunction with external legal advisors, prior to submission of the draft legal text as part of the Change Proposal. No specific analysis or solution development activity was required as there was already a fully formed solution.

## 5 SUMMARY OF IMPACT ASSESSMENT ACTIVITY

### 5.1 IMPACT ASSESSMENTS

An Impact Assessment was published by the Code Manager on 10 June 2022, inviting REC Parties and Service Providers to respond by 24 June 2022. Seven responses were received; four from Energy Suppliers, two from Distribution Network Operators and a response was also received from the Data Communications Company (DCC) as the Central Switching Service (CSS) Provider. The responses received are contained in the consolidated Impact Assessment responses document here, along with the Code Manager's comments and responses to questions posed by respondents.

The Impact Assessment was combined for R0046 and R0046A, therefore some responses relate specifically to R0046 and the changes proposed to Clause 18. Following review of the responses relating to R0046, the Change Proposer decided to withdraw R0046, to enable a fuller review of the proposed solution. This Change Proposal, R0046A, will continue to progress in line with the Change Proposal Plan.

The Change Proposer has confirmed they are intending to raise a new Change Proposal to progress the elements not covered under R0046A and will take into account the comments received during the Impact Assessment for R0046/R0046A.

| | |
|---|---|
| CSS PROVIDER (DCC) | • Concerns raised with REC Main Body Clause 18 (R0046) of the draft legal text included in R0046 with potential conflict identified between REC and Smart Meter Communication Licence.<br>• Change to REC Main Body Clause 19 and 20 as part of R0046A is the preferred option.<br>• REC Main Body Clauses 19 and 20 for R0046A must be implemented to enable DCC to comply with REC data sharing obligations.<br>• Proposed that changes are made to the Access Agreement template appended to REC Schedule 9 - Qualification and Maintenance to include the new defined terms being introduced as part of this Change Proposal<br>• Data Breach process to notify the REC Board is to be defined. |
| ENERGY SUPPLIERS | • Believe that the proposed draft legal text of R0046A to REC Main Body Clause 19 and 20 will deliver the proposed solution. |

| | |
|---|---|
| | • Agree with the proposed changes in the Change Proposal R0046A<br>• No risks identified<br>• No cost to implement identified |
| **DISTRIBUTION NETWORK OPERATORS** | • Believe that the proposed draft legal text of R0046A to REC Main Body Clause 19 and 20 will deliver the proposed solution<br>• No risks identified<br>• No cost to implement identified |

The Code Manager identified a number of areas where the feedback and supporting justification set out a compelling case for changing the proposed legal text. Therefore, the following changes were being made ahead of the Preliminary Change Report being published:

| DOCUMENT | SECTION / PARAGRAPH | AMENDMENT | REASON |
|---|---|---|---|
| REC Main Body | 19.6 | Removal of *'and such information shall include details of other REC Controllers and how and where to access the Data Subject information notices relating to the Processing of REC Data by the CRS Provider and RECCo'* | The wording clarifies and builds upon an existing obligation on Energy Suppliers, so to an extent this is an existing issue. However, it highlights the need for more work outside of the REC drafting regarding this element |
| REC Main Body | 20.4 (d) | Amended *'Personal Data'* to *'REC Data'* | Updated in line with the defined term |
| REC Main Body | 20.4 (h) | Removal of 'promptly' and the addition of '*as soon as practicable (and, in any event, within 1 Working Day)*' | Updated to reflect the consistent language used within the REC |
| REC Main Body | 20.6 | Removal of '*No REC Processor may subcontract any Processing of Personal Data on behalf of REC Controllers to a sub-processor without the prior written consent of the REC Controllers.'* | Contradiction within the wording of the Clause |
| REC Main Body | 20.6 | Removal of *'REC Service User*' and replaced with *'REC Controller'* | The correct term is REC Controllers |

| | | | |
|---|---|---|---|
| Schedule 9 - Qualification and Maintenance | Appendix 1 – Sample Access Agreement | Defined terms updated:<br>*Processor*<br>*Controller*<br>*REC Data* | Updated in line with the defined terms |

## 6 DELIVERY AGAINST CHANGE PROPOSAL PLAN

Publication of the Preliminary Change Report and Consultation was due on 01 July 2022; however this was delayed to 08 July 2022. This additional time enabled the Code Manager to seek external legal advice to support with the review and revision of the draft legal text, in response to the comments and questions received during the Impact Assessment.

## 7 KEY RISKS, ASSUMPTIONS, ISSUES AND DEPENDENCIES

### 7.1 RISKS AND ISSUES

No risks of issues have been identified as part of this Change Proposal.

### 7.2 ASSUMPTIONS AND DEPENDENCIES

| No. | DEPENDENCY | NOTES | STATUS |
|---|---|---|---|
| **D1** | The Authority will need to decide on whether to approve or reject this Change Proposal by 02 August 2022 if this is to be included in the extraordinary REC release on 03 August 2022 | The Authority has confirmed they will provide their approval or rejection of the Change Proposal by the agreed deadline | Open |
| **D2** | Reporting process to be communicated for a Personal Data Breach concerning REC Data relating to any Centralised Registration Service | Release readiness activity to include communication of the new process to notify the CSS Provider and the REC Board of a Personla Data Breach | Open |

## 8 PROPOSED SOLUTION

**Proposed changes to legal text in the REC Main Body for Clause 19**

The legal text clarifies how the REC Parties, when acting in their capacity as Data Controllers, will interact and comply with their Data Protection obligations, which include:

- Designation of contact points so that REC parties can easily find the right point of contact to engage with on Data Protection related issues;
- Confirmation of the obligations for each Data Controller to comply with the seven key UK GDPR principles (Lawfulness, Fairness and Transparency, Purpose Limitation, Data Minimisation, Accuracy, Storage Limitation, Integrity and Confidentiality (security) and Accountability);
- Flow down/pass-through of Data Protection requirements when sharing personal data with Data Controllers that are not a party to the REC;
- Putting in place relevant Data Processor provisions when contracting with Data Processors; and
- Respective obligations when dealing with personal data breaches. This includes making assessments regarding notification requirements to data subjects and to the ICO. It also covers notification, information and assistance to be provided to the CSS Provider, and the REC Board. The REC Board would then take on a coordination role, including notifying other REC Controllers of a breach.

**Proposed changes to legal text in the REC Main Body for Clause 20**

The legal text covers Data Processor obligations, where one party might be acting as a Processor for other parties to the REC, which include:

- The addition of the obligation to make information about compliance with Clause 20 available to the REC Board. The REC Board already has the ability to audit this, but this in-depth investigation may not always be necessary and simply providing information on request might be a preferred option;
- A general authorisation to appoint sub-Processors and a mechanism managed by each REC Controllers for the purpose of approving the appointment of new Sub-Processors; and
- As soon as practicable (and, in any event, within 1 Working Day) notify the REC Board and the REC Controllers in the event that the REC Processor becomes aware of a Personal Data Breach in relation to REC Data.

**Proposed additions/amendments to the REC Interpretations Schedule**

Four new definitions will be added:

- REC Controller
- REC Data
- REC Processor
- Personal Data Breach

Amendment to:

- Data Protection Legislation

**Proposed updated to the REC Qualification and Maintenance Schedule**

- Updates made to Appendix 1 – Sample Access Agreement to include the new additional defined terms being added as part of this Change Proposal.

## 9 DRAFT LEGAL TEXT

The legal text changes to deliver the proposed solution to R0046A can be found here.

## 10 PROPOSED IMPLEMENTATION DATE AND APPROACH

| | |
|---|---|
| **PROPOSED IMPLEMENTATION DATE** | 03 August 2022 |

| | |
|---|---|
| **PROPOSED IMPLEMENTATION APPROACH** | BIG BANG |

We propose this change is implemented in an extraordinary REC Release on the 03 August 2022, to ensure clarity is in place for Data Controllers and Data Processors as soon as possible after the CSS Go-Live date of 18 July 2022.

## 11 CHANGE PATH

| | |
|---|---|
| **CHANGE PATH** | AUTHORITY DETERMINED |

Ordinarily, with the withdrawal of R0046 and the changes to Clause 18, this Change Proposal would not be considered for Authority Determination, nor would it follow an Urgent timetable. However, whilst the Code Manager does not recognise it, the Data Communications Company (DCC) has stated there is a dependency on the legal text changes to Clauses 19 and 20 to enable them to submit Registrable Measurement Point (RMP) reporting information, in accordance with Paragraph 8.1 of the REC Central Switching Service Definition.

The Code Manager considers that the DCC have the obligations to provide the reporting, irrespective of this Change Proposal, however, this creates the potential to impact the fulfilment of requirements driven from the Switching Programme. In discussion with the Authority, it has been deemed appropriate for the Change Proposal to follow an Urgent timetable and for the Authority to make the determination.

## 12 RESPONSIBLE COMMITTEE

| RESPONSIBLE COMMITTEE | CHANGE PANEL |
|---|---|

## 13 SUMMARY OF CONSULTATION RESPONSES

A 5 Working Day Consultation was circulated on 08 July 2022 to obtain views on the Preliminary Change Report Link. In total three responses were received, one from DCC, one from a Supplier and one from a Distribution Network Operator.

The responses have been consolidated, along with the Code Manager's responses, and can be found on Change Proposal Page on the REC Portal here.

The key themes from these responses have been summarised and set out below.

### 13.1 SUMMARY OF RESPONSES

#### 13.1.1 COMMENTS ON THE SOLUTION

Two of the three responding Parties agreed with the proposed solution. The third respondent provided comments on elements of the proposed legal text changes, some of which the Code Manager agreed with and made the corresponding changes. However, some comments related to wider areas of the Data Protection obligation changes that are out of scope of this Change Proposal as they would require further review and a separate Change Proposal to make these changes.

#### 13.1.2 CASE FOR CHANGE AND CODE MANAGER'S RECOMMENDATION

All respondents agreed there is a positive case for change and agreed with the Code Manager's recommendation.

#### 13.1.3 IMPLEMENTATION APPROACH AND DATE

All respondents agreed with the Code Manager's recommended implementation date of 03 August 2022.

## 14 SUMMARY OF AMENDMENTS MADE FOLLOWING CONSULTATION

| DOCUMENT | CLAUSE /SECTION / PARAGRAPH | AMENDMENT | REASON |
|---|---|---|---|
| REC Main Body | 20.4 (e) | Amended *'Personal Data'* to *'REC Data'* | Updated in line with the defined term |

| | | | |
|---|---|---|---|
| REC Main Body | 20.5 | Insertion of 'that' - 'in respect of Processing of *that* Personal Data'. | Updated to reference the REC Data Processed by sub-processors in that Clause |
| REC Main Body | 20.9 | Removal of 'promptly' and the addition of '*as soon as practicable (and, in any event, within 1 Working Day)*' | Updated to reflect the consistent language used within the REC |
| Qualification and Maintenance Schedule | 7 | Amended *'Controller'* to *'REC Controller'* | Updated in line with the defined term |
| Qualification and Maintenance Schedule | 7 | Amended *'Processor'* to *'REC Processor'* | Updated in line with the defined term |
| Release readiness activity | n/a | Release readiness activity to include communication of the new process to notify the CSS Provider and the REC Board of a Personla Data Breach. | Process clarification/notification to Parties |
| Interpritations Schedule | n/a | New defined term added for 'Personal Data Breach' | New defined term added for clarification |

## 15 BUSINESS CASE ASSESSMENT

### 15.1 BENEFITS

The Code Manager does not consider the benefits to be quantifiable, however the change would bring about the following intangible benefits.

| INTANGIBLE BENEFITS | BENEFITS DESCRIPTION |
|---|---|
| **COMPLIANCE** | Clarification on the obligations in the context of REC Services to allow Parties to achieve compliance. |
| **IMPROVED UNDERSTANDING OF BREACH NOTIFICATION** | Clear reporting obligations following a Personal Data Breach, to ensure that RECCo Board is made aware. |
| **IMPROVED UNDERSTANDING OF RESPONSIBILITIES** | Resolving ambiguity and providing clarity on roles and responsibilities of a Data Controller and/or Data Processor under the REC. |

## 15.2 CASE FOR CHANGE – AUTHORITY DETERMINED

The key driver for this change is to resolve ambiguity and introduce clarity around Data Protection under the REC. It is not seeking to introduce onerous obligations on REC Parties, this is reflected in the changes made to the legal text following the Impact Assessment and in response to comments received during the consultation.

The implementation of this Change Proposal supports the resolution of dependency stated by the DCC, requiring the legal text changes to enable the provision of RMP reporting post CSS Go-Live. Although the Code Manager does not recognise this dependency, the resolution of barriers regarding the production of reporting has a positive impact.

The Code Manager believes that R0046A better facilitates the following REC Objectives:

| OBJECTIVE | IMPACT TYPE | JUSTIFICATION |
|---|---|---|
| To ensure the REC operates and evolves in a manner that facilitates the achievement of its mission statement | Positive | When assessing the impacts against this REC Objective, the Code Manager has considered impacts to the following areas:<br>• The efficient and effective running of the retail energy market;<br>• Competition; and<br>• Consumer Outcomes.<br>The approval, and subsequent implementation, of this Change Proposal will support the effective running of the retail energy market, and ensure Data Controllers and Data Processes are clear on their Data Protection obligations under the REC. |
| To ensure customers' interests and data is protected in the operation of the REC | Positive | R0046A looks to clarify how Data Protection Legislatation should be interpreted in the REC and ensure that data governed under the REC is treated in accordance with the Ofgem's Data Best Practice Guidance.<br>Therefore, the Code Manager considers the impact against this REC objective to be positive. |
| To drive continuous improvements and efficiencies in the operation of the REC and the central systems and communication infrastructures it governs | Positive | The implementation of this Change Proposal will provide more clarity for REC Parties who are Data Controllers and/or Data Processors, and to enable RECCo to maintain a comprehensive approach to the governance of data under the REC. |

## 16 CODE MANAGER'S RECOMMENDATION

Based on the assessment in section 15 of this report, the Code Manager considers the REC Objectives would be better facilitated on the basis of this Change Proposal being implemented.

The Code Manager recommends that the Change Panel recommend that the Authority:

- **APPROVE** the proposed change solution;
- **APPROVE** the proposed implementation approach; and
- **APPROVE** the proposed implementation date of 03 August 2022.

## 17 APPENDIX

| | |
|---|---|
| **CHANGE PROPOSAL – R0046A** | Link |
| **LEGAL DRAFTING – R0046A** | Link |
| **CONSOLIDATED IMPACT ASSESSMENT RESPONSES – R0046 & R0046A** | Link |
| **CONSOLIDATED CONSULTATION RESPONSES** | Link |