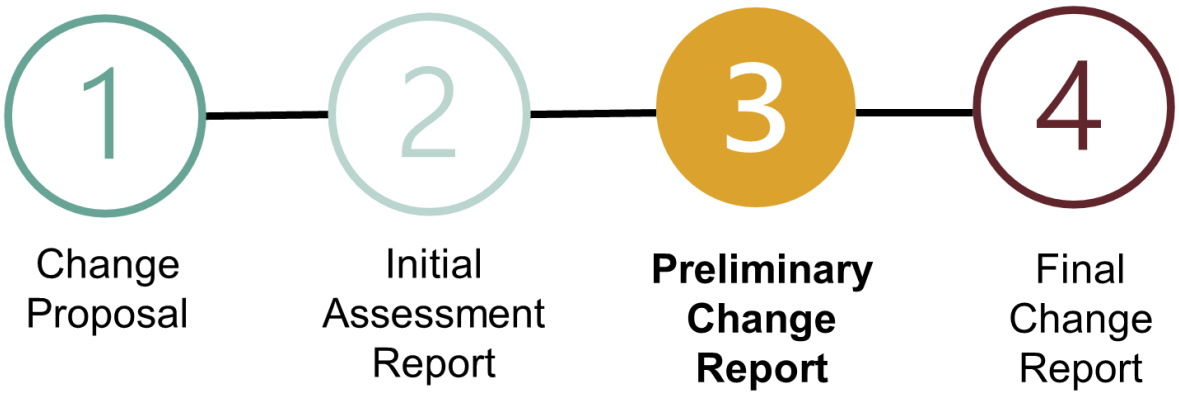
RETAIL ENERGY CODE

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PRELIMINARY CHANGE REPORT



PURPOSE:	The Preliminary Change Report is drafted by the Code Manager when a Change Proposal has a fully formed solution that has been sufficiently assessed to allow a decision to be made on whether this should be approved for implementation. The report includes a summary of the Change Proposal, details of the proposed solution and the Code Manager's view on the case for change and recommendation.
NOTES:	The report sets out the minded-to position, prior to formal consultation, and may be changed when publishing the Final Change Report.
NEXT STEPS:	The Preliminary Change Report will be issued for consultation. Following this, the Code Manager will produce a Final Change Report and the Responsible Committee will make a decision on whether to approve the Change Proposal.

RETAIL ENERGY CODE

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

PRELIMINARY CHANGE REPORT

R0046A - GOVERNANCE OF DATA UNDER THE REC (ALTERNATIVE)

DOCUMENT VERSION	1.0
DATE ISSUED	08/07/2022
DOCUMENT APPROVAL STATUS	PUBLISHED FOR CONSULTATION

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

The Code Manager recommends Change Proposal R0046A is **APPROVED** for implementation on 03 August 2022.

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

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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 set out under 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 draft legal text as part of the Change Proposal. Therefore, 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 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 Proposer has decided to withdraw R0046 at this time, to enable a fuller review of the proposed solution. This Change Proposal 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 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. • Change to REC Main Body Clause 19 and 20 as part of R0046A is the preferred option. • REC Main Body Clauses 19 and 20 for R0046A must be implemented to enable DCC to comply with REC data sharing obligations. • 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 • 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

	• No risks identified • 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. • No risks identified • 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 have been made:

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: *Processor* *Controller* *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 has been delayed to 08 July 2022. This enabled the Code Manager to seek external legal advice to support with the review and revise 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.		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 includes:

- Designation of contact points so that REC parties can easily find the right point of contact to interact 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 Controllers that are not a party to the REC;
- Putting in place relevant Data Processor provisions when contracting with 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 CRS 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 Processor obligations where one party might be acting as a Processor for other parties to the REC, which includes:

- 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 sort of in-depth investigation might 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 and Definitions Schedule

Three new definitions will be added:

- REC Controller
- REC Data
- REC Processor

Amendment to:

- Data Protection Legislation

The impacts identified are based on the Initial Assessment of the proposed solution carried out by the Code Manager. These will be validated in the Preliminary Change Report and confirmed by the Consultation.

Proposed updated to the REC Qualification and Maintenance Schedule

- Updates made to Appendix 1 – Sample Access Agreement to include the new additional defined terms

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 for Data Controllers and Data Processors is in place as soon after the CSS Go-Live date as possible.

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, 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 BUSINESS CASE ASSESSMENT

13.1 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 a clarity on roles and responsibilities of a Data Controller and/or Data Processor under the REC.

14 CASE FOR CHANGE

14.1 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.

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 Date. 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: • The efficient and effective running of the retail energy market; • Competition; and • Consumer Outcomes. 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 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. 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.

15 CODE MANAGER'S RECOMMENDATION

Based on the assessment in section 13 and 14 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.

16 CONSULTATION PLAN AND NEXT STEPS

The consultation on this Preliminary Change Report for **R0046A** will be published on the REC Portal on **08 July 2022.** Consultation closes on **15 July 2022**.

Following consultation, the Code Manager will produce an updated version of this Preliminary Change Report (referred to as the Final Change Report). This will include the outcome of the consultation, setting out a summary of the consultation responses and the Code Manager's response.

The Final Change Report will be issued to the Change Panel to make its determination.

17 APPENDIX

CHANGE PROPOSAL – R0046A	Link
LEGAL DRAFTING – R0046A	Link
CONSOLIDATED IMPACT ASSESSMENT RESPONSES – R0046 & R0046A	Link