RETAIL ENERGY CODE

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01	Proposal Plan
02	Impact Assessment
03	Consultation
04	**Final Recommendation**

CHANGE REPORT

R0049 – INTELLECTUAL PROPERTY RIGHTS AND SERVICES DATA MAIN BODY CHANGES

DOCUMENT VERSION	V2.0
PROPOSED IMPLEMENTATION DATE	08 November 2024
IMPLEMENTATION APPROACH	Big Bang

RESPONSIBLE COMMITTEE	Change Panel	**CHANGE PATH**	Self-Governance
PRIORITY STATUS	Low	**URGENCY**	Standard
IMPACTED STAKEHOLDERS	CRS Users		

LEAD ANALYST (SOLUTION LEAD)	SUBJECT MATTER EXPERT
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OVERVIEW

This Change Proposal has been raised by the Centralised Registration Services (CRS) Provider to address risks they have identified associated with Clause 13 of the REC Main Body, relating to Intellectual Property Rights (IPR). Operational realities that have emerged since the REC go-live mean that Clauses drafted prior to go-live may now need to be reviewed to reflect current CRS practices.

RESPONSIBLE COMMITTEE DECISION

On 17 September 2024, the REC Change Panel, in line with the Code Manager's recommendations, voted to:

- **APPROVE** the proposed change solution;
- **APPROVE** the proposed implementation approach; and
- **APPROVE** the proposed implementation date of 08 November 24.

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BACKGROUND

1 SUMMARY

The Centralised Registration Service (CRS) IPR provisions in the REC were drafted before the designation of v1.0, and primarily seek to deal with the CRS Services IPR as if it were developed and owned by the CRS Provider (or its contractors). Following the REC go-live, however, much of the CRS IPR provision is built upon third party-owned software or platforms/services that are available to the market.

Notwithstanding certain concessions drafted in Clause 13.5 of the REC Main Body at designation, the scope of CRS Service IPR refers to terms and concepts which are now obsolete, and do not reflect the working reality of the REC. These clauses should be amended to clarify what the CRS Provider owns or is responsible for, to alleviate the existing ambiguity.

Additionally, there is potential uncertainty as to the scope of "CRS Services IPR" and "RECCo Services IPR". This is because they are defined by the REC Main Body, rather than within Schedule 1 – Interpretations & Definitions. Therefore, this Change seeks to explore whether these definitions should instead be defined in Schedule 1 (Interpretations and Definitions) of the Code, as well as the proposed Changes to the REC Main Body.

2 PROBLEM STATEMENT

There is uncertainty as to the scope of the various classes of Intellectual Property Rights (IPR) covered in Clause 13 of the REC Main Body (including the extent to which any IPR may exist in certain data, and the use of obsolete terms and concepts). As a result, there is a risk that the relevant industry stakeholders referred to in Clause 13 are unable to grant the licences and indemnities as described in that Clause.

The current wording of Clause 5.3 of the REC Main Body requires amendments to ensure it correctly reflects the relationship between CRS Provider and RECCo, the services being provided and the entitlement to input VAT as a recipient of the CRS.

3 IMPACTS

CONSUMERS
N/A

REC SERVICE PROVIDERS
CRS Provider

RECCO / REC CODE MANAGER
N/A

REC PARTIES AND SERVICE USERS
CRS Users

REC DOCUMENTS / PRODUCTS
REC Main Body
Schedule 1 – Interpretations & Definitions

MHHS DESIGN
N/A

MHHS DATA SPECIFICATION
N/A

MHHS CODE DRAFTING
N/A

The Code Manager does not anticipate significant impact for REC Parties as a result of changes to CRS Provider IPR provision within the REC Main Body. However, due to the central role within the REC played by the CRS Provider, the Code Manager will conduct a Party Impact Assessment to determine if there are any tangible impacts on REC Parties & Service Users.

The Code Manager has confirmed that the CRS Provider, whilst impacted, will not need to undergo dedicated Impact Assessment activity. Whilst they are the proposer and the primary beneficiary of any proposed changes to the REC Main Body, their central role within the development of the proposed legal drafting means that they are already aware of their impact and will not need to develop or implement process changes to accommodate the proposed solution.

No MHHS impacts have been identified.

4 CROSS CODE IMPACTS

No cross-code impacts have been identified.

5 PROPOSAL PLAN

	FROM	TO
PARTY IMPACT ASSESSMENT	04/07/2024	26/07/2024
PRELIMINARY CHANGE REPORT AND CONSULTATION ISSUED	08/08/2024	08/08/2024
CONSULTATION	08/08/2024	30/08/2024
FINAL CHANGE REPORT ISSUED	10/09/2024	10/09/2024
RESPONSIBLE COMMITTEE DECISION	17/09/2024	17/09/2024
APPEAL WINDOW CLOSURE	01/10/2024	01/10/2024

6 STAKEHOLDER ENGAGEMENT

The Code Manager has not planned for any wider engagement beyond the standard Party Impact Assessment and Consultation period.

7 PRIORITY STATUS AND URGENCY

PRIORITISATION MATRIX

Category	Significance / Resource impacts / Urgency	Further selection / breakdown	Score (0-3)	Weighting	Weighted Score
Impacts	Consumer Impact	Direct	0	27	0
	Retail Markets Impact	Retail Risk(s)	0	17	0
	RECCo / REC Party / REC Service Provider Impact	Operational Effectiveness and Efficiencies	1	7	7
		Legal and Regulatory Compliance	1	14	14
Resource	Complexity / Effort / Duration		2	9	18
Strategic Alignment	Contribution to/ Alignment with the objectives of the REC		1	17	8
	Contribution to/ Alignment with RECCo's Forward Work Plan		0		0
Urgency *(The need to progress a change to meet a targeted date)*		Other Planned Activity	0	10	0
				Overall Priority Score (rounded)	48

Priority Score	Priority Status
171 and above	Critical
151 to 170	High
101 to 150	Medium
0 to 100	Low

Priority Status	LOW
Change Proposal Type	STANDARD

Urgent Change Proposals meet the Criteria for Urgency as set out by Ofgem

This Change has a priority status of Low, based on a score of 48. This score has been calculated as follows:

- Complexity/Effort/Duration has been ranked as two, indicating moderate complexity. This is reflective of the work conducted on developing the draft legal text prior to the publication of this Initial Assessment, and the need for industry wide impact assessment activity.
- The following metrics have been ranked as one, indicating minor impact/improvement:
    - Operational Effectiveness & Efficiency
    - Legal & Regulatory Compliance
    - Alignment with REC Objectives

This is because the proposed amendments to the REC Main Body and Schedule 1 – Interpretations & Definitions would all contribute minor improvement to the above metrics by grounding current regulation in the operational reality of a substantial REC Service Provider.

- All other metrics have been ranked as zero.

SOLUTION

8 SUMMARY OF ANALYSIS UNDERTAKEN

The Code Manager has worked extensively with the Data Communications Company (DCC) (in their role as the CRS Provider) and with our legal counsel to refine draft changes to the REC Main Body (and consequential changes to Schedule 1 – Interpretations & Definitions). The proposed changes to the REC Main Body have been led by the DCC, in order to better reflect the operational reality of their IPR provision as the CRS Provider since REC go-live.

9 PROPOSED SOLUTION

The Code Manager has proposed a number of changes to Clause 13 – Intellectual Property Rights of the REC Main Body, along with consequential changes to Schedule 1 – Interpretations & Definitions. These proposed changes target the following areas:

- CRS Services IPR – 13.5 to 13.10
    - These changes mean that there is a better reflection of actual working practices regarding provisions made by the CRS provider to CRS users of products such as software, for example.
- Services Data – 13.18 to 13.21
    - These changes were proposed to mitigate a risk in that seeking to specify ownership of IPR in data or datasets will conflict with ownership of the same IPR under other regulatory or contractual arrangements.
    - As such, we propose to delete Clause 13.19 to remove potential ambiguity and confusion over ownership of IPR between numerous industry stakeholders.
- General – 13.22
    - Expanded to indicate that users of CRS IPR provisions refers to REC Service Users, rather than a generic reference to “Users”.

10 DRAFT LEGAL TEXT

The proposed changes to the REC Main Body can be found here.

11 SUMMARY OF IMPACT ASSESSMENT ACTIVITY

11.1 SERVICE PROVIDER IMPACT ASSESSMENTS

The Code Manager has confirmed that CRS Provider, whilst impacted, will not need to undergo dedicated Impact Assessment (IA) activity. Whilst they are the proposer and the primary beneficiary of any proposed changes to the REC Main Body, their central role within the development of the proposed legal drafting means that they are already aware of their impact and will not need to develop or implement process changes to accommodate the proposed solution.

11.2 REC PARTY IMPACT ASSESSMENTS

The Code Manager conducted a REC Party IA between 06 July 2024 and 26 July 2024. Two responses were received: one confidential, and one from an anonymous REC Party. Both were supportive of the proposed solution, and agreed that it would provide benefits to their organisations.

12 KEY RISKS, ISSUES, ASSUMPTIONS AND DEPENDENCIES

No risks, issues, assumptions or dependencies have been identified.

13 BUSINESS CASE ASSESSMENT

13.1 COST BENEFIT ANALYSIS

The Code Manager has not identified any costs associated with the implementation of this Change Proposal.

INTANGIBLE BENEFITS	BENEFITS DESCRIPTION
OPERATIONAL EFFECTIVENESS & EFFICIENCY	The proposed amendments to the REC Main Body and the consequential changes to Schedule 1 – Interpretations & Definitions will result these intangible benefits by grounding current regulation in the operational reality of a substantial REC Service Provider.
LEGAL & REGULATORY COMPLIANCE	
ALIGNMENT WITH REC OBJECTIVES	

13.2 COST BENEFIT ANALYIS SUMMARY

As this Change has a clear intangible benefits case, and there are no costs associated with implementation, the Code Manager feels that this Change meets the cost-benefit test. Additionally, REC Party IA respondents reported potential cost savings as a result of the proposed solution.

14 CASE FOR CHANGE

SELF-GOVERNANCE

The Code Manager considers that there is a case for change to implement this solution, on the basis that it:

- Is both viable and implementable, and it appropriately resolves the problem statement; and
- Is cost effective and proportionate to the anticipated benefit.

15 SUMMARY OF CONSULTATION RESPONSES

A consultation was circulated on 08 August 2024 to obtain views on the Preliminary Change report (found here). In total one response was received from a distribution Network Operator. The key themes from these responses have been summarised and set out below.

15.1 SUMMARY OF RESPONSES

15.1.1 COMMENTS ON THE SOLUTION AND PROPOSED LEGAL TEXT

The respondent agreed that the proposed solution resolved the problem statement.

15.1.2 BENEFITS RELATIVE TO IMPLEMENTATION AND OPERATIONAL COSTS

The respondent did not provide a view on this.

15.1.3 CASE FOR CHANGE AND CODE MANAGER'S RECOMMENDATION

The respondent agreed that the proposed solution constituted a positive case for change.

15.1.4 IMPLEMENTATION APPROACH AND DATE

The respondent agreed with the Code Manager's proposed implementation date and approach.

16 SUMMARY OF AMENDMENTS MADE FOLLOWING CONSULTATION

No changes were made to the solution following Consultation.

15 APPENDIX

CHANGE PROPOSAL	Link
LEGAL DRAFTING	Link
CONSOLIDATED IMPACT ASSESSMENT RESPONSES	Link
CONSOLIDATED CONSULTATION RESPONSES	Link

16 GLOSSARY

TERM	DEFINITION
Centralised Registration Service	means the services provided pursuant to Condition 15 (Incorporation, delivery and provision of the Centralised Registration Service) of the DCC Licence, being the services provided under this Code by the CSS Provider, Switching Operator, CSS Certificate Authority and, until the end of the Post Implementation Period only, the Core Systems Assurance Provider and the CSS Systems Integrator.
CRS Services IPR	means the intellectual property rights described as such in clause 13 of the Main Body of this code.
Intellectual Property Rights*	means broad categorical description of a set of intangible assets that are owned by a company or individual. It's legally protected from outside use or implementation without consent. An intangible asset is a non-physical asset.

*Definition not found in Schedule 1- Interpretations & Definitions and has been sourced from here.