

DCUSA Change Report		At what stage is this document in the process?
<h1 data-bbox="124 353 550 448">DCP 316</h1> <h2 data-bbox="124 488 1133 622">General Data Protection Regulation Compliance for DCUSA</h2> <p data-bbox="124 645 805 683"><i>Raised on 29 March 2018 as an Urgent Change</i></p>		<div data-bbox="1189 347 1348 414">01 – Change Proposal</div> <div data-bbox="1189 470 1412 504">02 – Consultation</div> <div data-bbox="1189 560 1348 627">03 – Change Report</div> <div data-bbox="1189 672 1348 739">04 – Change Declaration</div>
<p data-bbox="124 784 566 817"><b>Purpose of Change Proposal:</b></p> <p data-bbox="124 840 1404 952">The intent of DCP 316 is to ensure that the DCUSA is compliant with the General Data Protection Regulation 2016/679 (GDPR) which is due to be implemented by EU Law on 25 May 2018.</p>		
	<p data-bbox="231 996 1428 1064">This document is issued in accordance with Clause 11.20 of the DCUSA, and details DCP 316 – General Data Protection Regulation Compliance for DCUSA</p> <p data-bbox="231 1086 1396 1198">DCP 316 is considered a Part 2 matter and Parties are invited to consider the proposed amendment (Attachment 1) and submit their votes using the Voting form (Attachment 2) to <a href="mailto:dcusa@electralink.co.uk">dcusa@electralink.co.uk</a> by <b>14 May 2018</b>.</p> <p data-bbox="231 1220 1428 1332">The voting process for the proposed variation and the timetable of the progression of the Change Proposal (CP) through the DCUSA Change Control Process is set out in this document.</p> <p data-bbox="231 1355 1444 1433">If you have any questions about this paper or the DCUSA Change Process, please contact the DCUSA by email to <a href="mailto:dcusa@electralink.co.uk">dcusa@electralink.co.uk</a> or telephone 020 7432 3011.</p>	
	<p data-bbox="231 1467 550 1512">Parties Impacted: <b>All</b></p>	
	<p data-bbox="231 1590 1428 1702">Impacted Clauses: <b>Amend Section 1A (clause 1), Incorporate Clause 60.15 into Section 3 and replace any reference to “Data Protection Act” to “Data Protection Legislation”</b></p>	

## Contents

<b>1 Executive Summary</b>	<b>3</b>
<b>2 Governance</b>	<b>3</b>
<b>3 Why Change?</b>	<b>4</b>
<b>4 Solution</b>	<b>4</b>
<b>5 Relevant Objectives</b>	<b>5</b>
<b>6 Impacts &amp; Other Considerations</b>	<b>5</b>
<b>7 Implementation</b>	<b>6</b>
<b>8 Legal Text</b>	<b>6</b>
<b>9 Code Specific Matters</b>	<b>6</b>
<b>10 Recommendations</b>	<b>7</b>



Any questions?

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## Timetable

The timetable for the progression of the CP is as follows:

### Change Proposal timetable

Activity	Date
Initial Assessment Report Approved by Panel	03 April 2018
Change Report Approved by Panel	18 April 2018
Change Report issued for Voting	20 April 2018
Party Voting Closes	14 May 2018
Change Declaration Issued to Parties	16 May 2018
Implementation	24 May 2018 <sup>1</sup>

<sup>1</sup> Extra DCUSA Release

## 1 Executive Summary

### What?

- 1.1 The General Data Protection Regulation 2016/679 (GDPR) is a new EU Legislation which will be replacing the UK Data Protection Act 1998 (DPA) on 25 May 2018. The government has confirmed that the UK's decision to leave the EU will not affect the commencement of the GDPR.
- 1.2 Consistency around data protection laws and rights is crucial to both businesses, organisations and individuals, which included having clear laws with safeguards in place.

### Why?

- 1.3 The principles in GDPR are similar to those in the DPA, with added detail at certain points and a new accountability requirement. The GDPR requires you to show how to comply with the principles, therefore, updating the DCUSA to ensure compliance is the first step in doing this.

### How?

- 1.4 GDPR will be implemented in the UK from 25 May 2018. DCUSA Parties will need to ensure that they comply with the GDPR from this date as a breach can have significant financial implications. Changes to the DCUSA have been recommended by DCUSA Ltd.'s legal advisors to ensure compliance.

## 2 Governance

### Justification for Part 2 Matter

- 2.1 The Panel reviewed DCP 316 and noted that the Proposer's opinion was that the change should be treated as a Part 2 matter. The Panel agreed that Authority Consent would not be necessary for this CP as there are no material changes to DCUSA being made.

### Requested Next Steps

- 2.2 The Panel considered that the Proposer has carried out the level of analysis required to enable Parties to understand the impact of the proposed amendment and to vote on DCP 316.
- 2.3 The DCUSA Panel recommends that this CP:
  - Be issued to Parties for Voting.

## 3 Why Change?

### Background of DCP 316

- 3.1 GDPR will be implemented on 25 May 2018 for the whole of the UK. The GDPR applies to 'controllers' and 'processors' of data. These definitions are broadly the same under the DPA – the controller says how and why the personal data is processed and the processor acts on the controller's behalf.
- 3.2 If you are a processor, the GDPR places specific legal obligations on you; for example, you are required to maintain records of personal data and processing activities. You will have significantly more legal liability if you are responsible for a breach. These obligations for processors are a new requirement under the GDPR.
- 3.3 However, if you are a controller, you are not relieved of your obligations where a processor is involved – the GDPR places further obligations on you to ensure your contracts with processors comply with the GDPR.
- 3.4 Like the DPA, the GDPR applies to 'personal data', however, the GDPR's definitions are more detailed and clearer. You can assume that if you hold information that falls within the scope of DPA, it will also fall within the scope of GDPR. The GDPR applies to both automated personal data and to manual filing systems where personal data are accessible according to specific criteria. Personal data that has been pseudonymised can also fall within the scope of GDPR depending on how difficult it is to attribute pseudonym to a particular individual.
- 3.5 GDPR also requires organisations to document how they are complying with the GDPR. Taking the first step in updating the DCUSA with legal advisors' recommendation will help with this.

## 4 Solution

### DCP 316 Assessment

- 4.1 The Board of DCUSA Ltd requested for their legal advisors to undertake an impact assessment on the DCUSA document with a view to ensuring compliance with the new GDPR legislation. The impact assessment was completed and a set of recommendations, inclusive of proposed amendments, was provided to the Board. These recommendations and proposed amendments are set out in Attachment 4 (Memorandum - GDPR Impact Assessment).
- 4.2 The Board of DCUSA Ltd agreed that the recommendations and proposed amendments should be progressed into the solution of this CP. Further information on the recommendations and proposed amendments as provided by DCUSA Ltd.'s legal advisors upon completion of the impact assessment is set out in section 8 below.

4.3 The Secretariat drafted the CP form and the Proposer agreed to sponsor the change, after which it was issued to the DCUSA Panel for approval into the change control process.

## 5 Relevant Objectives

### Assessment Against the DCUSA Objectives

- 5.1 For a DCUSA Change Proposal to be approved it must be demonstrated that it better meets the DCUSA Objectives.
- 5.2 The CP form provided as Attachment 3, details which of the DCUSA Objectives the Proposer considers DCP 316 better facilitates.

Impact of the Change Proposal on the Relevant Objectives:	
Relevant Objective	Identified impact
General Objective Four - The promotion of efficiency in the implementation and administration of this Agreement	Positive
General Objective Five – Compliance with the Regulation on Cross-Border Exchange in Electricity and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators	Positive

5.3 DCUSA General Objectives four and five are better facilitated by this change as it will promote compliance with the upcoming GDPR EU Legislation across the DCUSA and it will ensure the DCUSA reflects the environment in which it operates.

## 6 Impacts & Other Considerations

### Does this Change Proposal impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

6.1 Not applicable

### Consumer Impacts

6.2 No consumer impacts have been identified.

### Environmental Impacts

6.3 In accordance with DCUSA Clause 11.14.6, the Proposer assessed whether there would be a material impact on greenhouse gas emissions if DCP 316 were implemented. The Proposer did not identify any material impact on greenhouse gas emissions from the implementation of this CP.

## 7 Implementation

- 7.1 GDPR will be implemented into EU Law from 25 May 2018. The proposed implementation date for DCP 316 should be before this date and therefore, the changes to DCUSA should be made on an extra DCUSA Release on 24 May 2018.

## 8 Legal Text

- 8.1 The legal text for DCP 316 has been recommended and reviewed by the DCUSA legal advisor and is provided as Attachment 1.
- 8.2 The legal text sets out the amendments made to the DCUSA and includes the following:
- The defined term “Data Protection Act” has been amended to “Data Protection Legislation”;
  - All references to “Data Protection Act” found in Clauses 1 and 57.3, Schedule 25 and Schedule 26 will be replaced with “Data Protection Legislation”;
  - Clauses 34.3, 35.5, 50.3, 51.5, 52E.3, 52F.5, 52K.5 and 52L.5 will be deleted; and
  - Incorporating a GDPR Clause in Section 3 as clause 60.15 “Data Protection”. These inclusions address the requirements under Article 26 GDPR<sup>2</sup> in respect of joint data controllers and clarifies that the Parties to the Agreement are either joint data controllers or independent data controllers.
- 8.3 The Proposer is satisfied that the legal text meets the intent of the change.

## 9 Code Specific Matters

- 9.1 Data protection expertise may be needed to review the recommendations provided to DCUSA Parties. However, this can be determined by individual Parties as the recommendations have been provided by a data protection lawyer.
- 9.2 Parties are invited to consider whether there are any instances in which a Party to the DCUSA processes personal data under the DCUSA as a data processor. There is no need to identify instances that are governed by a different contract, e.g. when a MOP processes data on behalf of a Supplier, as this will have been contracted separately with the MOP for the provisions of the metering services.

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<sup>2</sup> <https://gdpr-info.eu/art-26-gdpr/>

## Modelling Specification Documents

9.3 Not applicable.

## Reference Documents

9.4 Not applicable.

# 10 Recommendations

## Panel's Recommendation

10.1 The Panel approved this Change Report on 18 April 2018. The Panel considered that the Proposer has carried out the level of analysis required to enable Parties to understand the impact of the proposed amendment and to vote on DCP 316.

10.2 The Panel have recommended for this report to be issued for voting and DCUSA Parties should consider whether they wish to submit views regarding this Change Proposal. The Voting Form can be found in Attachment 2.

## Attachments

- Attachment 1 – DCP 316 Legal Text
- Attachment 2 – DCP 316 Voting Form
- Attachment 3 – DCP 316 Change Proposal
- Attachment 4 – Memorandum - GDPR Impact Assessment