

**DCP 314 Draft Legal Text**

**Appropriate treatment of Bad Debt following appointment of Supplier of Last Resort**

**Add the following new definitions to Clause 1:**

<b>Defaulting Supplier</b>	means, the supplier party the whose licence the authority has revoked.[]
<b>Final Reconciliation Settlement Run</b>	has the meaning given to that expression in the Balancing and Settlement Code.
<b>Last Resort Supply Direction</b>	has the meaning given to that expression in the Supply Licences.
<b>Unrecovered EDNO UoS Bad Debt</b>	means, , the Use of System Charges payable (but not yet paid) to the EDNO by the Defaulting Supplier in respect of Settlement Days prior to and including the Final Day of Supply.[]
<b>Unrecovered EDNO UoS Bad Debt Model</b>	means the model made available from time to time on the DCUSA Website by the Panel for the purposes of calculating the amount of Unrecovered EDNO UoS Bad Debt that can be re-distributed from the EDNO to the DNO Party, as described in paragraph 8 of Schedule 19 (Portfolio Billing).[]
<b>Final Day of Supply</b>	means, the final date for which the Defaulting Supplier Party was responsible for the supply to []premises.[]

**Commented [GWL1]:** This seemed a useful definition. Is the name OK?

**Commented [HN2R1]:** Revised version provided

LRSD removed due to the trigger being the defaulting suppliers bad debts and what happens after that is not necessaryl relevant

**Commented [HN3]:** Updated definition

**Commented [GWL4]:** I've added a definition of the model. Is the description accurate?

**Commented [HN5R4]:** WG content with the definition

**Commented [HN6]:** Added definition of Final Day of Supply

**Add the following new paragraph 1.5 to Schedule 19:**

- 1.5 Notwithstanding Paragraph 1.4, where Paragraph 8 applies the DNO Party and the EDNO shall use reasonable endeavours to resolve any dispute in good faith. Where a

dispute remains unresolved after 20 Working Days, either the DNO Party or the EDNO may, on notice to the other:

- (a) refer the dispute to arbitration in accordance with Clause 58; or
- (b) elect not to rely on arbitration, in which case arbitration will not apply and either of them may refer the dispute to the Authority for its determination, which shall be final and binding.

**Commented [GWL67]:** I recognize that Ofgem determination potentially applies to charging disputes, and that this is just a short-cut to the same end, but Ofgem may not want to hear these disputes.

**Commented [HN8R7]:** Accept

**Add the following new paragraph 8 to Schedule 19:**

## **8. SUPPLIER OF LAST RESORT**

8.1 This section only applies where the EDNO has complied with Schedule 1 in respect of the Defaulting Supplier.

**Commented [HN9]:** Action: Check the other paragraphs for references due to the addition of this Paragraph

8.2 Where an EDNO is seeking re-distribution of Unrecovered EDNO UoS Bad Debt, the EDNO shall, in line with the timescales detailed in Paragraph 8.4 and 8.5, provide to the DNO Party:

- (a) the name of the Defaulting Supplier Party;
- (b) a statement signed by a director of the EDNO certifying that the EDNO has complied with Schedule 1 (Cover) in respect of the Defaulting Supplier Party (insofar as relevant to the Unrecovered EDNO Bad Debt);

**Commented [GWL10]:** Is this necessary? What happens if they haven't? Does this mean they can't recover anything? Or should references to Collateral be to the higher of Collateral actually held or Collateral they should have held?

(c) **The Final Day of Supply**

**Commented [HN11R10]:** WG –It is necessary and if it is not complied with the party will get nothing in line with the Best practice guideline. AE still wishes for this to stay.

- (d) For the periods up to and including the Final Day of Supply to which the Unrecovered EDNO Bad Debt relates, the amount of the DNO Party's charges to the EDNO under this Schedule 19 in respect of the premises supplied by the Defaulting Supplier and those periods (in the formats specified in Paragraphs 8.4 and 8.5), and the number of days (if any) for which the Unrecovered EDNO Bad Debt for each such period was outstanding past its due date as at the end of the Final Day of Supply;

the amount of the DNO Party's charges to the EDNO under this schedule 19 (In the formats specified in Paragraphs 8.4 and 8.5) in respect of:

**Commented [HN12]:** Clarity in the paragraph – For added by WG member,

Total amount billed before adjusted for Collateral etc.

Could clean it up by breaking this down into bullet points?

The amount of bad debt wanting to be recovered from the DNO. And age profile.

- Settlement Days (or in the case of Non HH settlement and HH aggregated settlement runs) up to and including the Final Day of Supply for which the EDNO has not received payment from the Defaulting Supplier; and
- Premises to which the Defaulting Supplier was responsible for the supply of electricity.

And the number of days (if any) for which the Unrecovered EDNO Bad Debt for each such period was outstanding past its due date at the end of the Final Day of Supply.

**Commented [HN13]:** WG Suggestion as a replacement for (d)

- (e) the total of any and all Collateral which the EDNO held in respect of the Defaulting Supplier Party and the Unrecovered EDNO UoS Bad Debt, as at the end of the Final Day of Supply; and
- (f) the total of Unrecovered EDNO UoS Bad Debt which the EDNO is seeking to re-distribute to the DNO Party, calculated in accordance with Paragraph 8.3, along with calculations clearly setting out how this total has been determined.

**Commented [HN14]:** The Working Group considered this to potentially led to sharing of confidential data, the Collateral of the business.

WG deliberated on the point and chose to

Email to IDNO you were consulted on DCP 314 and in this you were about providing credit cover amounts, and this has now been noted as potentially sensitive data are you still in agreement. Part of the solution is they have to provide potentially commercially sensitive data, and can parties provide their views on this.  
Credit cover/Collateral

8.3 In order to calculate the amount of Unrecovered EDNO UoS Bad Debt which is to be re-distributed from the EDNO to the DNO Party, the EDNO shall:

- (a) calculate the amount of the DNO Party's charges to the EDNO under this Schedule 19 in respect of the premises covered by the Defaulting Supplier and the periods to which the Unrecovered EDNO UoS Bad Debt relates (as detailed in Paragraphs 8.4 and 8.5);
- (b) determine the total recoverable bad debt by reducing the charges calculated under paragraph (a) above to reflect the proportion of such bad debt which would be recoverable if the unpaid invoices had been levied by the DNO Party, based on the number of Working Days from (but excluding) the due date to (and including) the Final Day of Supply, as detailed in Paragraph 8.5;
- (c) calculate the proportion of the Unrecovered EDNO UoS Bad Debt which the EDNO was unable to settle via the Collateral held by the EDNO for the Defaulting SoLR Supplier Party as at the end of the Final Day of Supply (as further described in Paragraph 8.6); and
- (d) determine the Unrecovered EDNO UoS Bad Debt to be re-distributed from the EDNO to the DNO Party by multiplying the total recoverable bad debt

**Commented [GWL15]:** Please check the including/excluding timing. Also, changed from business days to Working Days.

**Commented [HN16R15]:** WG - Accepted

determined under paragraph (b) above by the proportion determined under paragraph (c) above.

**Commented [GWL17]:** I've deleted 8.7, because it just repeated this paragraph (d).

8.4 In order to calculate the invoices for Use of System Charges attributable to the EDNO's non-half-hourly-settled and half-hourly-aggregated-settled Connectees produced under Paragraph 2, within two calendar months after receipt of the Final Reconciliation Settlement Run for the Final Day of Supply, the EDNO shall create a report using the latest version of the Unrecovered EDNO UoS Bad Debt Model, and data extracted from that sent from the Supplier Volume Allocation Agent to the EDNO via the D0030 data flow, which relates to the period for which the EDNO has payments outstanding from the Defaulting Supplier Party.

8.5 In order to calculate the invoices for Use of System Charges attributable to the EDNO's site-specific half-hourly-settled Connectees produced under paragraph 3, concurrent with the timing of the report sent in accordance with Paragraph 8.3, the EDNO shall create a report using the latest version of the Unrecovered EDNO UoS Bad Debt Model, and the half-hourly DUoS reports which relate to sites that were Registered to the Defaulting Supplier Party and which relate to a period for which the EDNO has payments outstanding from the Defaulting Supplier Party.

8.6 The EDNO shall calculate the amount referred to in Paragraph 8.3(b) as follows:

- (a) for invoices raised by the DNO Party for which the corresponding Unrecovered EDNO UoS Bad Debt was not yet overdue for payment by the Defaulting Supplier Party as at the end of the Final Day of Supply: 100% shall count as recoverable for the purposes of Paragraph 8.3(b); and
- (b) for invoices raised by the DNO Party for which the corresponding Unrecovered EDNO UoS Bad Debt was overdue for payment by the Defaulting Supplier Party as at the end of the Final Day of Supply, the following percentage shall count as recoverable for the purposes of Paragraph 8.3(b):

No. of Working Days overdue	Percentage
1-30	100
31-35	90
36-40	80

41-45	70
46-50	60
51-55	50
56-60	35
61-65	20
>65	5

8.7 The EDNO shall determine the proportion referred to in Paragraph 8.3(c) as follows:

$$\% \text{ Unrecovered EDNO UoS Bad Debt not Settled via Collateral} = \frac{\text{Total Unrecovered EDNO UoS Bad Debt} - \text{Collateral}}{\text{Total Unrecovered EDNO UoS Bad Debt}}$$

**Commented [GWL18]:** I don't think you really need this formula, as it is explained clearly enough in 8.2(c).

8.8 Where the EDNO receives further payments in respect of the Unrecovered EDNO UoS Bad Debt after the Final Day of Supply (including from a liquidator, administrator or similar, but excluding via the Collateral), then such payments shall be applied to reduce the debt that can be re-distributed from the EDNO to the DNO Party under this Paragraph 8 in the same way as applies in respect of the Collateral. Where such further payments are received by the EDNO before it provides its reports under Paragraph 8.2, such further payments shall be added to the Collateral referred to in Paragraphs 8.3(c) and 8.7. Where such further payments are received by the EDNO after it provides its reports under Paragraph 8.2, the EDNO shall pay to the DNO Party the amount which would not otherwise have been paid by the DNO Party had such further payments been added to the Collateral referred to in Paragraphs 8.3(c) and 8.7.

**Commented [GWL19]:** The previous wording didn't seem to explain how they were to be apportioned, which I have attempted to do.

8.9 The DNO Party may include the EDNO data relating to the Defaulting Supplier Party as part of the DNO Party's submission for cost recovery to the Authority.

8.10 Where the Authority requests additional information to that provided under Paragraph 8.2 and that additional information relates to the EDNO data, the EDNO shall provide such information to the DNO Party in a timely manner in order that the DNO Party meets the timetable provided by the Authority. If the Authority has not provided a timetable, then such information shall be provided within 10 Working Days from the DNO Party's request.

Gowling WLG: 21 November 2018

**Gowling WLG (UK) LLP**

**21 November 2018**