

About Ofgem's DCP 211 and DCP 211A questions

by Franck Latrémolière on Friday 17 July 2015

1. Ofgem's first question to the DCP 211 Working Group is:

In the latest 211A text, in new 5.3.10A(B), the words “issued after [insert Implementation Date]” would appear to stop someone requesting a copy of documents issued prior to that date. This appears to reduce the amount of information that can be obtained, and be contrary to the intent of the modification. An equivalent limitation is not in the 211 text. This is a material difference between 211A and 211. Should this limitation even be in 211A?

2. Figure 1, a screenshot of exhibit D at the end of this paper, shows the changes to the Secretariat's obligation to provide documents on request proposed by DCP 211A.

Figure 1 Changes to clause 5.3.10 proposed by DCP 211A

Exhibit D — DCP 211A changes to clause 5.3.10

5.3.10 make ~~an accurate and up-to-date copy of this Agreement~~ available on the Website in accordance with Schedule 14; ~~and~~

(a) an accurate and up-to-date copy of this Agreement;

(b) subject to Clauses 57.1 and 57.3.1, a copy of each: (i) Change Proposal made; (ii) consultation issued in respect of a Change Proposal; and (iii) Change Report delivered to the Panel and/or the Authority; and

(c) subject to Clauses 57.1 and 57.3.1, all the matters, minutes, reports, consultation responses, data and other information related to the change control process set out in Section 1C produced by or for, or made available to, the Panel, the Secretariat, the Panel Secretary or a Working Group (with the exception of contact details);

~~5.3.10A arrange, (in return for a charge not exceeding the reasonable cost of so doing,) for the following an accurate and up-to-date copy of this Agreement to be supplied to any person requesting a copy of the same;~~

(a) an accurate and up-to-date copy of this Agreement (including the Revenue Protection Code of Practice); and

(b) subject to Clauses 57.1 and 57.3.1, any document issued after [insert Implementation Date] referred to in Clause 5.3.10(b) or 5.3.10(c);

3. Ofgem's comment that DCP 211A “appears to reduce the amount of information that can be obtained, and be contrary to the intent” seems to be targeted to something different from the DCP 211A legal text: exhibit D only shows additions to the Secretariat's obligation to provide information.
4. (For what it's worth, I agree with the apparent hint in Ofgem's question that DCP 211A does not sufficiently increase Secretariat's obligation to provide documents on request, but that was clearly the intention of the DCP 211A proposer.)
5. Ofgem's second question to the DCP 211 Working Group is:

Comment [RT1]: This clause is about the sorts of documents that someone can request. By having a date this restricts people from requesting earlier documents.

It was observed that under the baseline there is not the ability to request earlier documents. I.e. there is a restriction relative to DCP 211 but relative to the baseline both CPs provide for more documents to be requested than can currently be requested.

In the latest 211 and 211A text, Proposed 3A(b) doesn't include references to papers that are produced for or made available to the Secretariat or the Panel Secretary which are also referred to in proposed 3(3). What's the reason for that? Shouldn't everything that's not on the Public Website, by accessible on the Password Controlled Pages?

6. Figure 2, a screenshot of exhibit E at the end of this paper, shows the changes proposed by DCP 211 to the Secretariat's obligations to manage the website.

Figure 2 Changes to paragraph 3 of schedule 14 proposed by DCP 211

Exhibit E — DCP 211 changes to Schedule 14 paragraph 3

3. ~~The following This Agreement (excluding the Revenue Protection Code of Practice), a list of the Parties and a copy of the Change Register~~ shall be accessible through the Public Pages.

(a) ~~t~~This Agreement (excluding the Revenue Protection Code of Practice);

(b) ~~a list of the Parties; and~~

(c) ~~a copy of the Change Register;~~

~~(d) subject to Clauses 57.1 and 57.3.1, a copy of each: (i) Change Proposal made after 31 May 2014; (ii) consultation issued after 31 May 2014 in respect of a Change Proposal; and (iii) Change Report delivered to the Panel and/or the Authority after 31 May 2014;~~

~~(e) subject to Clauses 57.1 and 57.3.1, all the matters, minutes, reports, consultation responses, data and other information related to the change control process set out in Section 1C produced by or for, or made available to, the Panel, the Secretariat, the Panel Secretary or a Working Group after 31 May 2014 (with the exception of contact details); and~~

~~(f) minutes of and papers associated with the Panel meetings published after 31 May 2014 which are not specified as confidential under Clauses 57.1 and/or 57.3.1.~~

3A. Subject to Paragraph 6, tThe following shall only be accessible through the Password Controlled Pages:

(a) the full text of this Agreement (including the Revenue Protection Code of Practice);

(b) minutes of (and papers associated with) the meetings of the Panel, Working Groups and the DCUSA Ltd board of directors ~~that are not accessible through the Public Pages~~; and

(c) the contact details for Contract Managers and holders of Web Accounts.

7. There is no paragraph 3(3) in the proposed legal text. DCP 211 would not change the principle of the current legal text to specify, first, material to be placed on the Public Pages, and second, material (excluding that on the Public Pages) that is to be placed "**only**" on the Password Protected Pages.
8. There is nothing in schedule 14, with or without DCP 211, which would prevent the Secretariat from maintaining its practice of including published material on many of the Password Protected Pages.
9. These comments apply to DCP 211A in the same way as to DCP 211. Again, Ofgem's question seems to be targeted to something different from our legal texts.

Exhibit A — Extracts from version 7.2 of DCUSA

Clause 5.3.10 — Version 7.2

5.3.10 make an accurate and up-to-date copy of this Agreement available on the Website in accordance with Schedule 14, and arrange (in return for a charge not exceeding the reasonable cost of so doing) for an accurate and up-to-date copy of this Agreement to be supplied to any person requesting a copy of the same;

Schedule 14 — Version 7.2

The following requirements apply in relation to the Website:

1. The Website is to comply with best practice regarding accessibility and the use of widely used or open formats.
2. The Website is to comprise public facing pages (the Public Pages) that are accessible by all, and pages (the Password Controlled Pages) that are only accessible by those with a user name and password (a Web Account).
3. This Agreement (excluding the Revenue Protection Code of Practice), a list of the Parties and a copy of the Change Register shall be accessible through the Public Pages. The following shall only be accessible through the Password Controlled Pages:
 - (a) the full text of this Agreement (including the Revenue Protection Code of Practice);
 - (b) minutes of (and papers associated with) the meetings of the Panel, Working Groups and the DCUSA Ltd board of directors; and
 - (c) the contact details for Contract Managers and holders of Web Accounts.
4. Subject to Paragraph 5, Web Accounts shall only be given to the Panel, a Party, the Panel Secretary, the Secretariat, the Authority, the Consumer Body, MRASCo, the National Electricity Transmission System Operator, BSCCo, SECCo or DCUSA Ltd (or to the employees of any of them).
5. The Panel may, at its sole discretion, also give Web Accounts to persons (each an Interested Industry Participant) other than those referred to in Paragraph 4. A person wishing to become an Interested Industry Participant shall submit an application for a Web Account via the Website. Such application shall include the requirement to specify a sponsoring Party.
6. The access rights attributable to each Web Account may (as determined by the Panel) provide individual users (or classes of user) with different levels of access within the Password Controlled Pages, including so that (a) DCUSA Ltd's business confidential or financial information is only available to Parties; and (b) DCUSA Ltd's corporate governance information is only available to the directors of DCUSA Ltd.
7. The Panel may, at its sole discretion, withdraw or reduce the access rights associated with a Web Account at any time.

Exhibit B — Legal text for DCP 211

This exhibit compiles the relevant sections of legal text for DCP 211, based on material circulated by the DCUSA Secretariat to the DCP 211 Working Group on 8 June 2015. I have corrected some punctuation and capitalisation, and removed the superfluous words “Schedule 14” from a cross-reference within Schedule 14.

Clause 5.3.10 — with DCP 211

5.3.10 make available on the Website in accordance with Schedule 14:

- (a) an accurate and up-to-date copy of this Agreement;
- (b) subject to Clauses 57.1 and 57.3.1, a copy of each: (i) Change Proposal made; (ii) consultation issued in respect of a Change Proposal; and (iii) Change Report delivered to the Panel and/or the Authority; and
- (c) subject to Clauses 57.1 and 57.3.1, all the matters, minutes, reports, consultation responses, data and other information related to the change control process set out in Section 1C produced by or for, or made available to, the Panel, the Secretariat, the Panel Secretary or a Working Group (with the exception of contact details);

5.3.10A arrange, in return for a charge not exceeding the reasonable cost of so doing, for the following to be supplied to any person requesting a copy of the same:

- (a) an accurate and up-to-date copy of this Agreement (including the Revenue Protection Code of Practice); and
- (b) subject to Clauses 57.1 and 57.3.1, any document referred to in Clause 5.3.10(b) or 5.3.10(c);

Schedule 14 — with DCP 211

The following requirements apply in relation to the Website:

1. The Website is to comply with best practice regarding accessibility and the use of widely used or open formats.
2. The Website is to comprise public facing pages (the Public Pages) that are accessible by all, and pages (the Password Controlled Pages) that are only accessible by those with a user name and password (a Web Account).
3. The following shall be accessible through the Public Pages:
 - (a) this Agreement (excluding the Revenue Protection Code of Practice);
 - (b) a list of the Parties;
 - (c) a copy of the Change Register;

(d) subject to Clauses 57.1 and 57.3.1, a copy of each: (i) Change Proposal made after 31 May 2014; (ii) consultation issued after 31 May 2014 in respect of a Change Proposal; and (iii) Change Report delivered to the Panel and/or the Authority after 31 May 2014;

(e) subject to Clauses 57.1 and 57.3.1, all the matters, minutes, reports, consultation responses, data and other information related to the change control process set out in Section 1C produced by or for, or made available to, the Panel, the Secretariat, the Panel Secretary or a Working Group after 31 May 2014 (with the exception of contact details); and

(f) minutes of and papers associated with the Panel meetings published after 31 May 2014 which are not specified as confidential under Clauses 57.1 and/or 57.3.1.

3A. Subject to Paragraph 6, the following shall only be accessible through the Password Controlled Pages:

(a) the full text of this Agreement (including the Revenue Protection Code of Practice);

(b) minutes of (and papers associated with) the meetings of the Panel, Working Groups and the DCUSA Ltd board of directors that are not accessible through the Public Pages; and

(c) the contact details for Contract Managers and holders of Web Accounts.

4. Subject to Paragraph 5, Web Accounts shall only be given to the Panel, a Party, the Panel Secretary, the Secretariat, the Authority, the Consumer Body, MRASCo, the National Electricity Transmission System Operator, BSCCo, SECCo or DCUSA Ltd (or to the employees of any of them).

5. The Panel may, at its sole discretion, also give Web Accounts to persons (each an Interested Industry Participant) other than those referred to in Paragraph 4. A person wishing to become an Interested Industry Participant shall submit an application for a Web Account via the Website. Such application shall include the requirement to specify a sponsoring Party.

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7. The Panel may, at its sole discretion, withdraw or reduce the access rights associated with a Web Account at any time.

Exhibit C — Legal text for DCP 211A

This exhibit compiles the relevant sections of legal text for DCP 211A, based on material circulated by the DCUSA Secretariat to the DCP 211 Working Group on 8 June 2015. I have corrected some punctuation and capitalisation, and removed the superfluous words “Schedule 14” from a cross-reference within Schedule 14.

Clause 5.3.10 — with DCP 211A

5.3.10 make available on the Website in accordance with Schedule 14:

- (a) an accurate and up-to-date copy of this Agreement;
- (b) subject to Clauses 57.1 and 57.3.1, a copy of each: (i) Change Proposal made; (ii) consultation issued in respect of a Change Proposal; and (iii) Change Report delivered to the Panel and/or the Authority; and
- (c) subject to Clauses 57.1 and 57.3.1, all the matters, minutes, reports, consultation responses, data and other information related to the change control process set out in Section 1C produced by or for, or made available to, the Panel, the Secretariat, the Panel Secretary or a Working Group (with the exception of contact details);

5.3.10A arrange, in return for a charge not exceeding the reasonable cost of so doing, for the following to be supplied to any person requesting a copy of the same:

- (a) an accurate and up-to-date copy of this Agreement (including the Revenue Protection Code of Practice); and
- (b) subject to Clauses 57.1 and 57.3.1, any document issued after [insert Implementation Date] referred to in Clause 5.3.10(b) or 5.3.10(c);

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1. The Website is to comply with best practice regarding accessibility and the use of widely used or open formats.
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 - (b) a list of the Parties;
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(d) subject to Clauses 57.1 and 57.3.1, a copy of each: (i) Change Proposal made after [insert Implementation Date]; (ii) consultation issued after [insert Implementation Date] in respect of a Change Proposal ; and (iii) Change Report delivered after [insert Implementation Date] to the Panel and/or the Authority ;

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Exhibit D — DCP 211A changes to clause 5.3.10

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(a) an accurate and up-to-date copy of this Agreement (including the Revenue Protection Code of Practice); and

(b) subject to Clauses 57.1 and 57.3.1, any document issued after [insert Implementation Date] referred to in Clause 5.3.10(b) or 5.3.10(c);

Exhibit E — DCP 211 changes to Schedule 14 paragraph 3

3. ~~The following~~ ~~This Agreement (excluding the Revenue Protection Code of Practice), a list of the Parties and a copy of the Change Register~~ shall be accessible through the Public Pages.

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