

**DCP 387 ‘Amendment to the Definition of Non-Final Demand Site to Align with CUSC’
– Draft Legal Text**

Amend paragraph 1.8(d) of Schedule 32 as follows:

1.8 This Schedule sets out:

- (a) the process for the initial determination of the charging bands for each group of Final Demand Sites to apply from 1 April 2022 to 31 March 2026 (see Paragraph 2);
- (b) the process to be used to review and determine the charging bands for subsequent onshore electricity transmission owner price control periods (see Paragraph 3);
- (c) the process for allocating Final Demand Sites to each of those charging bands (see Paragraph 4); and
- (d) the processes via which a site can be moved from one charging band to another part way through an onshore electricity transmission owner price control period (see Paragraphs 5, 5A, 6 and 7).

Commented [DT1]: As per feedback from legal advisors, the Working Group agreed to make this amendment during meeting 05

Amend paragraph 4.5 of Schedule 32 as follows:

4.5 Subject to Paragraph 4.6 and 5A, Final Demand Sites will remain in a charging band for the duration of the onshore transmission owner price control period, subject to any exceptional circumstances as defined in Paragraph 6 and/or a successful dispute as defined in Paragraph 7.

Commented [DT2]: As per feedback from legal advisors, the Working Group agreed to make this amendment during meeting 05

Amend paragraph 5 of Schedule 32 as follows:

5. TRANSITIONAL PERIOD AS A RESULT OF A RE-CLASSIFICATION OF A SINGLE SITE

5.1 Subject to Paragraph 5.3 and Paragraph 5.4, a DNO/IDNO Party shall no longer treat a Single Site as a Final Demand Site (and shall re-classify it as a Non-Final Demand Site) if the DNO/IDNO Party has, by no later than 31 July 2021, been provided with the certification necessary to satisfy the definition of a Non-Final Demand Site.

Commented [DT3]: **Gowling WLG Feedback:**

Linked to the point below, it doesn't make sense to add a cross reference in paragraph 5.1, as paragraph 5.1 only applies by reference to 31 July 2021. The new text should instead be cross-referred in paragraphs 1.8(d), 4.5, and 5.3.

Commented [DT4R3]: As per feedback from legal advisors, the Working Group agreed to remove this amendment during meeting 05
This will now be deleted given the move to a new para 5A

- 5.2 Subject to Paragraph 5.3, a DNO/IDNO Party shall no longer treat a Single Site as a Non-Final Demand Site (and shall re-classify it as a Final Demand Site) if the DNO/IDNO Party has not, by 31 July 2021, been provided with the certification necessary to satisfy the definition of a Non-Final Demand Site.
- 5.3 Where Paragraph 5.1 or 5.2 applies, the DNO/IDNO Party will notify the relevant Customer's import/export Registrant(s) of the re-classification and the new charging band by 31 August 2021. A Customer, its Registrant or an agent authorised to act on the Customer's behalf (in each such case, the 'appointed agent') can challenge the new charging band by notifying the DNO/IDNO Party of such challenge by no later than 30 September 2021. Where a DNO/IDNO Party and the Customer (or its appointed agent) cannot come to an agreement with respect to the new charging band by 31 October 2021, then the charging band determined by the DNO/IDNO Party shall be used (subject to Paragraph 5A.6 and/or Paragraph 7).

Add paragraph 5A to Schedule 32 as follows:

5A. RE-CLASSIFICATION OF A SINGLE SITE

5A.1 A DNO/IDNO Party shall no longer treat a Single Site as a Final Demand Site (and shall re-classify it as a Non-Final Demand Site) if the DNO/IDNO Party at any time has been notified that the Single Site is an Eligible Services Facility and has been provided with the certification necessary to satisfy the definition of a Non-Final Demand Site.

5A.2 Where Paragraph 5A.1 applies the:

- (a) DNO/IDNO Party will notify the relevant Customer's import/export Registrant(s) of the re-classification by the end of the following month;
- (b) re-classification shall apply from the next billing period; and
- (c) the Registrant may be eligible for a rebate (which shall be backdated to the time when the request was received).

Add the following definitions to the table of defined terms contained under paragraph 8.2 of Schedule 32:

Commented [DT5]: As per feedback from legal advisors, the Working Group agreed to make this amendment during meeting 05

Commented [DT6]: **Gowling WLG Feedback:**

Is paragraph 5 the best place for this new rule? Paragraph 5 is headed 'Transitional Period ...', and the current provisions of paragraph 5 ceased to have effect in 2021. This appears to be an ongoing rule. Would it be better as a new paragraph 5A or 8 (with the definitions re-numbered 9)?

Commented [DT7R6]: During meeting 05, the Working Group agreed to move the additional text to a new paragraph (i.e. 5A) in line with the above feedback from the legal advisors.

Commented [DT8]: Working Group wanted to check whether there is a need to include that the rebate can potentially be backdated 'up to a maximum of six years (five years in Scotland)' or because it is some form of requirement of an act/legislation that there isn't a need to specifically call it out here. They were hesitant of including it here in case those reading it got the wrong impression.

Commented [DT9R8]: **Gowling WLG Feedback:**

Regarding the limitation period for rebates – (i) the Scottish limitation period would never be relevant, as the DCUSA is governed by English law; (ii) the contractual limitation period won't necessarily be 6 years prior to the notice regarding re-classification, as any contractual claim for incorrect charging would likely be based on mistake, so that the claim would expire 6 years after it should have been identified; (iii) the registrant's claim wouldn't necessarily be for mistake, as it might be a referral to Ofgem, to which there would be no limitation period; and (iv) the rebate provided by paragraph 6.4 is not subject to any limitation.

What do you want to do on limitation? Do you want to add a 6-year limit on how far back the new rebate can go? 6 years seems long – wouldn't a shorter period be more sensible? Also what if the occupier and/or registrant has changed in the meantime? Should the same approach apply to the existing paragraph 6.4 (including to additional charges as well as rebates)?

Commented [DT10R8]: During meeting 05, the Working Group noted their belief that the text at (c) works as is, as the basis for its inclusion was paragraph 6.4. The Working Group also noted that they are happy not to include a limitation as this can be picked up via the disputes process

<u>Active Power</u>	<u>the product of the voltage, current and cosine of the phase angle between them, measured in watts.</u>
<u>Ancillary Services</u>	<u>has the meaning given to that term in the CUSC.</u>
<u>Balancing Services</u>	<u>has the meaning given to that term in the National Electricity Transmission System Operator Licence.</u>
<u>Eligible Services</u>	<u>shall mean any Balancing Services or Ancillary Services which imports or exports Reactive Energy but does not result in the production or export of any Active Power to the DNO/IDNO Party's Distribution System.</u>
<u>Eligible Services Facility</u>	<u>means a Single Site that can only and solely provide Eligible Services to a DNO/IDNO Party or to the National Electricity Transmission System Operator and does not undertake Electricity Storage or Electricity Generation or consume any Active Power other than for the provision of the Eligible Services.</u>
<u>Reactive Energy</u>	<u>has the meaning given to that term in the Balancing & Settlement Code.</u>

Commented [DT11]: **Gowling WLG Feedback:**

The proposed definition of Eligible Services Facility differs from the CUSC definition in that the proposed DCUSA definition refers to (1) provision of balancing/ancillary services to a distributor (as well as to NGESE); and (2) (via the definition of Eligible Services) export of active power to the distribution system (rather than the transmission system). Regarding which:

a. Do the CUSC definitions need to be updated to match the DCUSA definitions? I wondered whether the CUSC charging perhaps didn't apply to embedded sites, but I note that the CUSC definition of Single Site cross-refers to the DCUSA.

b. The proposed reference to services procured by distributors doesn't currently work, as it depends on Ancillary/Balancing Services as defined in the CUSC/NGESO licence, which both envisage services procured by NGESE. I think we will have to refer to Ancillary/Balancing Services procured by NGESE (or similar services procured by DNO/IDNOs). Is that okay?

Amend definition of "Non-Final Demand Site" as contained in the table of defined terms under paragraph 8.2 of Schedule 32, as follows:

<u>Non-Final Demand Site</u>	<p><u>is a Single Site:</u></p> <p>(a)</p> <p>(i) <u>at which either or both Electricity Storage and/or Electricity Generation occurs (whether the facility(ies) at the site are operating or being commissioned, repaired or decommissioned), and that: has an export Metering PointAN or Metering System and an import Metering PointAN or Metering</u></p>
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Commented [DT12]: The Working Group agreed to remove the words "to a DNO/IDNO Party or" during meeting 05, this was due to the feedback above and views from WG members

Commented [DT13]: During meeting 05, the Working Group confirmed that they'd also be happy to use "procured by the" in place of the words "to the" used

	<p><u>System</u> with associated metering equipment which only measures export from Electricity Storage and/or Electricity Generation and import for or directly relating to Electricity Storage and/or Electricity Generation (and not export from another source and/or import for another activity); <u>or</u></p> <p><u>(ii) is an Eligible Services Facility; and</u></p> <p><u>(b)</u></p> <p>(i) if registered in an MPAS Registration System, is subject to certification from a Supplier Party that the site meets the criteria in paragraph (a)(i) or (a)(ii) above, which certificate has been provided to the DNO/IDNO Party; <u>and/or</u></p> <p>(ii) if registered in CMRS, is subject to certification from the Customer (or its CVA Registrant) that the site meets the criteria in paragraph (a)(i) or (a)(ii) above, which certificate has been provided to the DNO/IDNO Party.</p>
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Commented [DT14]: DCP 401 proposes to remove "an MPAS Registration System" and replace with "CSS" will need to account for one another depending upon implementation dates.

Commented [DT15]: WG agreed to the amendments made to this definition during meeting 04. It was agreed to separate out Storage/Generation from Eligible Services Facility by using (i) and (ii) and inserting (a) before them. Then including (b) with the original (i) and (ii) below it.