RETAIL ENERGY CODE

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

CHANGE REPORT

R0225 – CLARIFICATION ON TDIS PORTFOLIO TRANSFERS ON SALE

DOCUMENT VERSION	1.0
PROPOSED IMPLEMENTATION DATE	27 June 2025
IMPLEMENTATION APPROACH	BIG BANG

RESPONSIBLE COMMITTEE	CHANGE PANEL	**CHANGE PATH**	SELF-GOVERNANCE
PRIORITY STATUS	MEDIUM	**URGENCY**	STANDARD
IMPACTED STAKEHOLDERS	ENERGY SUPPLIERS		

LEAD ANALYST (SOLUTION LEAD)	TECHNICAL LEAD	ASSURANCE LEAD	SUBJECT MATTER EXPERT
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OVERVIEW

This proposal seeks to add clarity around which instances would trigger the transfer of theft targets on a portfolio sale from one Energy Supplier to another.

CODE MANAGER RECOMMENDATION

The Code Manager recommends that the Change Panel:

- **APPROVE** the proposed change solution;
- **APPROVE** the proposed implementation approach; and
- **APPROVE** the proposed implementation date of 27 June 2025.

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BACKGROUND

1 SUMMARY

The Theft Detection Incentive Scheme (TDIS) exists to incentivise Energy Suppliers to resolve Energy Theft. Section 3.8 of Annex 3 of Schedule 7 'Energy Theft Reduction' sets out actions the Code Manager should take where one supplier takes over the supply contracts of another (in brief, reducing the selling supplier's target to zero and transferring the target amount over to the purchaser).

Prior to setting these actions out, the Code states that '*If, following the date of the market share figures on which the Theft Targets were calculated but before the end of the TDIS Reporting Year, an Energy Supplier purchases all (or substantially all) of an Energy Supplier's supply contracts, then the Code Manager…'.*

The term 'substantially all' in this section requires clarity or additional explanation to allow consistent understanding across all REC Parties.

2 PROBLEM STATEMENT

Schedule 7 - Energy Theft Reduction currently has wording on the transfer of theft targets on portfolio sale, however which sales would qualify is ambiguous. There have been multiple instances of Parties requesting this transfer in cases where the legal advice is that this would not apply.

3 IMPACTS

CONSUMERS
No impact

REC SERVICE PROVIDERS
No impact

RECCO / REC CODE MANAGER
REC Performance Assurance

REC PARTIES AND SERVICE USERS
Energy Suppliers

REC DOCUMENTS / PRODUCTS
Schedule 7 – Energy Theft Reduction

MHHS DESIGN
No impact

MHHS DATA SPECIFICATION
No impact

MHHS CODE DRAFTING
No impact

4 CROSS-CODE IMPACTS

No Cross-Code impacts have been identified.

5 PROPOSAL PLAN

Milestone	Activity	From	To
Definition		**14-Jan-25**	**25-Feb-25**
	Solution Development	**Completed**	**Completed**
Change Proposal		**25-Feb-25**	**29-Apr-25**
	Business Case Assessment	**Completed**	**Completed**
	Consultation	**Completed**	**Completed**
	Final Determination	May	May
Voting		**06-May-25**	**06-May-25**
	Appeal Window	May	May

6 STAKEHOLDER ENGAGEMENT

As the Change Proposal is only adding clarity around the instances when the Energy Theft Targets are being transferred between suppliers following a portfolio sale, the Code Manager did not conduct a Party impact assessment. On 7 March 2025, the Code Manager conducted an industry consultation until 28 March 2025.

7 PRIORITY STATUS AND URGENCY

PRIORITISATION MATRIX

Category	Significance / Resource impacts / Urgency	Further selection / breakdown	Score (0-3)	Weighting	Weighted Score
Impacts	Consumer Impact	Indirect	1	27	27
	Retail Markets Impact	Innovation and Market Arrangements	1	17	17
	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		3	9	28
Strategic Alignment	Contribution to/ Alignment with the objectives of the REC		1	17	8
	Contribution to/ Alignment with RECCo's Forward Work Plan		2		17
Urgency *(The need to progress a change to meet a targeted date)*		Other Planned Activity	0	10	0
				Overall Priority Score (rounded)	117

Priority Status	MEDIUM
Change Proposal Type	STANDARD

The priority status for this Change Proposal is medium based on a weighted prioritisation score of 117 and has been assessed as a Standard Change.

SOLUTION

8 SUMMARY OF ANALYSIS UNDERTAKEN

Code Manager legal counsel was consulted on the meaning of 'substantially all'. Currently there is no definitive legal meaning of the phrase, rather the meaning in individual cases needs to be interpreted in context.

Case law indicates a high threshold for the concept, and - given that paragraph 3.8 provides for the selling supplier's Theft Target to be reduced to zero – the context of paragraph 3.8 reinforces an interpretation of near to 100%.

Below it can be found a series of different case laws and other relevant statements used to test the concept of 'substantially all':

- *School Facility Management Ltd v Governing Body of Christ the King College (2020)* - This case refers to expert evidence which identifies 90% as the minimum threshold for the concept of "substantially all" in a particular accountancy test (to identify a finance lease). The judge concurs with this view but is at pains to point at that this should not be taken as an endorsement of the 90% test for all purposes.
- *Lloyds TSB Equipment Leasing (No 1) Ltd v Revenue and Customs Commissioners (2012)* - This case identifies an instance in which a party was responsible for defraying more than 90% of shipping operation costs, as being an instance in which they were responsible for substantially all of the expenses.
- *British Association of Leisure Parks, Piers & Attractions Ltd v Revenue and Customs Comrs, (2011)* - This case considers substantially all as "e.g. 100% or a near percentage, rather than simply a bare majority".

Guidance found on HMRC website states that 'substantially all' in practice will be interpreted to mean 'around 90%'.

The above case laws and statements are not in a definitive relation to interpretation of the REC, but all are consistent with REC legal counsel's interpretation of the paragraph in the context of the consequence of its application.

9 PROPOSED SOLUTION

The solution proposed aims to add clarity around which instances would trigger the transfer of Theft Targets on portfolio sale from one Energy Supplier to another, by removing 'substantially all' from paragraph 3.8. A clearer explanation of what constitutes a valid instance to trigger the transfer of Theft Targets will be introduced.

10 DRAFT LEGAL TEXT

The legal text changes to deliver the proposed solution to R0225 can be found here.

PRELIMINARY ASSESSMENT

11 BUSINESS CASE ASSESSMENT

11.1 COSTS

This proposal is only seeking to introduce clarity to Schedule 7 regarding which instances would trigger the transfer of Theft Targets on portfolio sale from one Energy Supplier to another. Therefore, there are no costs to implement this change proposal.

11.2 BENEFITS

INTANGIBLE BENEFITS	BENEFITS DESCRIPTION
CLARITY	The solution will provide more clarity and a more consistent approach to which instances would trigger the transfer of Theft Targets on portfolio sale from one Energy Supplier to another.

12 CASE FOR CHANGE

SELF GOVERNANCE

The Code Manager considers that there is a positive case for change for implementing this Change Proposal on the basis that the proposed solution:

- Effectively resolves the problem statement; and
- The impact of the Change Proposal not being implemented causes confusion and potential inconsistency to Market Participants.

13 SUMMARY OF CONSULTATION RESPONSES

A consultation was circulated on 7 March 2025 to obtain views on proposed solution of R0225. In total one response was received from an Energy Supplier.

The respondent welcomed the proposal to provide clarity and a consistent approach for transferring TDIS market shares between parties following a portfolio sale. It was agreed that the phrase 'substantially all' could cause inconsistencies in determining the legal import or meaning in the context of what the schedule aims to achieve.

One amendment was recommended to replace '*final metering point market share'* with '*final Metering/Supply Meter Point market share*', as seen in section 15.
No additional comments, queries or objections were received.

14 SUMMARY OF AMENDMENTS MADE FOLLOWING CONSULTATION

DOCUMENT	SECTION	AMENDMENT	REASON
Schedule 7 Energy Theft Reduction Schedule	Paragraph 3.8(b)	Amend 'final metering point market share' with 'final	The initial proposed legal drafting made reference to 'final metering point market share', whereas the Code

		Metering/Supply Meter Point market share'.	currently uses 'final Metering/Supply Meter Point market share'.

15 APPENDIX

CHANGE PROPOSAL	Link
LEGAL DRAFTING	Link
CONSOLIDATED CONSULTATION COMMENTS AND CODE MANAGER'S RESPONSES	Link

16 GLOSSARY

TERM	DEFINITION
Energy Theft	Energy Theft Includes: (a) circumstances described in Paragraphs 5(1) (Restoration of connection without consent) and 6(1)(a) (Damage to electrical plant etc) of schedule 6 to the Electricity Act (in so far as they relate to an electricity supplier; (b) circumstances described in Paragraph 6(1)(b) (Damage to electrical plant etc) of schedule 6 to the Electricity Act; (c) circumstances described in Paragraph 11(1) (Interference with meters) of schedule 7 to the Electricity Act; (d) circumstances described in Paragraphs 10(1)(a) and 11(2) of schedule 2B to the Gas Act (in so far as they relate to a gas supplier); and (e) circumstances described in Paragraphs 10(1)(b) and 10(1)(c) of schedule 2B to the Gas Act
Energy Theft Tip-Off Service (ETTOS)	is described in Annex 2 of the Energy Theft Reduction Schedule.
Theft Target	means the target number of Confirmed Energy Thefts to be identified by each Energy Supplier, to be determined in accordance with Paragraph 3 of Annex 3 of the Energy Theft Reduction Schedule.