

MARKET ARRANGEMENTS CODE CHANGE PROPOSAL

Change Proposal Reference <i>(To be completed by the Panel Secretary)</i>	CPM033	Version No	1.0
Type of Change Proposal:	Code Change Proposal		
Submission Date	7 September 2020		
Title: of Market Arrangements Code Change Proposal	Improved process for managing Data Subject Rights Requests		
Summary: of Market Arrangements Code Change Proposal <i>(40 to 50 Words Maximum)</i>	This change proposal seeks to facilitate compliance with the obligations and timeframes set out in the GDPR and Data Protection Act 2018 in relation to Data Subject Rights Requests through improvement of the process for the handling and recording of such requests.		
General Details of the Proposer			
Name of Proposer	Arabella Prothero		
Capacity (on behalf of a Trading Party, as a Panel Member, as the Customer Representative or the Market Operator).	on behalf of the GDPR Issues Committee		
Contact Email	change@mosl.co.uk		
Telephone Number			
The Proposer recommends that this Change Proposal should: <i>(delete as appropriate)</i>	Proceed to Assessment		
	Proceed to Consultation		
	Proceed to Recommendation		
Is the change Urgent (Yes/No)? If yes, please provide reason for urgency (if applicable)	No		

Related Documents

Reference of any associated Code Panel Market Arrangements Code Change Proposal

Documents Accompanying Form

CPM033 Draft Legal Text

Market Arrangements Code Change Proposal Details

Description of the issue or defect which this Market Arrangements Code Change Proposal seeks to address, as required under the Market Arrangements Code Section 7.1.2(b).

All parties in the non-household water market have the legal obligation to resolve Data Subject requests. Any failure to do so, or to do so within the timeframes specified, may result in a complaint by the Data Subject to the ICO, for which the data controller(s) will have to answer. In light of this, MAC Schedule 13 (Part D), currently contains a broad requirement for the Market Operator and each Trading Party to coordinate and manage any Data Subject Rights Request(s) (“DSRRs”) received, and to provide any information and assistance, as is necessary and reasonable, in order to deal with a request in compliance with Data Protection Laws.

The Committee has determined that these arrangements do not sufficiently address interactions where a multi-party response to a DSRR is required, which in turn could jeopardise timely compliance and/or create unnecessary opportunity for dispute.

The Committee notes the following three particular risks under the current arrangements:

- **Risk 1 – Failing to pass on a DSRR in good time**

The DSRR Form has been created as a way for the initial recipient of a DSRR (who cannot deal with the request itself) to pass on the request to the party who can (i.e. the Data Owner), however no timescale is specified in which the initial recipient must do so. Failure on the part of the initial recipient to pass on a request uses up time the other party would otherwise have to comply, and potentially jeopardises its ability to meet the GDPR deadline.

- **Risk 2 – Relevant parties being unaware that a request is a DSRR**

There is no clear mechanism for the initial recipient of a DSRR, where using a Standard Process, to signal to the Data Owner or other relevant party that the process has been triggered to deal with a DSRR, rather than for business-as-usual reasons. The Data Owner may therefore remain unaware (because, for example, a request to rectify or delete data is received via a Standard Process) that GDPR timelines and obligations, and interactions with a Data Subject are necessary.

- **Risk 3 – Standard Processes exceed GDPR timescales**

Timelines for Standard Processes described in the Codes can exceed the one to three months maximum allowed for dealing with a DSRR under Article 12.

Description of the Market Arrangements Code Change Proposal, its nature and purpose and how it is consistent with the Market Arrangements Code Principles and required under the Market Arrangements Code Section 7.1.2(c)

The Committee therefore proposes an amended process for handling DSRRs (contained in MAC Schedule 13 Part D), and a new form to be known as the “DSRR Record” to replace the

current DSRR Form.

In summary, the process is proposed to work as follows:

Dealing with a request unilaterally

[1] Upon receipt of a DSRR, a Trading Party or the Market Operator will determine if it can deal with the DSRR in full without the assistance of any other party. If yes, that party should deal with the request in accordance with Data Protection Laws, using a Standard Process where one is applicable, or other suitable processes or transactions if not, and respond to the Data Subject accordingly.

Notes:

(a) a DSRR Record should not be issued in this instance since the assistance of other parties is not required¹;

(b) the assessment of whether the request is indeed a DSRR from a Data Subject (or someone authorised by him/her) is at the judgement of the party concerned;

(c) the assessment of whether the DSRR can be dealt with by the party by itself, whether a Standard Process is applicable and, if not, which other operational or internal processes to use, is at the judgement of the party concerned;

(d) this regime is substantially the same as that currently in the MAC, with the exception that a party is not restricted to using a Standard Process since the party may still be able to deal with a DSRR unilaterally, regardless of whether a Standard Process applies.

Dealing with a request with the assistance of other parties:

[2] If a Trading Party or the Market Operator (who first receives the DSRR from the Data Subject – i.e. the initial 'DSRR Recipient') determines it cannot deal with the DSRR in full by itself, and requires the assistance of other Trading Parties and/or the Market Operator, it should determine whether a Standard Process or Processes can be used to deal with the DSRR.

Standard Process applicable

[i] As soon as is practicable but no later than 3 Business Days of receipt of the request, the initial DSRR Recipient ('DSRR Record Initiator') should (a) submit the request by initiating the relevant Standard Process (including standard Operational Forms) to commence action on the DSRR, and (b) creating and issuing a DSRR Record (via a secure method) to the other parties necessary to deal with the DSRR. Once the parties have dealt with the DSRR to completion under the Standard Process(es), the Data Subject should be informed accordingly.

Notes:

(a) in this scenario the purpose of the DSRR Record is to identify to the party or parties on the receiving end of the Standard Process that it has been initiated in order to deal with a DSRR (not for business-as-usual reasons) and allow them to expedite their actions as necessary. It also enables all interested parties in the DSRR to track its progress;

(b) the DSRR Record Initiator should indicate the date the DSRR was received

¹ Or put another way: the DSRR Record should only be used where the initial recipient of a DSRR is not able to fully discharge it without the cooperation of the Market Operator and/or another Trading Party.

and identify (e.g. by name, ID or reference number) which Standard Process has been initiated; thereafter the party or parties dealing with the request should update the DSRR Record with actions, in particular when it is completed, refused, or delayed (if that delay jeopardises meeting the GDPR deadline);

(c) the solution envisages that when a party completes their DSRR action they should issue the response to the Data Subject, however the option for one of the other interested parties to do so has been left open.

Standard Process not applicable

[ii] In this case, the DSRR Record is the only means to deal with DSRRs which require a multi-party involvement. The initial DSRR Recipient should therefore, as soon as is practicable but no later than 3 Business Days of receipt of the request, create and issue a DSRR Record (via a secure method) to the other parties necessary to deal with the DSRR. Once the other parties have dealt with the DSRR to completion, the Data Subject should be informed accordingly.

Notes:

(a) parties must fill out all sections of the DSRR Record which are applicable, and which enable the DSRR to be dealt with; mandatory sections will be indicated;

(b) when passing on the DSRR – by issuing the DSRR Record – to the other parties necessary to deal with it, the DSRR Recipient may describe in the DSRR Record what action is understood to be required based on information provided by the Data Subject or in the DSRR, however it will ultimately be for those other parties to determine how to handle the request or the aspect of it they are responsible for, in accordance with Data Protection Laws;

(c) parties should update the DSRR Record with actions, in particular when the DSRR is completed, refused, or delayed (if that delay jeopardises meeting the GDPR deadline);

(d) the Data Subject should be issued with a final response upon completion of the DSRR (or, if there are lawful grounds to do so, upon refusal of the DSRR).

Refusing a request

[3] If there are lawful grounds under Data Protection Laws to refuse to deal with all or part of a DSRR, a party may choose to do so. The assessment of whether there are any grounds to refuse, and when in the process to determine this, is at the judgement of the party. The ability of a party to refuse is allowed for in the current DSRR Form and is inherent in section 15 of the MAC (which essentially requires parties to act in accordance with Data Protection Laws). The new proposed DSRR Record maintains this possibility.

Who should handle a request

[4] Because of the determinations that will need to be made and the interactions between parties, the Committee considers that the persons best placed to deal with DSRRs should be the Data Protection Officer (DPO) and/or some other person with relevant data protection expertise and/or training – which, for example, may be a designated data protection contact (for smaller organisations without a DPO), or a contract manager if appropriately trained. Parties will be required to nominate at least two such qualified contacts for the handling of DSRRs.

The contact information for such nominated contacts will be added to a contact list held by the Market Operator, and Trading Parties will be expected to update the contact list as and when there is a change to their personnel so that the list remains current. This will enable the Market Operator and Trading Parties to interact as necessary, via their nominated contacts, in relation to DSRRs. As it is envisaged the DSRR Record will sit on Kissflow (see [6] below), nominated contacts will receive automated notifications² and will need access to Kissflow to handle the request.

Meeting the GDPR Deadline

[5] Parties should expedite their actions to deal with DSRRs without undue delay and in any event within one month of receipt, or within a total of three months from receipt in a complex case. Where a party seeks to extend the time for responding from one month to three, it is required to inform the Data Subject of any such extension within that first month and provide reasons for the delay. Since the timescales stipulated in the GDPR take precedence, the Committee proposes to introduce an obligation into Schedule 13 of the MAC for all parties to expedite actions, whether using a Standard Process or not, to deal with DSRRs by or within the GDPR deadline.

The “GDPR clock” stops when the Data Subject has received a substantive response (i.e. that the request has been completed or that it cannot be completed, and why). The party who provides this response does not have to be the party the Data Subject initially contacted, because – as per the MAC – the Market Operator and all Trading Parties are joint Data Controllers, and therefore any relevant Party can give the substantive response.

Secure Transfer

[6] It is envisaged that the DSRR Record will be implemented as a digital form in Kissflow (the workflow management software currently used in the market), and can be securely shared with the relevant parties by this means. However, the form itself has been designed to exist independently of Kissflow, or any software.

Principles

Description of the principles affected by the Change Proposal on the items below (if applicable) as detailed under Schedule 1 Market Arrangements Code Principles and Definitions

Principles	Affected (Y/N)	Description
Efficiency	N	
Proportionality	Y	This change presents a proportionate solution for managing Data Subject Rights Requests that require multi-party participation, without assessing and

² Notifications will be sent when: (1) a DSRR Record is created and issued to the designated Trading Party required to take action on a DSRR, and (2) when a Trading Party makes updates to the status (e.g. to “in progress” or “refused”), (3) when the due date for completion of the DSRR is changed, (4) when a new DSRR Recipient is added, and/or (5) if a complaint is added.

		redesigning all the Standard Processes to fit into the GDPR timescale.
Transparency	Y	This change provides the Market Operator and Trading Parties clarity of process and responsibilities for managing a Data Subject Rights Request, and thus reduces the potential for dispute.
Barriers to entry	N	
Non-discrimination	N	
Customer participation	Y	This change facilitates the handling of DSRRs within the timeframes required by the GDPR, thus reducing the risk of a customer (Data Subject) complaint in this regard.
Seamless markets	N	
No limit on upstream competition	N	
Description of any consultation carried out in advance of the Market Arrangements Code Change Proposal being made (if any), as required under the Market Arrangements Code Sections 7.1.2(f).		
N/A		
Further Information		

Key	
	To be completed by the Market Operator
	To be completed by the Proposer