

P247 – PROPOSED DRAFT LEGAL TEXT

SECTION F: MODIFICATION OF THE CODE (Version 16.0)

Amend paragraph 1.3.5 to read as follows:

1.3.5 The Modification Register shall include details of:

- (a) each Modification Proposal which has been withdrawn pursuant to paragraph 2.1.12(a) or paragraph 2.1.12A or rejected by the Authority;
- (b) each Approved Modification which has been implemented; and
- (c) each Modification Proposal that:
 - (i) has been the subject of a notice from the Transmission Company either pursuant to paragraphs 1.1.2 or 1.1.4; and
 - (ii) is the subject of a Relevant Challenge,

for a period of 3 months after such withdrawal, rejection or implementation, (and in the case of a Modification Proposal as described in sub-paragraph (c) determination of the relevant appeal or judicial review), or such longer period as the Panel may determine.

Amend paragraph 2.1.11 to read as follows:

2.1.11 It shall be a condition to the right to make or adopt a proposal to modify the Code under this paragraph 2.1 that the Proposer:

- (a) assigns fully, irrevocably and unconditionally any and all present and future rights, IPRs or moral rights it may have in such proposal (as regards use or application in Great Britain and Offshore) to BSCCo and each Proposer acknowledges and agrees that any such rights, IPRs and moral rights shall vest in BSCCo unconditionally; and
- (b) warrants that, to the best of its knowledge, information and belief, no other person has asserted to the Proposer that such person has any IPRs or moral rights or rights of confidence in such proposal.

Amend paragraph 2.1.12 to read as follows:

2.1.12 ~~A Proposer may withdraw his Modification Proposal on notice to the Modification Secretary at any time prior to the Panel meeting at which such Modification Proposal is to be considered for the first time, in which case the Modification Secretary shall promptly:~~

- ~~(a) revise the Modification Register;~~
- ~~(b) notify the persons referred to in paragraph 2.1.10(a); and~~
- ~~(c) remove the Modification Proposal from the agenda of the relevant Panel meeting.~~

Subject to paragraphs 2.2.3(b), (iii), 2.5.9(c) and 2.9.4A, a Proposer may:

- (a) withdraw his Modification Proposal on notice to the Modification Secretary at any time prior to the final evaluation by the Modification Group (in accordance

with its terms of reference and working practices) of that Modification Proposal and, subject to paragraph 2.1.12B, any Modification Proposal so withdrawn shall lapse; or

(b) vary his Modification Proposal on notice (which may be given verbally) to the chairman of the Modification Group at any time prior to the final evaluation by the Modification Group (in accordance with its terms of reference and working practices) of that Modification Proposal provided that such varied Modification Proposal:

(i) shall address the same issue or defect originally identified by the Proposer in his Modification Proposal; and

(ii) shall be deemed to be the Proposer's Modification Proposal.

Insert new paragraphs 2.1.12A to 2.1.12D (inclusive) as follows:

2.1.12A The Panel may (but shall not be obliged to) require a Modification Proposal to be withdrawn at any time if, in the Panel's opinion, the Proposer of that Modification Proposal is deliberately and persistently disrupting or frustrating the work of the Modification Group and that Modification Proposal shall be deemed to have been so withdrawn. In the event that a Modification Proposal is so withdrawn, the provisions of paragraphs 2.1.12B and 2.1.12C shall apply in respect of that Modification Proposal.

2.1.12B In relation to each Modification Proposal that has been withdrawn pursuant to paragraph 2.1.12(a) or 2.1.12A (other than Urgent Modification Proposals in respect of which this paragraph shall not apply):

(a) the Modification Secretary shall promptly notify the persons referred to in paragraph 2.1.10(a);

(b) subject to paragraph 2.1.12B(d), such withdrawn Modification Proposal shall remain open to be adopted, in accordance with paragraph 2.1.12B(c) for a period commencing at 1200 hours on the first Business Day after the date of the Modification Secretary's notice and ending at 1200 hours on the 5th Business Day thereafter;

(c) any of the persons referred to in paragraph 2.1.1 may (subject to paragraph 2.1.12B(e) and, if applicable, the circumstances set out in paragraph 2.1.1(d)) adopt the withdrawn Modification Proposal by notifying the Modification Secretary during the period set out in paragraph 2.1.12B(b) in which case:

(i) the adopted Modification Proposal shall continue through the Modification Procedures from the point at which it was withdrawn; and

(ii) the Proposer of the adopted Modification Proposal shall be entitled, pursuant to paragraph 2.4.5(a), to appoint a member of the Modification Group who shall replace any member appointed by the Proposer of the withdrawn proposal;

(d) the Modification Proposal shall be adopted by the person whose notice is first received by the Modification Secretary in accordance with paragraph 2.1.12B; and

(e) where a Modification Proposal has been withdrawn in accordance with paragraphs 2.1.12(a) or 2.1.12A, neither the Proposer of that Modification Proposal, nor any Affiliate of the Proposer that falls within the categories listed in paragraph 2.1.1, shall be entitled to adopt that Modification Proposal.

2.1.12C In relation to each Modification Proposal that has been withdrawn pursuant to paragraph 2.1.12(a) or 2.1.12A, or withdrawn and subsequently adopted pursuant to paragraph 2.1.12B, the Modification Secretary shall promptly:

(a) revise the Modification Register; and

(b) notify the persons referred to in paragraph 2.1.10(a).

2.1.12D The changes effected by Modification Proposal P247 (in respect of paragraphs 1.3.5(a), 2.1.11, 2.1.12, 2.1.12A, 2.1.12B, 2.1.12C, 2.1.12D, 2.2.3(b)(iii), 2.2.11, 2.3.2(c), 2.4.5(a), 2.4.5C, 2.4.6, 2.4.9, 2.4.9A, 2.5.9(c), 2.6.12, 2.9.4A, paragraph 1(a) of Annex F-1 and the definition of Proposer in Section X) shall only be effective in respect of any Modification Proposal raised, pursuant to paragraph 2.1.1, after the Relevant Implementation Date.

Amend paragraph 2.2.3 to read as follows:

2.2.3 In relation to each new Modification Proposal, the Panel shall determine:

- (a) whether to amalgamate the Modification Proposal with any other Modification Proposal in accordance with paragraph 2.3;
- (b) whether to:
 - (i) submit the Modification Proposal to the Definition Procedure pursuant to paragraph 2.5; or
 - (ii) submit the Modification Proposal to the Assessment Procedure pursuant to paragraph 2.6; or
 - (iii) proceed directly to the Report Phase pursuant to paragraph 2.7 (in which case the Proposer's right to withdraw or vary his Modification Proposal shall lapse);
- (c) where the Modification Proposal is to be submitted to the Definition Procedure or the Assessment Procedure pursuant to paragraph (b):
 - (i) the composition or identity and terms of reference of the Modification Group in accordance with the provisions of paragraph 2.4;
 - (ii) subject to paragraphs 2.2.8 and 2.2.9, the priority to be accorded to the Modification Proposal (as compared with other Pending Modification Proposals) and the timetable to apply for completion of the relevant procedure; and
- (d) where the Modification Proposal is to proceed directly to the Report Phase pursuant to paragraph (b):

- (i) whether the draft Modification Report shall contain a recommendation of the Panel to make the Proposed Modification; and
- (ii) the proposed Implementation Date for implementation, subject to the consent of the Authority, of the Proposed Modification (whether or not the Panel recommends the making of such Proposed Modification).

Amend paragraph 2.2.11 to read as follows:

2.2.11 The Panel may decide at any time to stop a Definition Procedure and/or an Assessment Procedure and proceed, in either case, directly to the Report Phase, in which case the Proposer's right to withdraw or vary his Modification Proposal shall lapse.

Amend paragraph 2.3.2 to read as follows:

2.3.2 Where Modification Proposals are amalgamated pursuant to paragraph 2.3.1:

- (a) such Modification Proposals shall be treated as a single Modification Proposal;
- (b) references in this Section F to a Modification Proposal shall include and apply to a group of two or more Modification Proposals so amalgamated;
- (c) without prejudice to each Proposer's right to withdraw his Modification Proposal prior to the amalgamation of his Modification Proposal, the Proposers of each such Modification Proposal shall co-operate in deciding which of them is to be the Proposer ~~provide a representative for any Modification Group in respect~~ of the amalgamated Modification Proposal and, in default of agreement, the Panel shall nominate one ~~or more~~ of the Proposers ~~as it sees fit~~ for that purpose; and
- (d) the Panel shall establish such arrangements as it considers appropriate for the evaluation of the amalgamated Modification Proposals.

Amend paragraph 2.4.5 to read as follows:

2.4.5 In addition to the members appointed by the Panel pursuant to paragraph 2.4.4:

- (a) the Proposer shall be entitled to appoint its representative as a ~~one~~ member of the Modification Group which is to consider the Proposer's Modification Proposal (and who, in the case of a standing Modification Group, shall be a member for the purposes of that Modification Proposal only);
- (b) the Transmission Company shall be entitled to appoint one member of any Modification Group (unless the Transmission Company is the Proposer, in which case paragraph (a) applies); and
- (c) unless the Panel otherwise determines, the Panel shall appoint at least one additional member of each Modification Group who shall be an employee of BSCCo, and BSCCo shall make appropriately qualified BSCCo staff available for this purpose.

Insert new paragraph 2.4.5C to read as follows:

2.4.5C A Proposer may, pursuant to paragraph 2.4.5(a), appoint a representative of BSCCo as a member of the Modification Group (provided that BSCCo shall act as an impartial representative of the Proposer's views and shall not act as an advocate of the Modification Proposal and, where the Modification Group's terms of reference provide for voting, BSCCo shall not have voting rights when appointed in such capacity). If the Proposer appoints a representative of BSCCo as a member of Modification Group, the Proposer shall not have the right to:

- (a) vary his Modification Proposal pursuant to paragraph 2.1.12(b); and
- (b) address the Panel pursuant to paragraph 2.6.12 to explain variations that have been made or omitted.

Amend paragraph 2.4.6 to read as follows:

2.4.6 Prior to establishing the composition of a Modification Group:

- (a) each proposed member of the Modification Group shall be required to confirm to the Panel that he will be available as required throughout the relevant Definition Procedure or Assessment Procedure (or, in the case of a standing Modification Group, during such period as the Panel may specify) to attend Modification Group meetings and to carry out work to be undertaken outside those meetings as necessary; and
- (b) with the exception of a member appointed pursuant to paragraph 2.4.5(a), where the proposed member is employed, he shall provide to the Modification Secretary a letter from his employer agreeing that he may act as a member of a Modification Group, and that the requirements of paragraph 2.4.9 shall prevail over his duties as an employee.

Amend paragraph 2.4.9 to read as follows:

2.4.9 A member of a Modification Group shall act impartially and, subject to paragraph 2.4.9A, shall not be representative of a particular person or class of persons (and, accordingly, no member shall agree to follow or be bound by the instructions of any person or body, other than the Panel pursuant to this Section F, in the exercise of his functions as a member of a Modification Group).

Insert new paragraph 2.4.9A to read as follows:

2.4.9A The restrictions in paragraph 2.4.9 on a member of a Modification Group not being representative of a particular person or class of persons shall not apply to a member appointed pursuant to paragraph 2.4.5(a) insofar as that member shall be entitled to represent the views of the Proposer.

Amend paragraph 2.5.9 to read as follows:

2.5.9 Following completion of the Modification Group's report pursuant to paragraph 2.5.7, the Panel shall consider the Modification Group's report at the next following Panel meeting and shall determine whether to:

- (a) refer the Modification Proposal back to the Modification Group for further analysis (in which case, the Panel shall determine the timetable and terms of reference to apply in relation to such further analysis);

- (b) submit the Modification Proposal to the Assessment Procedure pursuant to paragraph 2.6; or
- (c) proceed directly to the Report Phase pursuant to paragraph 2.7 (in which case the Proposer's right to withdraw or vary his Modification Proposal shall lapse).

and, in the case of paragraphs (a) or (b), the Panel may instruct the Panel Secretary to initiate a further process of consultation (in accordance with the terms of reference determined by the Panel).

Amend paragraph 2.6.12 to read as follows:

- 2.6.12 The chairman or another member (nominated by the ~~E~~chairman) of the Modification Group shall attend the next following Panel meeting and may be invited to present the findings of the Modification Group to the Panel and/or answer the questions of Panel Members in respect thereof; the Proposer's representative and the other members of the Modification Group may also attend such Panel meeting and the Proposer's representative may address such Panel meeting for the purpose of explaining any variations made pursuant to paragraph 2.1.12 (or, as the case may be, omitted to be made) to the Modification Proposal where such variations have been made or omitted contrary to the views of the Modification Group.

Insert new paragraph 2.9.4A to read as follows:

- 2.9.4A Where the procedure and timetable approved by the Authority in respect of an Urgent Modification Proposal does not provide for the establishment (or designation) of a Modification Group the Proposer's right to withdraw or vary his Modification Proposal pursuant to paragraph 2.1.12 shall lapse from the time and date of such approval.

ANNEX F-1: CONTENTS OF REPORTS

Amend paragraph 1(a) to read as follows:

- 1. The matters referred to in paragraph 2.6.4 of Section F are (to the extent applicable to the proposal in question):
 - (a) a description of the Proposed Modification including the details of, and the rationale for, any variations made (or, as the case may be, omitted) by the Proposer together with the views of the Modification Group, and an analysis of and the views and rationale of the Modification Group as to whether (and, if so, to what extent) the Proposed Modification would better facilitate achievement of the Applicable BSC Objective(s);

SECTION X –DEFINITIONS AND INTERPRETATION - ANNEX X-1 (version 44.0)

Amend Section X – Annex X-1 to read as follows:

"Proposer": means, in relation to a particular Modification Proposal, the person who makes or adopts such Modification Proposal;