

## **DRAFT LEGAL TEXT FOR PROPOSED MODIFICATION P351**

### **SECTION F: MODIFICATION PROCEDURES [Version 26.0]**

#### **2. CODE MODIFICATION PROCEDURES**

##### **2.1 Modification Proposals**

*Amend paragraph 2.1.1 as follows:*

2.1.1 A proposal to modify the Code may be made by any of the following:

- (a) a Party (other than BSCCo or the BSC Clearer);
- (b) Citizens Advice and Citizens Advice Scotland;
- (c) such other bodies representative of interested third parties as may be designated in writing for this purpose by the Authority from time to time;
- (d) the Panel:
  - (i) on the recommendation of BSCCo in accordance with Section C3.8.8 or Section H9.8;
  - (ii) on the recommendation of BSCCo following receipt by BSCCo of a change request proposing a change to a Core Industry Document and/or the System Operator-Transmission Owner Code which would, if made, have an impact on the Code;
  - (iii) on the recommendation of BSCCo where BSCCo becomes aware of a change in circumstances, since approval of a Proposed Modification, which would make the implementation of that Approved Modification impossible or significantly more costly than anticipated at the time such Modification was approved or no longer relevant;
  - (iv) on the recommendation of BSCCo to rectify manifest errors in or to correct minor inconsistencies (or make other minor consequential changes) to the Code;
  - (v) on the recommendation of the Trading Disputes Committee in consequence of a Trading Dispute;
  - (vi) on the recommendation of the Performance Assurance Board in accordance with Section Z8.2;
  - (vii) on the recommendation of a report in relation to a VoLL Review in accordance with Section T1.12; or
  - (viii) on the recommendation of a report in accordance with paragraph 3.1.7 of Annex C-2,

provided that, where the Panel decides to make a proposal in any of the circumstances set out in paragraphs (i) to (viii), such proposal shall be without prejudice to the Panel's decision, pursuant to paragraph 2.7, as to whether or not to recommend to the Authority that such modification should be made;

- (e) a CfD Counterparty to reflect a proposed change to the CFD Arrangements which would, if made, have an impact on the Code;
- (f) the CM Settlement Body to reflect a proposed change to the CM Arrangements which would, if made, have an impact on the Code; ~~and~~
- (g) the Authority ~~in relation only to modifications which it reasonably considers are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency~~; and
- (h) the Authority in relation to a Modification Proposal that is in respect of a Significant Code Review.

*Amend paragraph 2.1.12A as follows:*

- 2.1.12A Subject to paragraph 2.1.10A, 5.3.1(b), 5.3.1A(a) and 8.3, 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 Workgroup 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.

*Amend paragraph 2.1.12B as follows:*

- 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 and Modifications Proposals withdrawn following a Backstop Direction in accordance with paragraph 5.3B.1 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 Workgroup who shall replace any member appointed by the Proposer of the withdrawn Modification 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, 5.3B.1, 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).

*Amend paragraph 2.7A.1 as follows:*

## **2.7A Send Back Process**

2.7A.1 Where the Authority considers that it is unable to form an opinion in relation to a Modification Report submitted to it pursuant to paragraph 2.7.6 or paragraph 5.3A.3 then it may issue a direction to the Panel:

- (a) specifying any additional steps that it requires in order to form such an opinion including drafting or amending the proposed text to modify the Code, revising the implementation timetable and/or proposed Implementation Date(s), revising or providing additional analysis and/or information; and
- (b) requiring such Modification Report to be revised and re-submitted to the Authority,

and the Authority may include in such direction its reasons for why it has been unable to form an opinion (a "**Send Back Direction**").

## **5. SIGNIFICANT CODE REVIEW**

### **5.1 Significant Code Review Phase**

*Amend paragraph 5.1 as follows:*

5.1.1 The Authority may at any time notify Parties of a Significant Code Review.

5.1.2 The notice referred to in paragraph 5.1.1 shall include:

- (a) a statement that the Authority's review shall constitute a Significant Code Review;
- (b) the start date of the Significant Code Review; and
- (c) a description of the matters for consideration within the scope of the Significant Code Review.

5.1.3 Subject to paragraphs 5.1.3A and 5.1.4, a Significant Code Review Phase shall commence on the date specified by the Authority pursuant to paragraph 5.1.2(b) and shall be deemed to have ceased for the purposes of the Code on the date that:

(a) the Transmission Company raises a SCR Modification Proposal in accordance with a direction from the Authority pursuant to paragraph 5.3.1 arising from the relevant Significant Code Review; ~~or~~

(aa) the Authority raises a SCR Modification Proposal pursuant to paragraph 5.3.1A arising from the relevant Significant Code Review; or

(b) the Authority issues a statement to Parties to the effect that no direction in accordance with paragraph 5.1.3(a) or SCR Modification Proposal in accordance with 5.1.3(aa) will be issued;

provided that the Authority shall issue a direction pursuant to paragraph 5.3.1 (a), raise an SCR –Modification Proposal pursuant to 5.1.3(aa) or issue a statement pursuant to paragraphs 5.1.3(b) or 5.1.3A within 28 days after the Authority publishes its Significant Code Review Conclusions.

5.1.3A If the Authority issues a statement that it will continue work and/or issue a direction in accordance with paragraph 5.3B, the Significant Code Review Phase will be deemed to have ended when;

(a) the Authority issues a statement that the Significant Code Review Phase has ended;

(b) one of the circumstances in paragraphs 5.1.3(aa) or (b) occurs (irrespective of whether such circumstance occurs within 28 days after the Authority has published its Significant Code Review conclusions); or

(c) the Authority makes a decision consenting or otherwise to the modification of the BSC following the panel's submission of its report under paragraph 5.3A

5.1.4 Unless the Authority issues a statement in accordance with 5.1.3A, if any~~either~~ of the Authority's direction described in paragraphs 5.3.1 (a), a SCR Modification Proposal as described in 5.1.3(aa) or the Authority's statement described in paragraph 5.1.3(b) ~~are~~is not issued within 28 days after the date on which the Authority publishes its Significant Code Review Conclusions then, for the purposes of the Code, a Significant Code Review Phase shall be deemed to have ended on the 29th day after publication of the Significant Code Review Conclusions.

### 5.3 Significant Code Review Modifications

*Insert paragraph 5.3 as follows:*

5.3.1 The Authority may direct the Transmission Company to raise a SCR Modification Proposal and:

(a) the Transmission Company shall comply with the Authority's direction (including any timetable relating thereto);

(b) the Transmission Company and/or the Panel shall not withdraw the SCR Modification Proposal pursuant to paragraphs 2.1.12 and 2.1.12A respectively without the prior consent of the Authority;

- (c) the SCR Modification Proposal shall not be amalgamated with any other Modification Proposal in accordance with paragraph 2.3 or otherwise without the prior consent of the Authority; and
- (d) the Authority's Significant Code Review Conclusions (if any) or direction in respect of the SCR Modification Proposal shall not fetter the views of the relevant Workgroup, the voting rights of the Panel or the recommendation of the Modification Report in respect of such SCR Modification Proposal.

5.3.1A The Authority may raise a SCR Modification Proposal and:

- (a) the Panel shall not withdraw the SCR Modification Proposal pursuant to paragraphs 2.1.12A without the prior consent of the Authority;
- (b) the SCR Modification Proposal shall not be amalgamated with any other Modification Proposal in accordance with paragraph 2.3 or otherwise without the prior consent of the Authority; and
- (c) the Authority's Significant Code Review Conclusions (if any) or direction in respect of the SCR Modification Proposal shall not fetter the views of the relevant Workgroup, the voting rights of the Panel or the recommendation of the Modification Report in respect of such SCR Modification Proposal.

5.3.2 The Panel shall not refuse to accept a SCR Modification Proposal in accordance with paragraph 2.1.4 or otherwise.

5.3.3 If, pursuant to paragraph 5.3.1(b) and 5.3.1A(a), the Authority consents to the withdrawal of a SCR Modification Proposal, the provisions of paragraph 2.1.12B shall apply to such SCR Modification Proposal.

*Insert new paragraphs as follows*

**5.3A Authority Led SCR Modification**

5.3A.1 Where the Authority has issued a statement in accordance with paragraph 5.1.3A and/or a Backstop Direction in accordance with paragraph 5.3B, the Authority may submit an **Authority Led SCR Modification Proposal** for an Authority Led SCR Modification directly to the Panel. The Authority Led SCR Modification Proposal shall include a detailed explanation of how it meets the **SCR Exceptional Circumstances Criteria**.

5.3A.2 In response to a Authority Led Modification Proposal the Panel shall prepare an **Authority Led SCR Modification Report** which shall include;

- (a) an evaluation of each proposed modification; and
- (b) an assessment of the extent to which each proposed modification would better facilitate achievement of the applicable BSC objective(s); and
- (c) a detailed explanation of the Panel's reasons for that assessment (such assessment to include, where the impact is likely to be material, an assessment of the proposal on greenhouse gas emissions, to be conducted in accordance with such guidance on the treatment of carbon costs and evaluation of the greenhouse gas emissions as may be issued by the Authority from time to time); and
- (d) a timetable for implementation of each modification, including the date with effect from which such modification could take effect.

(e) an evaluation, in the opinion of the Panel of whether the Authority Led SCR Modification Proposal meets the SCR Exceptional Circumstances Criteria, if the Panel concludes that the Authority Led SCR Modification Proposal does not meet the SCR Exceptional Circumstances Criteria then the Panel is obliged to recommend to the Authority that the Authority Led SCR Modification should not be made.

5.3A.3 The Authority Led SCR Modification Report shall be submitted to the Authority as soon after the SCR Modification Proposal is submitted for evaluation as is appropriate (taking into account the complexity, importance and urgency of the modification).

5.3A.4 The Authority can require the revision and re-submission of the Authority Led SCR Modification in accordance with paragraph 2.7A.1;

5.3A.5 The timetable referred to in paragraph 5.3A.2(d) for implementation of any modification shall be set by the Authority under paragraph 5.3A.1 or where no timetable has been issued by the Authority under paragraph 5.3A.1, the timetable shall be such as will enable the modification to take effect as soon as practicable, account being taken of the complexity, importance and urgency of the modification with the Authority having discretion to change the timetable.

5.3A.6 The timetable for the completion of the procedural steps for a Authority Led SCR Modification, as outlined in paragraphs 5.3A.2, 5.3A.3 and 5.3A.4, shall be set by the Authority in its sole discretion.

5.3A.7 Subject to paragraph 5.3A.6 the Panel may conduct such consultation with Parties and interested third parties as it considers necessary.

5.3A.8 The Authority's published conclusions and Authority Led SCR Modification Proposal shall not fetter the voting rights of the members of the Panel or the recommendation procedures informing the report described at paragraph 5.3A.2.

### **5.3B Backstop Direction**

5.3B.1 Where a SCR Modification Proposal has been made in accordance with paragraph 5.3.1 or 5.3.1A and it falls within the scope of paragraph 2.1.1(h), the Authority may issue a direction (a "**Backstop Direction**"), which requires such proposal(s) and any alternatives to be withdrawn and which causes the Significant Code Review phase to recommence. Paragraph 2.1.12B shall not apply when a Backstop Direction is issued.

## **ANNEX X-1: GENERAL GLOSSARY [Version 74.0]**

*Insert the following new definitions in alphabetical order:*

<b><u>"Authority Led SCR Modification":</u></b>		<u>means a proposal to modify the Code which directly arises from a Significant Code Review and where the process of the modification is led by the Authority in accordance with its <b>SCR Guidance</b>;</u>
<b><u>"Authority Led SCR Modification Proposal":</u></b>		<u>means a proposal for a Authority Led SCR Modification which has been submitted pursuant to and in accordance with Section F5.3A.1;</u>

<b><u>"Authority Led SCR Modification Report":</u></b>		<u>means, in relation to an Authority Led SCR Modification Proposal the report prepared pursuant to and in accordance with Section F5.3A.2;</u>
<b><u>"Backstop Direction":</u></b>		<u>has the meaning given to it in Section F5.3B.1;</u>
<b><u>"SCR Guidance":</u></b>		<u>means a document of that title created and maintained by the Authority to provide guidance to interested parties on the conduct of an SCR by the Authority;</u>
<b><u>"SCR Exceptional Circumstances Criteria":</u></b>		<u>means a Authority Led SCR Modification Proposal that if implemented would have:</u> <u>a) significant impact on consumers; or</u> <u>b) significant impact on the market structure; or</u> <u>c) significant impact on more than one industry code;</u>

*Amend the following definitions as below:*

<b><u>"SCR Modification Proposal":</u></b>		means a Modification Proposal raised by the Transmission Company pursuant to a direction from the Authority arising from a Significant Code Review, <u>or by the Authority in accordance with Section F5.3.1A;</u>
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