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# MP234 ‘Addition of Public Task and Legitimate Interests into the SEC’

## Annex A

### Legal text – Version 0.6

#### About this document

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This document contains the redlined changes to the SEC that would be required to deliver this Modification Proposal.

This document contains the changes required to deliver the Proposed Solution.

## Section A ‘Definitions and Interpretation’

These changes have been redlined against Section A version 52.0.

### Amend Section A as follows:

|                                           |                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Data Protection Legislation</b>        | means <u>the Data Protection Act 2018, the</u> General Data Protection Regulation and any <del>national legislation implementing the same and</del> related <u>legislation</u> statutory instruments.                                                                                                                        |
| <b>General Data Protection Regulation</b> | means EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, <u>as it forms part of UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018.</u> |

### Add the following definitions to Section A1.1 as follows:

|                                    |                                                                                                                                            |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| <u><b>Approved Use List</b></u>    | <u>has the meaning given to it in Section I1.2D (Consumption Data).</u>                                                                    |
| <u><b>Legitimate Interests</b></u> | <u>means the lawful basis for the Processing of Personal Data as set out in Article 6(1)(f) of the General Data Protection Regulation.</u> |
| <u><b>Public Task</b></u>          | <u>means the lawful basis for the Processing of Personal Data as set out in Article 6(1)(e) of the General Data Protection Regulation.</u> |

## Section I 'Data Privacy'

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These changes have been redlined against Section I version 14.0.

### Amend Section I1.2 as follows:

#### User Obligations

##### Consumption Data

11.2 Each User undertakes that it will not request, in respect of a Smart Metering System, a Communication Service or Local Command Service that will result in it obtaining Consumption Data, unless:

(a) the User:

- (i) has the Appropriate Permission in respect of that Smart Metering System;
- (ii) (where that User is not the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System and is relying on paragraph (b) of the definition of Appropriate Permission) the User has, at the point of obtaining Appropriate Permission and at such intervals as are reasonably determined appropriate by the User for the purposes of ensuring that the Energy Consumer is regularly updated of such matters, notified the Energy Consumer in writing of:
  - (A) the time periods (by reference to length) in respect of which the User obtains or may obtain Consumption Data;
  - (B) the purposes for which that Consumption Data is, or may be, used by the User; and
  - (C) the Energy Consumer's right to object or withdraw consent (as the case may be) to the User obtaining or using that Consumption Data, and the process by which the Energy Consumer may object or withdraw consent; and

(iii) (where that User is not the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System and is relying on paragraph (c) of the definition of Appropriate Permission) the User obtains Consumption Data only for (and in accordance with the rights and duties of) the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor and/or Gas Transporter by which the User is contracted (and does not obtain the Consumption Data for any other purpose); or

(b) only in respect of Consumption Data which constitutes Personal Data, the User (where it is not the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System):

- (i) does not have the Appropriate Permission;
- (ii) considers it can rely on either Legitimate Interests or Public Task (as the case may be) as the lawful basis under Data Protection Legislation to obtain the Consumption Data; and
- (iii) has obtained the approval of the Privacy Sub-Committee under Section I1.2C (which approval has not been withdrawn), and .

**I1.2A** If the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor and/or Gas Transporter for a Smart Metering System contracts another User to obtain Consumption Data as envisaged by Section I1.2(ae)(iii), then both the employing Party and the other User which is providing the service shall be liable for the acts and omissions of such other User in its role as service provider. Without limitation, both the employing Party and such other User shall be in breach of this Code if such other User obtains and/or uses Consumption Data in a manner that breaches the employing Party's Energy Licence or this Code.

**I1.2B** Where a User obtains Consumption Data on behalf of an employing Party as envisaged by Section I1.2(ae)(iii), the User shall only process and use that Consumption Data for the purposes of making it available to the employing Party. The User shall make no other use of the Consumption Data, and shall not process the Consumption Data in any other way (save only that it may retain records of the Consumption Data obtained to the extent it is necessary to do so in order for it to comply with this Code or Laws and Directives).

**I1.2C** Where a User (who is not the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System) wishes to obtain Consumption Data which constitutes Personal Data in reliance on either Legitimate Interests or Public Task as the lawful basis for Processing under Data Protection Legislation, then the User:

- (a) must first apply for and obtain the approval of the Privacy Sub-Committee for obtaining the Consumption Data; and
- (b) in seeking the approval of the Privacy Sub-Committee, must submit documentation to the Privacy Sub-Committee in accordance with the requirements set out in the Privacy Controls Framework.

**I1.2D** The Privacy Sub-Committee shall prepare and publish on the Website a document (the “Approved Use List”) which provides information about each approval it has given to a User under Section I1.2C. The Privacy Sub-Committee may decide to withdraw an approval under Section I1.2C at any time. Where the Privacy Sub-Committee does so, it shall notify the affected User and update the Approved Use List.

**I1.2E** Where the Privacy Sub-Committee gives approval to a User to obtain Consumption Data as described in Section I1.2C, the User:

- (a) must not obtain any Consumption Data, in reliance on Section I1.2(b), which is not covered by the scope and extent of the approval;
- (b) must only obtain Consumption Data in accordance with any conditions of the approval given by the Privacy Sub-Committee; and

(c) remains responsible for ensuring that it complies with the Data Protection Legislation in respect of its Processing of such Consumption Data (and, for clarity, the approval of the Privacy Sub-Committee under Section I1.2C does not in any way relieve the User from its obligations under Data Protection Legislation).

I1.2F Where the Privacy Sub-Committee becomes aware that a User is obtaining Consumption Data in purported reliance on Section I1.2(b), and:

(a) the Privacy Sub-Committee has not given (or has withdrawn) approval to the User to obtain such Consumption Data in reliance on Legitimate Interest or Public Task;

(b) the User is acting in contravention of the conditions of any approval which has been given by the Privacy Sub-Committee; and/or

(c) the Privacy Sub-Committee does not (or no longer) considers that the User has a lawful ground for Processing in reliance on Legitimate Interest or Public Task,

then the Privacy Sub-Committee shall, without undue delay and in accordance with the established arrangements of the Privacy Sub-Committee relating to non-compliance with this Code, notify the Panel of the matter.

I1.2G Where the Panel receives a notification pursuant to Section I1.2F, it shall treat the notification as a notification that an Event of Default has occurred in respect of the User and investigate the matter in accordance with Section M8 (Suspension, Expulsion and Withdrawal).

## Privacy Controls Framework

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The following changes have been proposed to the Privacy Controls Framework (PCF). As the PCF is owned by SECCo and subject to review by the PSC, these changes will be managed concurrent with the proposed changes to SEC Section I. Changes will be proposed to the PCF such that it will deliver the intent of the following requirements:

In accordance with Paragraph I1.2C(b) of SEC Section I, the User must submit documentation to the Privacy Sub-Committee includes:

- the statutory or regulatory basis for the User's proposed reliance on Legitimate Interests or Public Task (as the case may be) as the lawful basis;
- the User's assessment of the necessity for it to obtain the Consumption Data and why it would be proportionate for it to obtain the Consumption Data in reliance on the lawful basis stated by it;
- the purposes for which the Consumption Data is to be, or may be, used by the User;
- the time periods (by reference to length) in respect of which User proposes to obtain the Consumption Data;
- the details of the Energy Consumer at the premises for which the Consumption Data is proposed to be obtained by the User;
- information as to how and when (and at which frequency) the User will inform Data Subjects to whom the Consumption Data relates of the reasons for obtaining the Consumption Data and the purposes for which the Consumption Data is to be, or may be, used by the User; and
- any other information requested by the Privacy Sub-Committee to enable the Privacy Sub-Committee to determine whether or not to give approval for the proposed Processing.