

## SECTION D – MODIFICATION PROCESS

### D1 RAISING DRAFT PROPOSALS

#### **Modifications**

- D1.1 This Code may only be varied in accordance with the provisions of this Section D.
- D1.2 Each variation of this Code must commence with a proposal made in accordance with the provisions of this Section D1 (a **Draft Proposal**) or a direction under Section D9A (Authority-Led Variations).

#### **Persons Entitled to Submit Draft Proposals**

- D1.3 A Draft Proposal may be submitted by any of the following persons (the **Proposer**):
- (a) a Party;
  - (b) Citizens Advice or Citizens Advice Scotland;
  - (c) any person or body that may from time to time be designated in writing by the Authority for the purpose of this Section D1.3;
  - (d) the Authority or the DCC acting at the direction of the Authority, but in each case only in respect of variations to this Code which are in respect of a Significant Code Review; ~~and~~
  - (e) the Secretary of State or the DCC acting at the direction of the Secretary of State, but in each case only in respect of variations to this Code which are intended to protect the security of the End-to-End Smart Metering System (or any part of the End-to-End Smart Metering System); and
  - ~~(e)~~(f) the Panel (where all Panel Members at the relevant meeting vote unanimously in favour of doing so), but only in respect of variations to this Code which are intended to give effect to:
    - (i) recommendations contained in a report published by the Panel pursuant to Section C2.3(i) (Panel Duties);

- (ii) recommendations contained in a report published by the Code Administrator pursuant to Section C7.2(c) (Code Administrator); and/or
- (iii) Fast-Track Modifications (as described in Section D2 (Modification Paths)); and/or

~~(f)~~(g) the REC Code Manager and/or the Code Administrator where a Consequential Change to this Code has been identified.

### **Form of the Draft Proposal**

- D1.4 The Proposer must submit a Draft Proposal to the Code Administrator.
- D1.5 The Code Administrator shall from time to time publish a prescribed form for submitting a Draft Modification Proposal on the Website. The prescribed form must require the provision by the Proposer of all of the information set out in Section D1.7, and any other information that the Panel may reasonably approve.
- D1.6 Each Proposer must use the prescribed form when submitting a Draft Proposal.

### **Content of the Proposal**

- D1.7 A Draft Proposal must contain the following information:
- (a) the name of the Proposer;
  - (b) the name and contact details of an employee or representative of the Proposer who will act as a principal point of contact in relation to the proposal;
  - (c) the date on which the proposal is submitted;
  - (d) a description in sufficient detail of the nature of the proposed variation to this Code and of its intended purpose and effect;
  - (e) a statement of whether, in the opinion of the Proposer, the Modification Proposal should be a Self-Governance Modification;
  - (f) a statement of whether the Proposer considers, in the light of any guidance on the topic issued by the Authority from time to time, that the Modification Proposal should be treated as an Urgent Proposal (and, if so, its reasons for so

considering);

- (g) a statement of whether or not the Modification Proposal is intended to be a Fast-Track Modification (bearing in mind that only the Panel may raise Fast-Track Modifications);
- (h) a statement of the reasons why the Proposer believes that this Code would, if the proposed variation were made, better facilitate the achievement of the SEC Objectives than if that variation were not made;
- (i) a statement of whether the Proposer believes that there would be a material impact on Greenhouse Gas Emissions as a result of the proposed variation being made; and
- (j) a statement of whether the Proposer believes the Draft Proposal should be submitted directly to the Panel.

### **Modification Register**

D1.8 The Secretariat shall establish and from time to time maintain a register (the **Modification Register**) of all current and past Draft Proposals and Modification Proposals.

D1.9 The Modification Register shall contain, in respect of each Draft Proposal submitted pursuant to this Section D1 and Modification Proposal subsequently raised pursuant to Section D3:

- (a) a unique reference number by which the Draft Proposal or Modification Proposal can be identified;
- (b) a brief summary of the Modification Proposal and its purpose and effect;
- (c) not used;
- (d) the stage of the process set out in this Section D that the Draft Proposal or Modification Proposal has reached;
- (e) following the Panel's determination pursuant to Section D3 that the Draft Proposal should be progressed as a Modification Proposal:

- (i) whether the proposal is a Self-Governance Modification;
- (ii) whether the proposal is a Fast-Track Proposal; and
- (iii) the timetable applying in respect of the Modification Proposal;
- (f) whether the Authority has determined the Modification Proposal to be an Urgent Proposal;
- (g) not used;
- (h) not used;
- (i) once it has been made, the decision of the Panel (in the case of Fast-Track Modifications) or of the Change Board (in the case of all other Modification Proposals); and
- (j) such other matters relating to the Draft Proposal or Modification Proposal as the Panel may reasonably determine from time to time.

D1.10 The Secretariat shall ensure that the Modification Register is updated at regular intervals so that the information it contains in relation to each Draft Proposal and Modification Proposal is, so far as is reasonably practicable, accurate and up-to-date.

D1.11 The Secretariat shall ensure that the Modification Register is published on the Website, and that a copy of the Modification Register is sent to each Party at least once every month.

### **Representations from Parties**

D1.12 Each Party shall be free to make written representations from time to time regarding each Draft Proposal or Modification Proposal. Such representations should be made to the Code Administrator in the first instance. The Code Administrator shall:

- (a) in the case of Fast-Track Modifications, bring such representations to the attention of the Panel;
- (b) in the case of Modifications Proposals (other than Fast-Track Modifications) which are not following the Refinement Process, consider such representations when producing the Modification Report;

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- (c) in the case of Modifications Proposals (other than Fast-Track Modifications) which are following the Refinement Process, bring such representations to the attention of the relevant Working Group; and
- (d) in the case of Draft Proposals, bring such representations to the attention of the Change Sub-Committee.

## **D2     MODIFICATION PATHS**

### **General**

- D2.1 Each Modification Proposal will follow one of four modification paths (as described in this Section D2). The modification path to be followed in respect of a Modification Proposal will depend upon the nature of the variation proposed in the Modification Proposal.
- D2.2 The Panel's determination (whether under Section D3.12 or subsequently) of whether a Modification Proposal is a Self-Governance Modification shall be conclusive unless and until any contrary determination is made by the Authority in accordance with Section D4 (Authority Determinations).
- D2.3 Where the Panel raises a Fast-Track Modification, such a Modification Proposal shall be treated as a Fast-Track Modification unless and until any contrary determination is made by the Authority in accordance with Section D4 (Authority Determinations).

### **Authority-initiated Modifications**

- D2.4 A Draft Proposal submitted:
- [\(a\) pursuant to Section D1.3\(d\), by either the Authority or the DCC at the direction of the Authority;](#)
  - [\(b\) pursuant to Section D1.3\(e\) by either the Secretary of State or the DCC at the direction of the Secretary of State,](#)
- shall have the status of an **Authority-initiated Modification**.
- D2.5 The DCC shall submit a Draft Proposal in respect of any variations:
- [\(a\) arising out of a Significant Code Review that the DCC is directed to submit by the Authority;](#)
  - [\(b\) relating to the protecting the security of the End-to-End Smart Metering System \(or any part of the End-to-End Smart Metering System\) that the DCC is directed to submit by the Secretary of State.](#)

### **Authority Determined Modifications**

D2.6 Unless it is an Authority-initiated Modification, a Modification Proposal that proposes variations to this Code that satisfy one or more of the following criteria shall have the status of a **Authority Determined Modification**:

- (a) the variations are likely to have a material effect on existing or future Energy Consumers;
- (b) the variations are likely to have a material effect on competition in the Supply of Energy or Commercial Activities connected with the Supply of Energy;
- (c) the variations are likely to have a material effect on the environment, on access to or privacy of Data, on security of the Supply of Energy, and/or on the security of Systems and/or Smart Metering Systems;
- (d) the variations are likely to have a material effect on the arrangements set out in Section C (Governance) or this Section D; and/or
- (e) the variations are likely to unduly discriminate in their effects between one Party (or class of Parties) and another Party (or class of Parties)

### **Self-Governance Modifications**

D2.7 A Modification Proposal that is not an Authority-initiated Modification, an Authority-determined Modification or a Fast-Track Modification shall have the status of a **Self-Governance Modification**.

### **Fast-Track Modifications**

D2.8 The Panel may itself raise Modification Proposals where it considers it necessary to do so to correct typographical or other minor errors or inconsistencies in this Code (**Fast-Track Modifications**).

**D2A THE CHANGE SUB-COMMITTEE**

**Establishment of the Change Sub-Committee**

D2A.1 The Panel shall establish a Sub-Committee as described in this Section D2A, to be known as the **Change Sub-Committee**. Save as expressly set out in this Section D2A, the Change Sub-Committee shall be subject to the provisions concerning Sub-Committees set out in Section C6 (Sub-Committees).

D2A.2 The Panel may discharge the requirements of Section D2A.1 by allocating the function of the Change Sub-Committee to another Sub-Committee. If the Panel elects to do this, all references to the Change Sub-committee in this Code shall be treated as references to this other Sub-Committee.

**Function of the Change Sub-Committee**

D2A.3 The function of the Change Sub-Committee shall be to facilitate the development, refinement and discussion of Draft Proposals prior to their progression as Modification Proposals.



### **D3     INITIAL ASSESSMENT OF DRAFT PROPOSALS**

#### **Invalid Draft Proposals**

- D3.1 The Code Administrator shall refuse (and may only refuse) to accept the submission of a Draft Proposal that is not submitted:
- (a) by a person entitled to submit Draft Proposals in accordance with Section D1.3 (Persons Entitled to Submit Draft Proposals); and/or
  - (b) in the form, and containing the content, required by Sections D1.6 (Form of the Proposal) and D1.7 (Content of the Proposal).
- D3.2 Where the Code Administrator refuses to accept the submission of a Draft Proposal, it shall notify the Panel and the Proposer of that refusal as soon as is reasonably practicable, setting out the grounds for such refusal.
- D3.3 Where the Panel is notified that the Code Administrator has refused to accept the submission of a Draft Proposal, the Panel may instruct the Code Administrator to accept the submission of that proposal (and Section D3.4 shall apply as if the Code Administrator had not refused to accept the Modification Proposal).

#### **Initial Comment by the Code Administrator**

- D3.4 Unless the Code Administrator has refused to accept the submission of the Draft Proposal, the Code Administrator shall, within the time period reasonably necessary to allow the Change Sub-Committee to comply with the time periods set out in Section D3.6 or the Panel to comply with the time periods set out in Section D3.10, submit to the Change Sub-Committee or the Panel as applicable:
- (a) each Draft Proposal; and
  - (b) without altering the Draft Proposal in any way and without undertaking any detailed evaluation of the Draft Proposal, the Code Administrator's written views on the matters that the Change Sub-Committee is to consider under Sections D3.7 and D3.8 or Panel is to consider under Sections D3.11 and D3.12.

#### **Initial Consideration by the Change Sub-Committee**

D3.5 The Change Sub-Committee shall consider each Draft Proposal that:

- (a) has not been requested by the Proposer to be treated as an Urgent Proposal; and
- (b) has not been requested by the Proposer to be submitted directly to the Panel (or where it has been requested by the Proposer to be submitted directly to the Panel, the Panel has determined pursuant to Section D3.11 that the Draft Proposal should be referred to the Change Sub-Committee for further assessment).

D3.6 The Change Sub-Committee shall consider each Draft Proposal and the accompanying documents referred to in Section D3.4 at the next Change Sub-Committee meeting occurring more than 6 Working Days after the Submission of the Draft Proposal.

D3.7 In considering each Draft Proposal, the Change Sub-Committee shall:

- (a) provide views and comments to the proposer on the scope of their Draft Proposal and any potential solution(s) put forward, and support the development of the Draft Proposal;
- (b) if available, provide views and comments on any draft legal text submitted with the Draft Proposal;
- (c) at its discretion, seek the views and input of the DCC and/or other Parties on the Draft Proposal; and
- (d) make a recommendation to the Panel on whether the Draft Proposal should be progressed in parallel with any other Draft Proposals or Modification Proposals.

D3.8 At each meeting where it considers a Draft Proposal, the Change Sub-Committee shall determine whether the Draft Proposal:

- (a) should remain with the Change Sub-Committee for further work and analysis, and if so what the timetable for this work shall be; or
- (b) should be referred to the Panel for consideration on whether it should be progressed as a Modification Proposal, and if so recommend what the proposed progression timetable should be.

**Initial Consideration by the Panel**

D3.9 The Panel Shall consider each Draft Proposal that:

- (a) has been requested by the Proposer to be treated as an Urgent Proposal;
- (b) has been requested by the Proposer to be submitted directly to the Panel; or
- (c) has been referred to the Panel by the Change Sub-Committee following completion of its assessment.

D3.10 The Panel shall consider each Draft Proposal and the accompanying documents referred to in Section D3.4:

- (a) in the case of Draft Proposals expressed by the Proposer to be urgent, within 5 Working Days after the proposal's submission; and
- (b) in respect of all other Draft Proposals, at the next Panel meeting occurring more than 6 Working Days after the submission or referral (as applicable) of the Draft Proposal.

D3.11 In considering each Draft Proposal pursuant to Section D3.9, the Panel shall determine:

- (a) whether to refuse the Draft Proposal in accordance with Section D3.14;
- (b) whether the Draft Proposal should be referred to the Change Sub-Committee for further assessment; or
- (c) whether the Draft Proposal should be progressed as a **Modification Proposal**.

D3.12 Where the Panel determines that a Draft Proposal should be progressed as a Modification Proposal, the Panel shall determine:

- (a) not used;
- (b) whether the Modification Proposal should be a Self-Governance Modification (taking into account the view expressed by the Proposer in the Draft Proposal and as described in Section D2), unless the Modification Proposal is an Authority-initiated Modification;
- (c) whether the Authority should be asked to consider whether the Modification

Proposal should be treated as an Urgent Proposal (and, where the Proposer has expressed the Modification Proposal to be urgent, the Panel shall so ask the Authority);

- (d) in the case of Fast-Track Modifications, whether the Modification Proposal should be progressed and approved as a Fast-Track Modification (and such approval shall require the unanimous approval of all the Panel Members present at the relevant meeting, otherwise the Modification Proposal shall be progressed as though it is not a Fast-Track Modification);
- (e) whether, in accordance with Section D3.15, it is necessary for the Modification Proposal to go through the Refinement Process, or whether it can progress straight to the Report Process;
- (f) the timetable to apply in respect of the Modification Proposal, in accordance with the criteria set out in Section D3.16; and
- (g) whether the Modification Proposal should be considered together with any other current Modification Proposal(s) (whether because they complement or contradict one another or for any other reason), in which case the Modification Proposals in question shall be considered by the same Working Group.

D3.13 The Secretariat shall, as soon as reasonably practicable following the Panel's determination under Sections D3.11 and D3.12 in respect of each Draft Proposal or Modification Proposal, confirm that determination to the Proposer and update the Modification Register.

### **Refusal by the Panel**

D3.14 The Panel may not refuse an Authority-initiated Modification. Otherwise, the Panel may choose to refuse a Draft Proposal if that Draft Proposal has substantively the same effect as another Draft Proposal or Modification Proposal which was submitted by a Proposer on an earlier date and which:

- (a) has not been refused, approved, rejected or withdrawn pursuant to this Section D at the time of the Panel's decision under this Section D3.14; or
- (b) was refused or rejected pursuant to this Section D on a date falling within the

period of two months immediately preceding the time of the Panel's decision under this Section D3.14.

**Determining whether the Refinement Process should be followed**

D3.15 The Panel shall determine whether each Modification Proposal must go through the Refinement Process, or whether it can progress straight to the Report Process. The Panel shall ensure that the following Modification Proposals are subject to the Refinement Process:

- (a) those submitted by the Panel itself (other than Fast-Track Modifications);
- (b) those that the Panel considers are likely to have an impact on the ability of the DCC to discharge its duties and comply with its obligations under the Relevant Instruments;
- (c) those that the Panel considers are likely to require changes to DCC Systems, User Systems and/or Smart Metering Systems, and/or testing as part of implementation; or
- (d) any other Modification Proposals, unless the Panel considers them to be clearly expressed and concerned solely with:
  - (i) insubstantial or trivial changes that are unlikely to be controversial (including typographical errors and incorrect cross-references); and/or
  - (ii) giving effect to variations that are mandated by the Relevant Instruments in circumstances where there is little or no discretion as to how they are to be given effect.

**Timetable**

D3.16 The Panel shall determine the timetable to be followed in respect of each Modification Proposal. In particular, the Panel shall:

- (a) in the case of Authority-initiated Modifications, determine a timetable consistent with any relevant timetable issued by the Authority or the Secretary of State (as the case may be);

- (b) in the case of Urgent Proposals, determine a timetable that is (or amend the existing timetable so that it becomes) consistent with any relevant timetable issued by the Authority; and
- (c) (subject to Sections D3.16(a) and (b)) specify the date by which the Modification Report is to be finalised; being as soon as reasonably practicable after the Panel's decision in respect of such timetable (having regard to the complexity, importance and urgency of the Modification Proposal).

D3.17 The Panel may, whether at its own initiation or on the application of another person, determine amendments to the timetable applying from time to time to each Modification Proposal; provided that any such amendment is consistent with Section D3.16. The Secretariat shall, as soon as reasonably practicable following any Panel determination under this Section D3.17, confirm that determination to the Proposer and the Change Board and update the Modification Register.

D3.18 The Panel, the Code Administrator, the Secretariat, any relevant Working Group, the Change Board and the Parties shall each (insofar as within its reasonable control) complete any and all of the respective tasks assigned to them in respect of a Modification Proposal in accordance with the timetable applying to that Modification Proposal from time to time (including as provided for in Section D4.9).

### **DCC Assessments**

D3.19 In determining or amending a timetable under Sections D3.10 and D3.11, the Panel may specify a time period for delivery of a DCC Assessment that differs from the standard time period set out in Section D6.10B (Analysis by the DCC). Without limitation, the Panel may specify a different time period in respect of Urgent DCC Assessments.

## **D4 AUTHORITY DETERMINATIONS**

### **Authority Determination of Modification Path**

D4.1 This Section D4.1 applies in respect of each Modification Proposal that the Panel has determined to be an Authority Determined Modification or a Self-Governance Modification. The Authority may:

- (a) at its own initiation, or on the application of a Party or Citizens Advice or Citizens Advice Scotland; and
- (b) having consulted with the Panel,

determine that the Modification Proposal should properly (in accordance with Section D2) be considered (in the case of an Authority Determined Modification) to be a Self-Governance Modification or be considered (in the case of a Self-Governance Modification) to be an Authority Determined Modification. Any such determination shall be final and binding for the purposes of this Code.

### **Referral of Disputes to the Authority**

D4.2 Where the Panel:

- (a) refuses a Draft Proposal pursuant to Section D3 (Initial Assessment of Draft Proposals);
- (b) determines that the Modification Proposal is an Authority-initiated Modification, an Authority Determined Modification or a Self-Governance Modification where such determination differs from the view of the Proposer expressed in the Draft Proposal; and/or
- (c) determines a timetable (or an amendment to the timetable) in respect of the Modification Proposal which the Proposer considers inconsistent with the requirements of Section D3 (Initial Assessment of Draft Proposals),

then the Proposer may refer the matter to the Authority for determination in accordance with Section D4.3.

D4.3 The Proposer may only refer a matter to the Authority pursuant to Section D4.2 where

such referral is made within 10 Working Days of the Proposer being notified by the Secretariat of the relevant matter. The Proposer shall send to the Panel a copy of any referral made pursuant to this Section D4.3.

- D4.4 Where the Authority, after having consulted with the Panel, considers that the Panel's decision that is the subject of a matter referred to the Authority by a Proposer in accordance with Section D4.3 was made otherwise than in accordance with Section D3, then the Authority may determine the matter. Any such determination shall be final and binding for the purposes of this Code.

#### **Authority Determination in respect of Urgent Proposals**

- D4.5 Where a Proposer has expressed a Draft Proposal to be urgent and/or where the Panel considers a Modification Proposal to be urgent, the Panel shall ask the Authority whether the Modification Proposal should be treated as an Urgent Proposal.
- D4.6 A Modification Proposal shall only be an **Urgent Proposal** where the Authority directs the Panel to treat the Modification Proposal as an Urgent Proposal (whether following a referral by the Panel pursuant to Section D4.5, or at the Authority's own initiation).
- D4.7 An Urgent Proposal shall be progressed:
- (a) in accordance with any timetable specified by the Authority from time to time, and the Panel shall not be entitled to vary such timetable without the Authority's approval; and
  - (b) subject to any deviations from the procedure set out in this Section D as the Authority may direct (having consulted with the Panel).

#### **Authority Determination in respect of Significant Code Reviews**

- D4.8 During a Significant Code Review Phase:
- (a) the Panel shall report to the Authority on whether or not the Panel considers that any Draft Proposal or Modification Proposal on which the Change Board had not voted prior to the commencement of the Significant Code Review (whether submitted before or after the commencement of the Significant Code Review) falls within the scope of the Significant Code Review;



- (b) the Panel may (subject to Section D4.8(d)) suspend the progress of any Draft Proposal or Modification Proposal that the Panel considers to fall within the scope of that Significant Code Review;
- (c) the Authority may (subject to Section D4.8(d)) direct the Panel to suspend the progress of any Draft Proposal or Modification Proposal that the Authority considers to fall within the scope of that Significant Code Review (and the Panel shall comply with such directions); and
- (d) the Authority may direct the Panel to cease the suspension of any Draft Proposal or Modification Proposal that has been suspended pursuant to this Section D4.8 (and the Panel shall comply with such directions). Any and all suspensions pursuant to this Section D4.8 shall automatically cease at the end of the Significant Code Review Phase.

D4.9 The commencement and cessation of suspensions in respect of a Modification Proposal pursuant to Section D4.8 shall have the effect of modifying the timetable applying to that Modification Proposal.

## **D5     WITHDRAWAL OF A PROPOSAL**

### **Right to Withdraw**

- D5.1 Subject to Section D5.2, the Proposer for a Draft Proposal or a Modification Proposal may withdraw the Draft Proposal or Modification Proposal on notice to the Secretariat at any time prior to the decision of the Change Board under Section D8.14(b) in respect of that Draft Proposal or Modification Proposal.
- D5.2 In the case of Authority-initiated Modifications, the Proposer may only withdraw the Draft Proposal or the Modification Proposal where the Proposer provides evidence that the Authority [or the Secretary of State \(as the case may be\)](#) has given its consent to such withdrawal. The Proposer may not withdraw a Modification Proposal following any direction by the Authority to the Panel pursuant to Section D9.3 (Send-Back Process).
- D5.3 As soon as is reasonably practicable after receiving any notice in accordance with Section D5.1, the Secretariat shall notify the Parties that the Proposer has withdrawn its support and shall update the Modification Register accordingly.

### **Adoption of Withdrawn Proposals**

- D5.4 Where, within 10 Working Days of the Secretariat sending notice under Section D5.3, the Secretariat receives notice from a Party that it is prepared to adopt the Draft Proposal or the Modification Proposal, such Party shall (for all purposes in respect of this Code) be deemed thereafter to be the Proposer for the Draft Proposal or the Modification Proposal (and, where the Secretariat receives more than one such notice, the first such notice shall have priority over the others).
- D5.5 Where Section D5.4 applies, the Draft Proposal or the Modification Proposal shall not be withdrawn, and the Secretariat shall notify the Parties and update the Modification Register.

### **Withdrawn Proposals**

- D5.6 Subject to Section D5.5, a Draft Proposal or a Modification Proposal that has been withdrawn in accordance with Section D5.1 shall cease to be subject to the process set out in this Section D.

**Authority-initiated Modifications**~~Significant Code Review~~: Backstop Direction

D5.7 Where one or more Draft Proposals or Modification Proposals that are Authority-initiated Modifications have been raised, the Authority or the Secretary of State (as the case may be) may issue a direction under this Section D5.7 that requires the withdrawal of those Draft Proposals or Modification Proposals, including any connected Alternative Solutions. Where the Authority or the Secretary of State (as the case may be) so directs:

(a) the Proposer for each such Modification Proposal shall be deemed to have withdrawn the Draft Proposal(s) or Modification Proposal(s), and Sections D5.3 and D5.4 shall not apply to the withdrawn Draft Proposal(s) or Modification Proposal(s); and

~~(a)(b) where the direction is issued by the Authority, the Significant Code Review Phase shall re-commence;~~and

~~(b) the Proposer for each such Modification Proposal shall be deemed to have withdrawn the Draft Proposal(s) or Modification Proposal(s), and Sections D5.3 and D5.4 shall not apply to the withdrawn Draft Proposal(s) or Modification Proposal(s).~~