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MP224 ‘SEC Performance Assurance Framework’

Annex B

Legal text – version 0.2

About this document

This document contains the redlined changes to the Smart Energy Code (SEC) that would be required to deliver this Modification Proposal.

Section C ‘Governance’

These changes have been redlined against Section C version 9.0.

Add Section 9.1 as follows:

C9. Performance Assurance

C9.1 Performance Assurance Board

Establishment of the Performance Assurance Board

C9.1.1 The Panel shall establish a Sub-Committee in accordance with the requirements of this Section C9 to be known as the “Performance Assurance Board”.

C9.1.2 Save as expressly set out in this Section C9, the Performance Assurance Board shall be subject to the provisions concerning Sub- Committees set out in Section C6 (Sub-Committees).

C9.1.3 Membership of the Performance Assurance Board shall be determined by the Panel:

- a) having regard to the need to provide an appropriate level of expertise in the matters that are the subject of the Performance Assurance Board’s duties; and
- b) otherwise in accordance with Section C6.7 (Membership).

Duties of the Performance Assurance Board

C9.1.4 The Performance Assurance Board shall develop and maintain a risk-based Performance Assurance Framework on behalf of the Panel to achieve the following objectives:

- a) Give confidence to all Parties that the obligations set out in the SEC are being fulfilled, and that failure to meet obligations will not detract from achievement of the SEC Objectives.
- b) Give confidence to Parties individually and collectively that they are not being disadvantaged by the failure of any Party to meet its obligations.
- c) Give confidence to Parties that performance risks and issues are dealt with in a standardised manner, that Parties can understand the assurance plan for the coming year, are able to contribute to it and know that it is delivered in a fair and equitable way.

C9.1.5 The Performance Assurance Board shall:

- a) Develop and maintain a Risk Evaluation Methodology;
- b) Develop and maintain a Performance Assurance Risk Register;

- c) Develop and maintain Performance Assurance Techniques;
- d) Develop and maintain a Performance Assurance Operating Plan;
- e) Apply a Risk Management Determination;
- f) Monitor compliance with the Code through data analysis; and
- g) Produce and deliver an Annual Performance Assurance Report for the Panel.

New Appendix 'Performance Assurance Framework'

This new schedule to the SEC has been drafted following a review of the existing SEC governance arrangements and an assessment of how a PAF might best fit within those arrangements.

Add Appendix as follows:

1. Introduction

1.1 This Schedule sets out provisions for the establishment and ongoing management of a Performance Assurance Framework (PAF), to:

- a) Give confidence to all Parties that the obligations set out in the SEC are being fulfilled, and that failure to meet obligations will not detract from achievement of the SEC Objectives.
- b) Give confidence to Parties individually and collectively that they are not being disadvantaged by the failure of any Party to meet its obligations.
- c) Give confidence to SEC Parties that performance risks and issues are dealt with in a standardised manner, that Parties can understand the assurance plan for the coming year, are able to contribute to it and know that it is delivered in a fair and equitable way.

2. Performance Assurance Board

- 2.1 The Panel shall establish a Sub-Committee to be known as the "Performance Assurance Board (the PAB)".
- 2.2 The PAB shall oversee the PAF and shall discharge the functions and duties assigned to it by the Panel and designated to it under the SEC, including those functions detailed in Section C9 of the Code and in this Schedule.
- 2.3 The Panel shall delegate relevant decision-making powers to the PAB and shall determine and maintain terms of reference for the PAB.
- 2.4 The costs incurred or paid by the PAB shall be SECCo costs and therefore recoverable under Section C8 of the Code – Panel Costs and Budgets.
- 2.5 The composition of the PAB shall be established by the Panel and set out in the PAB's terms of reference.

3. Functions and Duties of the PAB

- 3.1 The PAB shall perform the functions and duties assigned to it under Section C9 of the Code and as may be delegated to it by the Panel from time to time.
- 3.2 The functions and duties of the PAB shall include:

- a) Establishment and maintenance of a Risk Evaluation Methodology;
- b) Establishment and maintenance of a Performance Risk Register;
- c) Establishment and application of Performance Assurance Techniques;
- d) Establishment and maintenance of a Performance Assurance Operating Plan;
- e) Application of a Risk Management Determination;
- f) Monitoring compliance with the Code through data analysis; and
- g) Production and delivery of an Annual Performance Assurance Report for the SEC Panel

3.3 The PAB shall have the right at any time and from time to time to delegate or procure the delegation of all or any part of the day-to-day administration of its functions to the Code Administrator.

4. Proceedings of the PAB

- 4.1 The PAB shall develop, implement and amend working practices and procedures as it considers necessary for the proper performance of its functions, provided that there is no conflict with the provisions of the SEC or the terms of reference determined by the Panel.
- 4.2 The quorum for a meeting of the PAB shall be as set out in the PAB terms of reference.
- 4.3 PAB meetings held to discuss or determine matters related to compliance by Parties shall be closed meetings. For closed meetings, meeting notices need only be given to members of the PAB and other attendees permitted in accordance with the terms of reference or specifically at the invitation of the PAB Chair.
- 4.4 Minutes of closed PAB meetings shall be confidential and only provided to those persons entitled to attend the relevant meeting (or part of the meeting). For meetings related to compliance by a Party, they shall be provided with an extract of the minutes for the part of the meeting they attended and will be invited to comment upon and/or accept the accuracy of the minutes.
- 4.5 Any PAB member appointed as a Party nominee shall act impartially and independently of the interests of their employer and of any person or class of persons, when exercising the functions assigned to it under the SEC.
- 4.6 It shall be each PAB Member's responsibility to disclose to the PAB Chair from time to time any interests of such member which constitute, in such member's reasonable opinion, an actual or perceived conflict of interest with their functions as a Member. In such circumstances, the Member shall absent themselves from the meeting (or the relevant part of it) or may be excluded by the PAB Chair.
- 4.7 In performing their duties and functions PAB members may be in receipt of confidential information. For the avoidance of doubt, each PAB member shall not disclose any confidential information received in their capacity as PAB member to any person except where required

under the SEC or where disclosure is required by Laws and Directives. Where such disclosure is required, the PAB member shall first give written notice of the intended disclosure to the PAB (unless not permitted to do so by law).

4.8 Matters of non-compliance which are serious, systemic and/or which the PAB does not reasonably consider it has the ability to address, or has made reasonable efforts to address, through its established procedures without success, may be referred to the Authority together with such information as the PAB considers relevant and/or the Authority may subsequently request.

4.9 In the event that the Authority refers a matter to the PAB (or back to the PAB), the PAB shall take reasonable steps to comply with any direction, instruction or guidance as may be included in the referral.

5. The role of the Code Administrator

5.1 In relation to the PAF, the Code Administrator shall perform the functions assigned to it as may be delegated to it by the PAB from time to time.

5.2 The Code Administrator shall keep confidential all information that it receives in its role under this paragraph 5, unless the intention to publish it has been clearly signalled and agreed by the PAB.

6. Indemnity

6.1 SECCo shall indemnify all PAB Members and their Alternates in accordance with Section C3.12 and C3.13 of the SEC.

7. Risk Identification and Evaluation

7.1 The PAB shall establish and maintain a Risk Evaluation Methodology to be used to proactively identify, evaluate and assess risks to the fulfilment of the SEC Objectives.

7.2 The Risk Evaluation Methodology must describe the process to be used for:

- a) Identifying risks to the fulfilment of the SEC Objectives;
- b) Evaluating risks which have been identified; and
- c) Assessing the materiality of identified risks.

7.3 In relation to the establishment of the Risk Evaluation Methodology, or where the PAB considers that a change to the Risk Evaluation Methodology would further the aims of the PAF and/or further facilitate the SEC Objectives, the PAB shall:

- a) to the extent that it would not compromise the aims and effectiveness of the PAF, issue a draft of the Risk Evaluation Methodology for consultation with Parties, the Authority, Citizens Advice, Consumer Scotland¹ and such other stakeholders as the PAB considers appropriate;
- b) consider any comments received during that consultation and make any amendments to the draft that it considers appropriate in light of those comments; and
- c) approve and adopt the Risk Evaluation Methodology.

7.4 To the extent that it would not compromise the aims and effectiveness of the PAF, the PAB shall publish the approved Risk Evaluation Methodology on the SECCo Website.

7.5 The PAB shall periodically (at least annually) review the Risk Evaluation Methodology to ensure it remains fit for purpose.

8. Performance Risk Register

8.1 The PAB shall:

- a) Identify, evaluate and assess the materiality of risks to the fulfilment of the SEC Objectives by applying the Risk Evaluation Methodology;
- b) Prepare a Performance Risk Register, setting out the risks to the fulfilment of the SEC Objectives and the significance of each risk;
- c) Publish the approved Performance Risk Register on the SECCo Website; and
- d) Periodically (at least annually), review the Performance Risk Register to make sure it remains fit for purpose.

8.2 In relation to the establishment of the Performance Risk Register and each review of the Performance Risk Register, the PAB shall follow the same process as applies to the Risk Evaluation Methodology under paragraph 7.3.

9. Performance Assurance Techniques

9.1 The PAB shall establish a list of Performance Assurance Techniques.

9.2 The Performance Assurance Techniques shall be the techniques which the PAB considers can be applied to mitigate risks to the fulfilment of the SEC Objectives identified on the Performance Risk Register.

9.3 These Performance Assurance Techniques may include (but shall not be limited to):

- a) Preventative – techniques to promote assurance by acting early in the life cycle to avoid non-compliance.

¹ Consumer Scotland is replacing Citizens Advice Scotland as the consumer representative in Scotland. A housekeeping modification to update this is expected to be raised before this modification is implemented.

b) Detective – techniques to discover and provide evidence of areas of risk or non-compliance.

c) Corrective – techniques to remedy non-compliance.

d) Incentive – techniques to encourage operational compliance.

9.4 To the extent that it would not compromise the aims and effectiveness of the PAF, the PAB shall publish the list of Performance Assurance Techniques on the SECCo Website.

10. Performance Assurance Operating Plan

10.1 The PAB shall prepare a Performance Assurance Operating Plan which shall set out the Performance Assurance Techniques that can potentially be applied in relation to each risk identified in the Performance Risk Register, together with the forecast cost (whether to SECCo and/or to Parties) of implementing each relevant technique.

10.2 The PAB shall periodically (at least annually) review the Performance Assurance Operating Plan to ensure it remains fit for purpose.

10.3 Where the PAB approves a change to the Performance Risk Register, it shall consider whether corresponding revisions are required to the Performance Assurance Operating Plan.

11. Risk Management Determinations

11.1 The PAB shall make a Risk Management Determination in relation to each Party.

11.2 The Risk Management Determination shall be a determination (in accordance with the Risk Evaluation Methodology) of which risks in the Performance Risk Register are relevant to the particular Party (based on class materiality and individual materiality) and the Performance Assurance Techniques that are to be applied (and the manner in which they are to be applied) in relation to each risk.

11.3 Having made an initial Risk Management Determination for each Party in accordance with Paragraph 11.2, the PAB shall:

a) notify the Party of the Risk Management Determination (and any revised Risk Management Determination) made for it; and

b) thereafter from time to time re-assess and revise the Risk Management Determination for each Party where its circumstances change or there is a change to the Performance Assurance Operating Plan.

11.4 A Party shall be entitled to request a re-assessment of its Risk Management Determination by the PAB where that Party considers that:

a) the PAB has given undue weight to the risk or likelihood of occurrence in the Party's Risk Management Determination; or

b) there is a relevant change in the circumstances of the Party.

11.5 Where a Party disagrees with the contents of a Risk Management Determination which applies to it, then the Party in question may refer the matter to the PAB for determination. In such circumstances, the Party shall be informed of the PAB meeting at which the matter is to be determined and shall be entitled to submit representations to the PAB and/or attend the PAB meeting for that item of business only.

12. Application of the Performance Management Techniques

12.1 The PAB shall apply and implement the Performance Assurance Techniques in accordance with the Performance Assurance Operating Plan and each Risk Management Determination.

12.2 The Performance Assurance Technique(s) to be applied in respect of each risk to the fulfilment of the SEC Objectives, shall be techniques specified as applicable to such risk in the Performance Assurance Operating Plan; but the techniques to be applied (and the manner and extent to which they are to be applied) to individual Parties shall be as described in the applicable Risk Management Determination.

12.12.3 Parties of the same class may be subject to different Performance Assurance Techniques to reflect individual materiality of risks.

13. Annual Performance Assurance Report

13.1 Following the end of the financial year, the PAB shall prepare an Annual Performance Assurance Report for the year, to be presented to the Panel. The Annual Performance Assurance Report shall set out the following information in respect of the year:

- a) the results of the risk evaluation and risk assurance procedures, in particular, the extent to which the application of Performance Assurance Techniques mitigated the risks in the Risk Register;
- b) the actual costs to SECCo, and (as far as reasonably practicable) to Parties, of implementing the Performance Assurance Techniques, and a comparison against the estimated costs set out in the Performance Assurance Operating Plan (with an explanation of any differences);
- c) any recommendations to modify existing Performance Assurance Techniques or establish new Performance Assurance Techniques; and
- d) the benefits (including any cost savings) of any modifications to Performance Assurance Techniques.

13.2 The Annual Performance Assurance Report shall be published on the SECCo website.

New Performance Assurance Board 'Terms of Reference'

These draft Terms of Reference (ToR) have been produced based on a combination of:

1. The existing governance arrangements and other ToR already existing within the SEC; and
2. Any equivalent ToR that exist within other industry code arrangements which operate using a PAF.

Add Terms of Reference as follows:

1. Establishment and Role

1.1 Establishment

1.1.1 Section C9 of the SEC requires that the Panel shall establish a Sub-Committee to be known as the "Performance Assurance Board (the PAB)".

1.2 Role

1.2.1 The PAB shall discharge the functions and duties assigned to it by the Panel and designated to it under the SEC, including those functions detailed in Section C9 and the Performance Assurance Schedule.

2. Composition and Membership

2.1 Members

2.1.1 Members shall be appointed in accordance with Section C.67 (Membership) and shall have an appropriate level of expertise in the matters that are the subject of the Performance Assurance Board's duties.

2.1.2 The PAB shall be composed of the following Members:

a) Voting Members:

- i) Two persons elected by the Large Supplier Parties
- ii) Two persons elected by the Small Supplier Parties
- iii) One person elected by the Electricity Network Parties
- iv) One person elected by the Gas Network Parties
- v) Two persons elected by the Other SEC Parties
- vi) One person nominated by the DCC
- vii) One consumer representative, being either an employee or a nominee of Citizen's Advice or Consumer Scotland

b) Non-Voting Members

- i) The PAB Chair
- ii) SECAS

iii) The PAB Secretary

2.1.3 The Panel shall appoint Members to the PAB and a Member of the PAB shall remain in office until their resignation has been submitted in writing to the PAB Secretary or their removal by the Panel in accordance with paragraphs 2.1.4 and 2.1.5 below (whichever is earlier).

2.1.4 Without prejudice to paragraph 2.1.4 above, the Panel may remove and replace such Members from time to time if in the Panel's opinion they are unwilling, unable, unfit, or otherwise are incapable for any reason to carry out their duties as a Member in accordance with Section C9, the Performance Assurance Schedule, or these Terms of Reference.

2.1.5 The Panel may review and alter the membership of the PAB at any time but in any case, will review the membership annually.

2.2 Independence and Confidentiality

2.2.1 Any PAB member appointed as a Party nominee shall act impartially and independently of the interests of their employer and of any person or class of persons, when exercising the functions assigned to it under the SEC.

2.2.2 Each PAB member shall provide a member confirmation to the Panel that they agree to be a PAB member, and that they agree to remove themselves from any consideration of relevant matters that relates to its own employer or any affiliate.

2.2.3 PAB members shall acknowledge that in performing their duties and functions they may be in receipt of confidential information. For the avoidance of doubt, each PAB member shall not disclose any confidential information received in their capacity as PAB member to any person except where required under the SEC or these Terms of Reference or otherwise directed by the Panel.

2.2.4 PAB agenda items, papers and discussions will be assigned an information sharing level in accordance with the Panel Information Policy.

2.2.5 Each PAB Member will be asked to undertake in writing to abide by the confidentiality and disclosure provisions in relation to each information sharing level as described above, by signing a Confidentiality and Disclosure Agreement.

2.2.6 PAF Project Working Group Members who breach the rules of the confidentiality and disclosure provisions under any information sharing level may have their PAB membership ceased.

2.3 PAB Chair

2.3.1 The PAB Chair will be appointed by the Panel from time to time, being either an existing employee of or contractor to the SECCo or recruited specifically for this purpose.

2.3.2 If the PAB Chair is unable to be present at a meeting, depending on the nature of the meeting agenda, they may appoint a member of the PAB or Panel Member to function as Chair of that meeting, or postpone the meeting if needed.

2.4 PAB Secretary

2.4.1 Unless otherwise determined by the Panel, a SECAS representative shall function as secretary to the PAB.

2.5 Alternates

2.5.1 Any Member nominated to the PAB shall be entitled but not required to nominate an Alternate if they are unable to attend any meeting of the PAB during the term of their appointment. The PAB member will be expected to nominate their Alternate to the PAB Secretary upon, or as soon as reasonably practicable after, their own appointment.

2.5.2 If a PAB member will be absent from a meeting, the PAB Secretary will invite their Alternate to attend in their stead.

2.5.3 All aspects of these Terms of Reference will apply to the Alternate as if they were a PAB member until such time as the original PAB member becomes available to resume their position.

2.6 Indemnification and Liability

2.6.1 SECCo shall indemnify all PAB Members and their Alternates in accordance with Section C3.12 and C3.13.

2.7 Expenses

2.7.1 PAB members may recover all reasonable expenses incurred through their role. PAB members are not entitled to a salary for undertaking their role. Each PAB member, including alternates, shall be entitled to recover all reasonable travel expenses properly incurred by them in their roles, in accordance with SEC Section C8.3.

2.7.2 Any query or dispute over the validity of an expenses claim under paragraph 2.7.1 shall be determined by the PAB Chair and this decision shall be final and binding.

3. Conflict of Interest

3.1 It shall be each PAB member's responsibility to disclose to the PAB Chair from time to time any interests of such member which constitute, in such member's reasonable opinion, an

actual or perceived conflict of interest with their functions as a Member. The PAB Secretary shall record these disclosures in a Conflicts of Interest Register, including but not limited to, PAB member disclosure of their employment, principal financial and business interests, and significant personal relationships in any Party.

3.2 In the circumstances described in Paragraph 3.1 such PAB member may absent themselves from the meeting and from voting.

3.3 If at any time the PAB Chair decides (after consultation with other PAB members if necessary, including but not limited to circumstances where a member does not volunteer to absent themselves from voting on such matters) that a member has an actual or perceived conflict of interest, and whether that actual or perceived conflict of interest was raised by the member themselves or otherwise, then the PAB Chair may determine whether the member in question should be required to absent themselves from particular PAB business, including the receipt of relevant PAB papers.

3.4 Any decision of the PAB Chair taken pursuant to paragraph 3.3 above shall be final and binding.

4. Powers and Functions

4.1 The PAB shall act in accordance with the SEC, any subsidiary document of the SEC or maintained by SECCo in accordance with the SEC, and with these Terms of Reference.

4.2 In addition to the above, the PAB shall be responsible for supporting the Panel through discharging any powers, functions, and responsibilities which the Panel may delegate to it.

5. Proceedings of the PAB

5.1 Meetings

5.1.1 Meetings of the PAB shall be held at least once a month, whether in person or by video/teleconference.

5.1.2 All PAB meetings will be convened at such time and via such means as may be notified to the PAB members by the PAB Secretary.

5.1.3 If a matter arises requiring the immediate attention of the PAB which cannot reasonably await the next scheduled meeting of the PAB, the PAB Chair may convene an extraordinary PAB meeting. Such meeting would be held by video/teleconference at not less than five working days' notice.

5.2 Attendance by Non-PAB Members

5.2.1 In addition to the PAB members, the following will be entitled to attend any meeting of the PAB and fully participate in any discussion, but not vote:

- a) the Panel Chair or other director with Panel responsibility for the PAB;
- b) the SECCo Company Secretary;
- c) a representative of the Authority;
- d) such other external experts, including legal advisors to SECCo, as may be considered necessary and upon invitation of the PAB Chair.

5.2.2 Attendance is subject to the PAB Chair being satisfied that suitable confidentiality agreements are in place.

5.3 Quorum

5.3.1 No business shall be conducted at any meeting of the PAB unless a quorum is present at that meeting.

5.3.2 A quorum shall comprise of at least one half of all voting PAB Members appointed at the relevant time.

5.3.3 Notwithstanding that a quorum is present, the PAB Chair may exercise discretion to defer one or more agenda items to a later meeting at which more PAB members are expected to attend.

5.4 Voting

5.4.1 Each PAB Member shall be entitled to attend, to speak and vote at, every meeting of the PAB.

5.4.2 In deciding any matter which requires determination at a quorate meeting of the PAB, each voting PAB Member shall cast one vote.

5.4.3 All decisions of the PAB shall be by resolution. For a resolution of the PAB to be passed at a meeting, a simple majority of those PAB members voting at that meeting must vote in favour of that resolution.

5.4.4 For the avoidance of doubt, abstentions shall not be classed as votes and will therefore not prevent majority agreement of a matter.

5.4.5 Before putting any matter to the vote, the PAB Chair will confirm that all PAB members have enough information on which to base a vote and that any abstention would therefore not be due to there being insufficient information on which to base a decision. If any PAB member indicates that further information would allow them to cast a vote rather than abstain, the PAB Chair may, at their sole discretion, delay the vote to a later time or date if they consider that the requested information would reasonably be available within that time.

5.5 Conduct

5.5.1 PAB members and other attendees will be expected to conduct themselves in a professional manner, refraining from any comments or behaviour that could be considered unreasonable or hinder the proper functioning of the PAB.

5.5.2 If any unreasonable or disruptive behaviour persists, the PAB Chair may at their sole discretion ask that individual to leave the meeting and/or take steps to restrict their future attendance.

5.6 Minutes

5.6.1 The PAB Secretary shall ensure that within five working days of each PAB meeting, draft minutes (including any determinations and failure to make any determinations) are distributed to PAB members and relevant excerpts to those persons who were entitled to attend the meeting (or part thereof) for confirmation of factual accuracy.

5.6.2 Any comments on the accuracy of the draft minutes shall be returned to the PAB Secretary no less than five working days before the next scheduled meeting of the PAB, at which they will be formally approved. In the absence of any further meeting taking place within five calendar weeks of the previous meeting, the minutes may be accepted as final by the PAB Chair, having considered any comments received by the PAB Secretary and passed onto the PAB Chair.

5.6.3 Due to the confidential nature of the meetings, no person other than those who were entitled to attend the meeting (or part thereof) shall be entitled to receive a copy of the minutes (or part thereof).

5.6.4 Any actions that are assigned to PAB members, the PAB Chair, the PAB Secretary, or any other stakeholder will be captured both in the meeting minutes and in the meeting Actions Log. The PAB Secretary will ensure that the Actions Log is updated within five working days of the meeting.

5.7 Appeal of PAB Decisions

5.7.1 Decisions made by the PAB may be appealed to the Panel and/or Authority, whose decision on whether to uphold or overturn the PAB decision shall be final. Further detail on the escalation routes of appeals to PAB decisions is described in Section M7 of the SEC.

6. Reporting to the Panel

6.1 The PAB Chair shall provide a monthly report to the Panel which will include but not be limited to a summary of the key decisions and activities arising at the meeting. In addition to this, the Committee shall prepare an Annual Report in accordance with Section C9.