Smart Energy Code

SEC
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Legal Text

SECMP0049:

Section D Review: Amendments to the Modification Process

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Summary

This modification proposes to amend the end-to-end SEC Modifications Process to introduce a formal 'pre-modification process' and enhance the role of the Change Board in developing and assessing modifications.

About this document

This document contains the draft SEC Section D legal text that will deliver the intent of SECMP00049.

The legal text in this document applies to the Proposed Solution only.

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SECTION D – MODIFICATION PROCESS

D1 RAISING ~~MODIFICATION~~ 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 ~~**Modification**~~ **Draft Proposal**) or a direction under Section D9A (Authority-Led Variations).

Persons Entitled to Submit ~~Modification~~ Draft Proposals

D1.3 A ~~Modification~~ 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:

(i) the Authority reasonably considers are necessary to comply with or implement the EU Regulations, any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators; and/or

(ii) are in respect of a Significant Code Review; and

(e) 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);

(iii) Fast-Track Modifications (as described in Section D2 (Modification Paths)); and/or

(iv) consequential changes to this Code required as a result of changes proposed or already made to one or more other Energy Codes.

Form of the Draft Proposal

D1.4 The Proposer must submit a ~~Modification~~ Draft Proposal to the Code Administrator.

D1.5 The Code Administrator shall from time to time publish a prescribed form ~~of~~ for submitting a ~~Modification~~ Draft 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 ~~Modification~~ Draft Proposal.

Content of the Proposal

D1.7 A ~~Modification~~ 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 ~~Path 1 Modification, a Path 2 Modification or a Path 3~~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 as to which parts of this Code the Proposer considers would require to be amended in order to give effect to the proposed variation or as a consequence of that variation (including legal drafting if the Proposer so wishes);~~a statement of whether the Proposer believes the Draft Proposal should be submitted directly to the Panel.

~~(k) a statement as to which Party Categories, in the opinion of the Proposer, are likely to be affected by the proposed variation;~~

~~(l) a statement of whether changes are likely to be required to other Energy Codes as a result of the proposed variation being made;~~

~~(m) a statement of whether, in the opinion of the Proposer, the Modification Proposal will require, as part of the proposal's implementation, the DCC to undertake testing of the DCC Total System and/or provide testing services; and~~

~~(n) a statement of whether, in the opinion of the Proposer, the Modification Proposal will require changes to DCC Systems, User Systems and/or Smart Metering Systems; and~~

~~(o) the timetable in accordance with which the Proposer recommends that the proposed variation should be implemented (including the proposed~~

~~implementation date).~~

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 ~~from time to time~~.

D1.9 The Modification Register shall contain, in respect of each ~~Modification~~ 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) ~~a copy of (or internet link to) the Modification Proposal~~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 Modification Proposal's initial consideration by the Panel pursuant to Section D3:

(i) whether ~~it~~ the proposal is a ~~Path 1 Modification, a Path 2 Modification or a Path 3~~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) ~~where the Modification Proposal has been submitted to the Refinement Process, the agendas and minutes for Working Group meetings~~not used;

(h) ~~once it has been produced, the Modification Report for the Modification Proposal~~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 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; ~~and~~

(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

~~(c)~~(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 D3.6 or subsequently) of whether a Modification Proposal is a ~~Path 1 Modification, a Path 2 Modification or a Path 3~~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).

~~Path 1 Modifications:~~ Authority-initiated Modifications

D2.4 A Modification Proposal submitted pursuant to Section D1.3(d), by either the Authority ~~of~~ or the DCC at the direction of the Authority, that have the status of an ~~**Path 1**~~**Authority-initiated Modification**.

D2.5 The DCC shall submit a Modification Proposal in respect of any variations arising out of a Significant Code Review that the DCC is directed to submit by the Authority.

~~Path 2 Modifications:~~ Authority Determined~~ation~~ Modifications

D2.6 Unless it is an ~~Path 1~~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 an ~~**Path 2**~~**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).

~~Path 3 Modification:~~ Self-Governance Modifications

D2.7 A Modification Proposal that is not an ~~Path 1~~Authority-initiated Modification, an ~~Path 2~~Authority Determined Modification or a Fast Track Modification shall have the status of a ~~Path 3~~**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 formal submission as Modification Proposals.

D3 INITIAL ~~CONSIDERATION~~ ASSESSMENT OF ~~MODIFICATION~~ DRAFT PROPOSALS

Invalid ~~Modification~~ Draft Proposals

D3.1 The Code Administrator shall refuse (and may only refuse) to accept the submission of a ~~Modification~~ Draft Proposal that is not submitted:

(a) by a person entitled to submit ~~Modification~~ Draft Proposals in accordance with Section D1.3 (Persons Entitled to Submit ~~Modification~~ 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 ~~Modification~~ 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 ~~Modification~~ 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 ~~Modification~~ 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.~~5~~10, submit to the Change Sub-Committee or the Panel as applicable:

(a) each ~~Modification~~ Draft Proposal; and

(b) without altering the Modification Proposal in any way and without undertaking any detailed evaluation of the ~~Modification~~ Draft Proposal, the Code Administrator's written views on the matters that the Panel is to consider under Section D3.6.

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 (unless the Panel determines that the Draft Proposal should be submitted to the Change Sub-Committee for further work).

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 Draft Proposal's submission.

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) recommend whether there are any other Draft Proposals or Modification Proposals that the Draft Proposal should be progressed in parallel with.

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 to be progressed as a Modification Proposal, and if so 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.

~~D3.5~~D3.10 The Panel shall consider each ~~Modification~~ Draft Proposal and the accompanying documents referred to in section D3.4:

(a) in the case of ~~Modification~~ 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 ~~Modification~~ Draft Proposals, at the next Panel meeting occurring more than 6 Working Days after the ~~Modification~~ Draft Proposal's submission or referral (as applicable) (provided that, in the case of Fast-Track Modifications, the Panel shall not consider the Modification Proposal earlier than 15 Working Days after it was raised).

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**.

~~D3.6~~D3.12 ~~In considering each~~Where the Panel determines that a Draft Proposal should be progressed as a Modification Proposal ~~pursuant to Section D3.6~~, the Panel shall determine:

(a) ~~whether to refuse the Modification Proposal in accordance with Section D3.8~~not used;

(b) ~~whether unless the Modification Proposal is an Path 1Authority-initiated Modification, a Path 2 Modification or a Path 3~~whether the Modification Proposal should be a Self-Governance Modification (taking into account the

view expressed by the Proposer in the ~~Modification~~ 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 approved or withdrawn (and such approval shall require the unanimous approval of all the Panel Members present at the relevant meeting);

(e) whether, in accordance with Section D3.~~9~~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 D3.1~~0~~6; 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.

~~D3.7~~D3.13 The Secretariat shall, as soon as reasonably practicable following the Panel's determination under Sections D3.11 and D3.~~6~~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

~~D3.8~~D3.14 The Panel may not refuse an ~~Path 1~~Authority-initiated Modification. ~~Save in the case of Path 1Authority-initiated Modifications,~~ Otherwise, the Panel may choose to refuse a ~~Modification~~ Draft Proposal if that ~~Modification~~ Draft Proposal has substantively the same effect as another 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.~~8~~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.~~8~~14.

Determining whether the Refinement Process should be followed

~~D3.9~~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

~~D3.10~~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 ~~Path 1~~Authority-initiated Modifications, determine a timetable consistent with any relevant timetable issued by the Authority;

(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 D3.1~~0~~6(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).

~~D3.11~~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 D3.1~~0~~6. The Secretariat shall, as soon as reasonably practicable following any Panel determination under this Section D3.1~~1~~7, confirm that determination to the Proposer and the Change Board and update the Modification Register.

~~D3.12~~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).

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 ~~Path 2~~Authority Determined Modification or a ~~Path 3~~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 ~~Path 2~~Authority Determined Modification) to be a ~~Path 3~~Self-Governance Modification or be considered (in the case of a ~~Path 3~~Self-Governance Modification) to be an ~~Path 2~~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 ~~Modification~~ Draft Proposal pursuant to Section D3 (Initial ~~Consideration~~ Assessment of ~~Modification~~ Draft Proposals);

(b) determines that the Modification Proposal is an ~~Path 1~~Authority-initiated Modification, an ~~Path 2~~Authority Determined Modification or a ~~Path 3~~Self-Governance Modification where such determination differs from the view of the Proposer expressed in the Modification 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 ~~Consideration~~ Assessment of ~~Modification~~ 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 ~~Modification~~ 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~~ Draft Proposal shall only be an **Urgent Proposal** where the Authority directs the Panel to treat the ~~Modification~~ Draft 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 Modification Proposal.

D5.2 In the case of ~~Path 1~~Authority-initiated Modifications, the Proposer may only withdraw the Draft Proposal or the Modification Proposal where the Proposer provides evidence that the Authority has given its consent to such withdrawal. The Proposer may not withdraw a Draft Proposal or 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.

Significant Code Review: Backstop Direction

D5.7 Where one or more Draft Proposals or Modification Proposals that are ~~Path 1~~Authority-initiated Modifications have been raised, the Authority may issue a direction under this Section D5.7 that requires the withdrawal of those Draft Proposals or Modification Proposals, ~~and of~~ including any connected Alternative ~~Proposals~~Solutions. Where the Authority so directs:

(a) 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).

D6 REFINEMENT PROCESS

Application of this Section

D6.1 This Section D6 sets out the **Refinement Process**. This Section D6 only applies in respect of a Modification Proposal where it is determined that the Modification Proposal is to be subject to the Refinement Process in accordance with Section D3 (Initial Consideration of Modification Proposals). The Refinement Process never applies to Fast-Track Modifications.

Establishment of a Working Group

D6.2 Where this Section D6 applies, the Panel shall establish a group of persons (a **Working Group**) for the purposes set out in Section D6.8.

D6.3 Each Working Group so established must comprise:

(a) at least five individuals who:

(i) each have relevant experience and expertise in relation to the subject matter of the Modification Proposal (provided that there is no need to duplicate the experience and expertise available to the Working Group via the Technical Architecture and Business Architecture Sub-Committee); and

(ii) whose backgrounds are broadly representative of the persons likely to be affected by the Modification Proposal if it is approved,

(and the Panel, with the cooperation of the Parties, shall seek to establish a standing list of persons with potentially relevant experience who may be willing to serve on Working Groups);

(b) where the Proposer nominates such a person, one person nominated by the Proposer; and

(c) a Working Group chair in accordance with Section D6.4.

D6.4 The Code Administrator shall act as chair of a Working Group unless the Panel direct that there is a conflict of interest which prevents this in which case a chair shall be

selected from among the members of the Working Group by such members. The Code Administrator shall attend meetings of the Working Groups established pursuant to this Section D6, and support the activities of such Working Groups. The Code Administrator shall provide feedback to any Party that requests it regarding the progress of the Refinement Process and the outcome of Working Group meetings.

D6.5 A person appointed to serve on a Working Group, when acting in that capacity, shall act in a manner designed to facilitate the performance by the Panel of its duties under this Code.

D6.6 Each person appointed to serve on a Working Group must, before that appointment takes effect, confirm in writing to SECCo (for the benefit of itself and each Party) that that person:

(a) agrees to serve on that Working Group and to do so in accordance with this Code, including the requirements of Section D6.5; and

(b) will be available as reasonably required throughout the Refinement Process for the Modification Proposal, both to attend Working Group meetings and to undertake work outside those meetings as may reasonably be required.

D6.7 Except to the extent inconsistent with this Section D6, the provisions of Section C6 (Sub-Committees) shall apply in respect of each Working Group as if that Working Group was a Sub-Committee.

Purpose of Refinement Process

D6.8 The purpose of the Refinement Process is to:

(a) consider and (to the extent necessary) clarify the likely effects of the Modification Proposal, including to identify the Parties, Party Categories, Energy Consumers and other persons likely to be affected by the Modification Proposal;

(b) evaluate and (to the extent necessary) develop and refine the content of the Modification Proposal;

(c) evaluate and (to the extent necessary) amend the proposed implementation

timetable of the Modification Proposal including (where relevant) so as to ensure consistency with the Panel Release Management Policy (provided that the proposed implementation timetable of a Path 1 Modification cannot be so amended);

(d) consider (to the extent the Working Group considers necessary) the impact which the Modification Proposal would have, if approved, on the matters referred to in Section D6.9(b);

(e) consider whether the DCC should, as part of the proposal's implementation (if the Modification Proposal is approved), be required to undertake testing of the DCC Total System and/or provide testing services; and (if so) ensure that the Modification Proposal includes amendments to this Code which provide a robust testing solution (or, if it is not yet reasonably practicable to document the testing solution, which provide a process for developing the testing solution);

(f) seek (to the extent the Working Group considers necessary) the Technical Architecture and Business Architecture Sub-Committee's views of the impact which the Modification Proposal would have, if approved, on the DCC Systems and Smart Metering Systems; provided that the Working Group shall always seek such views:

(i) in respect of proposals to modify the Technical Code Specifications; and/or

(ii) where the Technical Architecture and Business Architecture Sub-Committee has notified the Working Group that the Technical Architecture and Business Architecture Sub-Committee wishes to express a view;

(g) seek (to the extent the Working Group considers necessary) the Security Sub-Committee's views on the Modification Proposal; provided that the Working Group shall always seek such views:

(i) in respect of proposals to modify the Security Obligations and Assurance Arrangements; and/or

(ii) where the Security Sub-Committee has notified the Working Group that

the Security Sub-Committee wishes to express a view;

(h) seek (to the extent the Working Group considers necessary) the SMKI PMA's views on the Modification Proposal; provided that the Working Group shall always seek such views:

(i) in respect of proposals to modify the SMKI SEC Documents; and/or

(ii) where the SMKI PMA has notified the Working Group that the SMKI PMA wishes to express a view;

(i) seek (to the extent the Working Group considers necessary) the Alt HAN Forum's views on the Modification Proposal; provided that the Working Group shall always seek such views:

(i) in respect of proposals to modify Section Z (The Alt HAN Arrangements);

(ii) in respect of proposals to modify any SEC Subsidiary Document which relates to Section Z (The Alt HAN Arrangements);

(iii) in respect of proposals to modify Section K (Charging Methodology) which are likely to affect the Alt HAN Charges; and/or

(iv) where the Alt HAN Forum (or a Forum Sub-Group acting on its behalf) has notified the Working Group that it wishes to express a view;

(j) consider whether, if the Modification Proposal is approved, this Code would better facilitate the achievement of the SEC Objectives than if the Modification Proposal was rejected;

(k) consider whether it is likely that there would be a material impact on Greenhouse Gas Emissions as a result of the Modification Proposal being approved, and (if so) assessing such impact (which assessment shall be conducted in accordance with any guidance on the evaluation of Greenhouse Gas Emissions issued by the Authority from time to time); and

(l) consider whether, if the Modification Proposal is approved, changes are likely to be required to other Energy Codes as a result.

Analysis by the DCC

D6.9 At the request of a Working Group established pursuant to this Section D6 in respect of a Modification Proposal, the DCC shall prepare an analysis of either or both of the following:

(a) whether the DCC should, as part of the proposal's implementation (if that Modification Proposal were to be approved), be required to undertake testing of the DCC Total System and/or provide testing services; and (if so) the DCC's proposals for the scope, phases, timetable and participants for such testing (or, to the extent it is not yet reasonably practicable to determine such matters, its proposals for the process pursuant to which such matters should be developed); and/or

(b) how the following matters would be affected if that Modification Proposal were to be approved:

(i) the ability of the DCC to discharge its duties and comply with its obligations under the Relevant Instruments; and/or

(ii) the extent to which changes would be required to DCC Systems, User Systems and/or Smart Metering Systems; and (if so) the likely development, capital and operating costs associated with such changes and any consequential impact on the Charges.

D6.10 The DCC shall provide such further explanation of any analysis prepared pursuant to Section D6.9 as the Working Group may reasonably require.

[Sections D6.10A to D6.10D will be introduced by SECMP0034 on 1st November 2018]

D6.10E Prior to requesting a DCC Impact Assessment, the Working Group will refer the Modification Proposal to the Change Board to determine whether the DCC Impact Assessment should be requested. The Working Group will not request the DCC Impact Assessment until the Change Board votes that it shall be requested.

D6.11 In considering whether the approval of a Modification Proposal would better facilitate the achievement of the SEC Objectives than the rejection of the Modification Proposal, the Working Group shall have regard to any analysis provided by the DCC pursuant to

Section D6.9.

Working Group Consultation

D6.12 Each Working Group established pursuant to this Section D6 in respect of a Modification Proposal shall consider any representations made to it by Parties from time to time regarding the subject-matter of the Modification Proposal.

D6.13 Each Working Group established pursuant to this Section D6 in respect of a Modification Proposal shall undertake at least one formal consultation in respect of the Modification Proposal seeking views on the matters set out in Section D6.8. The Working Group shall consult with the Parties, Citizens Advice or Citizens Advice Scotland and (where appropriate) any interested third parties (including, where relevant, Energy Consumers and/or those who represent or advise Energy Consumers).

D6.14 Each Working Group established pursuant to this Section D6 in respect of a Modification Proposal shall publish on the Website, and bring to the Parties' attention, a document (the **Consultation Summary**) containing the following:

(a) the final consultation draft of the Modification Proposal, including in particular the legal text of the proposed variation and the proposed implementation timetable;

(b) all consultation responses received and not marked as confidential; and

(c) a statement of whether the Working Group considers that the approval of the Modification Proposal would better facilitate the achievement of the SEC Objectives than the rejection of the Modification Proposal (and if so why).

Alternative ~~Proposals~~Solutions

D6.15 The Proposer shall have full ownership of the Proposed Solution to a Modification Proposal, and may direct changes to this variation at any time during the Refinement Process as long as any revised solution continues to achieve the purpose of the Modification Proposal.

~~D6.15 Alternative Proposals may arise in one of two ways:~~

D6.16 The Working Group may raise one or more Alternative Solution(s) where the majority

of the Working Group considers that there is more than one variation to this Code that could achieve the purpose of the Modification Proposal (and that each such variation would, if made, better facilitate the achievement of the SEC Objectives than if that variation were not made), ~~then the Working Group may decide to submit more than one proposed variation to this Code (identifying one proposal as its preferred variation, and the others as Alternative Proposals); and/or~~

~~(a) where the Proposer, or the person appointed to the Working Group pursuant to Section D6.3(b), objects to the proposed variation(s) to this Code preferred by the majority of the Working Group, such person may insist that the variation to this Code that it prefers is included in addition (an Alternative Proposal).~~

D6.17 References in this Section D to a Modification Proposal shall (except where the context otherwise requires) be deemed to include reference to the Proposed Solution and any Alternative ~~Proposal~~ Solution(s) ~~included~~ raised in accordance with Section D6.1~~5~~6.

D7 REPORT PHASE

Modification Report

D7.1 The Code Administrator shall, in respect of each Modification Proposal, prepare a written report on the proposal (the **Modification Report**); provided that no Modification Report shall be required for Fast-Track Modifications. This stage of the process is referred to as the **Report Phase**.

D7.2 The Code Administrator shall prepare the Modification Report for each Modification Proposal:

(a) where the Refinement Process has been followed, in accordance with the instructions of the relevant Working Group; or

(b) where the Refinement Process has not been followed, on the basis of the Modification Proposal and in consultation with the Proposer.

Content of the Modification Report

D7.3 The Modification Report for each Modification Proposal shall:

(a) be addressed and delivered to the Panel;

(b) set out the legal text of the proposed variation to this Code (and, where applicable, set out the alternative legal text of the Alternative Proposal);

(c) specify the proposed implementation timetable (including the proposed implementation date);

(d) specify the likely effects of the proposed variation if it is implemented;

(e) specify, in the opinion of the Working Group (or, where the Refinement Process was not followed, the Code Administrator), which Party Categories are likely to be affected by the Modification Proposal;

(f) specify whether, if the Modification Proposal is approved, this Code would better facilitate the achievement of the SEC Objectives than if the Modification Proposal was rejected;

(g) specify whether it is likely that there would be a material impact on Greenhouse Gas Emissions as a result of the Modification Proposal being approved, and (if so) assessing such impact (which assessment shall be conducted in accordance with any guidance on the evaluation of Greenhouse Gas Emissions issued by the Authority from time to time);

(h) specify whether, if the Modification Proposal is approved, changes are likely to be necessary to other Energy Codes, and whether changes have been proposed in respect of the affected Energy Codes; and

(i) where the Modification Proposal was subject to the Refinement Process prior to the Report Phase:

(i) include the Consultation Summary produced by the Working Group in respect of the Modification Proposal;

(ii) specify whether, if the Modification Proposal is approved, the implementation of the Modification Proposal is likely to require changes to DCC Systems, User Systems and/or Smart Metering Systems; and (if so) the likely development, capital and operating costs associated with such changes and any consequential impact on the Charges;

(iii) specify whether, if the Modification Proposal is approved, the DCC is to be required, as part of the Modification Proposal's implementation, to undertake testing of the DCC Total System and/or provide testing services; and (if so) how such testing is dealt with in the Modification Proposal;

(iv) include a summary of any views provided by the Technical Architecture and Business Architecture Sub-Committee, the Security Sub-Committee, the SMKI PMA or the Alt HAN Forum in respect of the Modification Proposal pursuant to Section D6.8 (Purpose of the Refinement Process); and

(v) include a summary of any analysis provided by the DCC pursuant to Section D6.9 (Analysis by the DCC).

Consideration of the Modification Report

D7.4 Upon completion of the Modification Report, the Code Administrator will place such report on the agenda for the next meeting of the Panel. Where the Refinement Process was followed, a member of the relevant Working Group shall attend that Panel meeting, and may be invited to present the findings of the Working Group to the Panel and/or answer the questions of Panel Members in respect of the Modification Report.

D7.5 The Panel shall consider each Modification Report and shall determine whether to:

(a) return the Modification Report back to the Working Group (or, where there was no Refinement Process, the Code Administrator) for further clarification or analysis (in which case, the Panel shall determine the timetable and terms of reference of such further analysis); or

(b) allow the Modification Report to proceed to the Modification Report Consultation.

D7.6 The Panel shall not make any statement regarding whether it believes the Modification Proposal should be successful.

D7.7 Where the Panel determines that a Modification Report is to proceed to the Modification Report Consultation, the Panel shall determine:

(a) the timetable for such Modification Report Consultation, including the period for which the consultation is to remain open (which cannot be more than 15 Working Days); and

(b) the Party Categories that the Panel considers are likely to be affected by the Modification Proposal.

Modification Report Consultation

D7.8 Where the Panel determines that a Modification Report is to proceed to the Modification Report Consultation, the Code Administrator shall arrange for a consultation seeking the views of Parties (other than the DCC) on the Modification Report (the **Modification Report Consultation**). The Code Administrator shall:

(a) invite consultation responses in accordance with the timetable determined by the Panel and in the form referred to in Section D7.9;

(b) collate the responses received during the consultation, and add those responses to the Modification Register; and

(c) place the Modification Report on the agenda for the next meeting of the Change Board following the collation of such consultation responses.

D7.9 Each Modification Report Consultation shall allow for each Party (other than the DCC) that wishes to respond to the consultation to respond by way of a form that provides for a response in one of the following manners (where applicable, in respect of the ~~Modification Proposal~~Proposed Solution and the Alternative ~~Proposal~~ Solution(s) separately):

(a) 'no interest' where the Party considers that it and its Party Category are unlikely to be affected by the Modification Proposal;

(b) 'abstain' where the Party wishes to abstain for reasons other than as described in Section D7.9(a);

(c) 'approve' where the Party considers that making the variation would better facilitate the achievement of the SEC Objectives than if the variation was rejected; or

(d) 'reject' where the Party considers that not making the variation would better facilitate the achievement of the SEC Objectives than if the variation was approved,

and which prompts the Party to give a reason for its response by reference to the SEC Objectives.

D7.10 Each Party's response to a Modification Report Consultation will only be validly given if made on the forms provided and received on or before the deadline for responses.

D8 CHANGE BOARD AND CHANGE BOARD DECISION

Establishment of the Change Board

D8.1 The Panel shall establish a Sub-Committee as described in this Section D8, to be known as the **Change Board**. Save as expressly set out in this Section D8, the Change Board shall be subject to the provisions concerning Sub-Committees set out in Section C6 (Sub-Committees).

Function of the Change Board

D8.2 The function of the Change Board shall be to:

(a) ~~facilitate the development, refinement and discussion of potential variations to this Code prior to their formal submission as Modification Proposals~~decide whether a Modification Proposal is ready for a DCC Impact Assessment to be requested;

(b) consider each Modification Report and the responses received in response to the Modification Report Consultation;

(c) decide whether to approve or reject the Modification Proposal in the form set out in the Modification Report (and, where applicable, whether to approve or reject the Proposed Solution and each Alternative ~~Proposal~~Solution); and

(d) decide whether to approve or reject a proposed Authority-Led Variation.

Effect of the Change Board Decision

D8.3 The effect of the Change Board decision shall:

(a) in the case of ~~Path 1~~Authority-initiated Modifications, ~~Path 2~~Authority-Determined Modifications and Authority-Led Variations, be to recommend to the Authority that the variation be approved or rejected; or

(b) in the case of ~~Path 3~~Self-Governance Modifications, be to approve or reject the variation.

Membership of the Change Board

D8.4 The following persons shall serve on the Change Board (each being a **Change Board Member**):

(a) one person nominated jointly by Citizens Advice and Citizens Advice Scotland;

(b) one person appointed by each of the Voting Groups within the Party Category representing the Large Supplier Parties;

(c) three persons appointed by the Party Category representing the Small Supplier Parties;

(d) three persons appointed by the Party Categories representing Electricity Network Parties and the Gas Network Parties collectively; and

(e) three persons appointed by the Party Category representing the Other SEC Parties.

D8.5 Each Voting Group, Party Category or Party Categories (as applicable) referred to in each sub-section of Section D8.4 shall nominate its appointee(s) to serve as Change Board Member(s) to the Secretariat. Each Change Board Member shall serve for a term of one year, and shall be capable of being reappointed at the end of that term. The relevant Voting Group, Party Category or Party Categories may (on notice to the Secretariat) establish a rota whereby more than one person shares the office of Change Board Member.

D8.6 It shall be for the Parties within the relevant Party Category or Party Categories (as applicable) referred to in each sub-section of Section D8.4 to determine how they agree between themselves on the identity of each person to be appointed as a Change Board Member on their behalf. In the event that the Parties within such Party Category or Party Categories cannot so agree, the Secretariat shall seek the preference of the Parties within the relevant Party Category or Party Categories (as applicable) and the person preferred by the majority of those Parties that express a preference (on a one-vote-per-Party basis) shall be appointed as a Change Board Member. In the absence of a majority preference the relevant Change Board Member position shall remain unfilled.

D8.7 The Panel shall only be entitled to remove a Change Board Member from office where

such Change Board Member is repeatedly absent from meetings to an extent that frustrates the proceedings of the Change Board. The Voting Group by which a Change Board Member was appointed pursuant to Section D8.4(b) shall be entitled to remove that Change Board Member by notice in writing to the Secretariat. The Party Category or Party Categories (as applicable) referred to in each other sub-section of Section D8.4 shall be entitled to remove the Change Board Member appointed by them from office by notice in writing to the Secretariat; provided that the majority of the Parties within the relevant Party Category or Party Categories (as applicable) must approve such removal.

Duties of Change Board Members

D8.8 The Consumer Member serving on the Change Board will, when acting as a Change Board Member, act in a manner consistent with the statutory functions of Citizens Advice or Citizens Advice Scotland. Each other Change Board Member will act in the interests of the Voting Group, Party Category or Party Categories (as applicable) by which the Change Board Member was appointed.

D8.9 In giving effect to his or her duties under Section D8.8, each Change Board Member (other than the Consumer Member) shall:

(a) be guided (but not bound) by the responses to the Modification Report Consultation given by Parties within the Voting Group, Party Category, or Party Categories (as applicable) by which such Change Board Member was appointed;

(b) seek to clarify with the relevant Party any responses to the Modification Report Consultation that are not clear to the Change Board Member, or which the Change Board Member considers to be based on a misunderstanding of the facts;

(c) seek to act in the best interests of the majority, whilst representing the minority view (and, where a majority is not significant, the Change Board Member should consider whether abstention from the vote best represents the interests of the Change Board Member's constituents); and

(d) be entitled to vote or abstain without regard to the Panel's indication of which Party Categories the Panel considered to be affected by the Modification Proposal.

D8.10 The confirmation to be given by each Change Board Member to SECCo in accordance with Section C6.9 (Member Confirmation) shall refer to Section D8.8 in place of Section C6.8.

Proceedings of the Change Board

D8.11 The Code Administrator shall chair the Change Board meetings. The chair shall have no vote (casting or otherwise).

D8.12 The quorum for Change Board meetings shall be:

(a) at least three persons appointed by the Large Supplier Parties;

(b) at least one person appointed by the Small Supplier Parties;

(c) at least two persons appointed by the Electricity Network Parties and Gas Network Parties collectively; and

(d) at least one person appointed by the Other SEC Parties,

provided that fewer (or no) appointees from a Party Category shall be required where that Party Category has not appointed that many (or any) Change Board Members; and further provided that no appointees from a Party Category shall be required where the Panel indicated pursuant to Section D7.7(b) that that Party Category was not likely to be affected by the Modification Proposal in question.

D8.13 In addition to those persons referred to in Section C5.13, representatives of the DCC shall be entitled to attend and speak (but not vote) at each meeting of the Change Board.

The Change Board Vote

D8.14 In respect of each Modification Report referred to the Change Board, the Change Board shall vote:

(a) whether to recommend to the Panel that the Panel consider returning the Modification Report to the Working Group (or, where there was no Refinement Process, the Code Administrator) for further clarification or analysis; and if not

(b) whether to approve the ~~variation~~ Proposed Solution set out in the Modification Report or any Alternative ~~Modification~~ Solution (on the basis that the Change

Board may only approve one of them).

D8.14A In respect of each request for a DCC Impact Assessment, the Change Board shall vote on whether to request the DCC Impact Assessment or whether to return the Modification Proposal to the Working Group for further work.

D8.15 A vote referred to in Sections D8.14 or D8.14A shall take the form of a vote by:

(a) the Consumer Member serving on the Change Board;

(b) the Change Board Members appointed by the Voting Groups within the Party Category representing the Large Supplier Parties (whose collective vote shall be determined in accordance Section D8.16);

(c) the Change Board Members appointed by the Party Category representing the Small Supplier Parties (whose collective vote shall be determined in accordance with Section D8.16);

(d) the Change Board Members appointed by the Party Categories representing Electricity Network Parties and the Gas Network Parties (collectively) (whose collective vote shall be determined in accordance with Section D8.16); and

(e) the Change Board Members appointed by the Party Category representing the Other SEC Parties (whose collective vote shall be determined in accordance with Section D8.16),

and a vote pursuant to Sections D8.14 or D8.14A shall only be successfully passed if the majority of the votes cast in accordance with this Section D8.15 are cast in favour. For the avoidance of doubt: an abstention shall be treated as if no vote was cast; where there are no Change Board Members present from within the categories referred to in each of Sections D8.15(a) to (e) they shall be deemed to have abstained; and a tie amongst the votes cast shall not be a vote in favour.

D8.16 Each of the collective votes by Change Board Members referred to in Section D8.15(b) to (e) shall be determined by a vote among the relevant Change Board Members, such vote to be undertaken on the basis:

(a) of one vote per Change Board Member; and

(b) that the majority of those Change Board Members that are present must vote in favour in order for the collective vote to be considered a vote in favour (and, for the avoidance of doubt, a tie amongst the votes cast shall not be a vote in favour).

D8.17 In casting his or her vote, each Change Board Member must record the reason for his or her vote, and where voting on whether or not to approve a variation must explain whether the making of the variation would better facilitate the achievement of the SEC Objectives than if the variation was rejected.

Communicating the Change Board Vote

D8.18 Following the vote of the Change Board in respect of each Modification Report, the Code Administrator shall update the Modification Register to include the outcome of the vote and the reasons given by the Change Board Members pursuant to Section D8.17.

D8.19 Where the outcome of the Change Board vote is to recommend to the Panel that the Panel consider returning the Modification Report for further clarification or analysis (as referred to in Section D8.14(a)), the Panel may either follow such recommendation or return the Modification Report to the Change Board without any further clarification or analysis. Where the Panel returns the Modification Report to the Change Board without any further clarification or analysis, the Change Board shall not vote again on the matters referred to in Section D8.14(a) and must vote on whether to approve the variation (as referred to in Section D8.14(b)).

D8.20 Where the Change Board votes on whether to approve a variation set out in a Modification Report (as referred to in Section D8.14(b)), the Code Administrator shall communicate the outcome of that vote to the Authority and the Panel, and shall send copies of the following to the Authority:

(a) the Modification Report;

(b) the Modification Report Consultation and the responses received in respect of the same; and

(c) the outcome of the Change Board vote, including the reasons given by the Change Board Members pursuant to Section D8.17.

D8.21 Where the outcome of the Change Board vote is to determine that a DCC Impact Assessment should not be requested (as referred to in Section D8.14A), the Change Board shall state what further work it believes is required before this is requested. The Proposer may appeal the decision to the Panel. Where the Panel also determines that the DCC Impact Assessment should not be requested, the Panel shall state what further work it believes is required before this is requested. Once this further work has been completed, the Working Group may re-refer the Modification Proposal to the Change Board to determine whether the DCC Impact Assessment should be requested.

D9 MODIFICATION PROPOSAL DECISION

General

D9.1 The final decision as to whether or not to approve a Modification Proposal shall depend upon whether the Modification Proposal is:

(a) an ~~Path 1~~Authority-initiated Modification or an ~~Path 2~~Authority Determined Modification;

(b) a ~~Path 3~~Self-Governance Modification; or

(c) a Fast-Track Modification.

~~Path 1~~Authority-initiated Modifications and ~~Path 2~~Authority Determined Modifications

D9.2 An ~~Path 1~~Authority-initiated Modification or an ~~Path 2~~Authority Determined Modification shall only be approved where the Authority determines that the Modification Proposal shall be approved (which determination shall, without prejudice to section 173 of the Energy Act 2004, be final and binding for the purposes of this Code). In making such determination, the Authority will have regard to:

(a) its objectives and statutory duties under the Electricity Act and the Gas Act;

(b) whether or not the approval of the variation would better facilitate the achievement of the SEC Objectives than if the variation was rejected;

(c) the decision of the Change Board in respect of the Modification Proposal, which shall be considered to constitute a recommendation by the Parties as to whether or not to approve the Modification Proposal; and

(d) such other matters as the Authority considers appropriate.

Send-Back Process

D9.3 Where the Authority considers that it is unable to form an opinion in relation to a Modification Proposal submitted to it, then it may issue a direction to the Panel specifying any additional steps that the Authority requires in order to form such an

opinion (including drafting or amending the proposed legal text, revising the proposed implementation timetable, and/or revising or providing additional analysis and/or information). Where the Authority issues a direction to the Panel pursuant to this Section D9.3:

(a) the decision of the Change Board in respect of the Modification Proposal shall be null and void;

(b) the Panel shall send the Modification Proposal back to the relevant Working Group (or shall establish a Working Group) to consider the matters raised by the Authority, and to prepare a revised Modification Report;

(c) the Panel shall revise the timetable applying to the Modification Proposal; and

(d) the Secretariat shall update the Modification Register to record the status of the Modification Proposal.

~~Path 3~~Self-Governance Modifications

D9.4 A ~~Path 3~~Self-Governance Modification shall only be approved where the Change Board votes to approve the Modification Proposal, subject to the following:

(a) any Party that disagrees with the decision of the Change Board, may (within 10 Working Days following the publication of that decision) refer the matter to the Panel, and the Panel shall determine whether it wishes to reverse the decision of the Change Board;

(b) any Party that disagrees with the decision of the Panel pursuant to Section D9.4(a), may (within 10 Working Days following the publication of that decision) refer the matter to the Authority, and the Authority shall determine whether the Modification Proposal should be rejected or approved in accordance with Section D9.2 (which determination shall, without prejudice to section 173 of the Energy Act 2004, be final and binding for the purposes of this Code); and

(c) accordingly, where the consequence of the Panel's or the Authority's determination is that the Modification Proposal is to be rejected (where it has previously been approved) the Modification Proposal shall be cancelled and not implemented (or, if already implemented, shall be reversed).

Fast-Track Modifications

D9.5 In the case of a Fast-Track Modification, any decision of the Panel under Section D3.6 to approve the Modification Proposal shall be final, subject to the following:

(a) where the Panel has raised a Fast-Track Modification, any Party may notify the Panel that the Party believes that the procedure for Fast-Track Modifications is inappropriate given the nature of the variation in question (and the Party should give reasons to substantiate this belief);

(b) when the Panel considers the status of the Fast-Track Modification in accordance with Section D3.6 (Initial Consideration of Modification Proposals), it shall consider any notifications received pursuant to Section D9.5(a);

(c) where the Panel nevertheless determines under Section D3.6 (Initial Consideration of Modification Proposals) that the Modification Proposal should be approved, the Panel shall notify the Party that raised the issue under Section D9.5(a);

(d) such Party may, within 10 Working Days thereafter, refer the matter to the Authority for final determination; and

(e) following a referral to the Authority in accordance with Section D9.5(d), where the Authority determines that the Panel's decision to follow the Fast-Track Procedure was inappropriate given the nature of the variation in question, the Modification Proposal shall be cancelled and not implemented (or, if already implemented, shall be reversed)

D9A AUTHORITY-LED VARIATIONS

Authority Power to Develop a Proposed Variation

D9A.1 The Authority may develop a proposed variation to this Code in respect of a Significant Code Review, in accordance with the procedures set out in this Section D9A.

D9A.2 The Authority may commence a Significant Code Review Phase by issuing a direction under this Section D9A.2, or may issue a direction under this Section D9A.2 at any time during a Significant Code Review Phase. The Authority's direction under this Section D9A.2 will set out the scope and/or subject matter of the Significant Code Review.

Authority-Led Consultation

D9A.3 The Authority will, in such manner as it considers appropriate, consult on the merits of the proposed Authority-Led Variation with the Parties, Citizens Advice, Citizens Advice Scotland, and any other persons whose interests are materially affected by this Code.

Authority-Led Modification Report

D9A.4 The Authority may submit its proposed Authority-Led Variation to the Code Administrator, together with such supplemental information as the Authority considers appropriate.

D9A.5 Upon receipt of the Authority's proposal under Section D9A.4, the Code Administrator shall prepare a written report on the proposal (the "Authority-Led Modification Report"). The Authority-Led Modification Report must be consistent with the information provided by the Authority under Section 9A.4, and shall:

(a) be addressed and delivered to the Panel;

(b) set out the legal text of the proposed variation to this Code;

(c) specify the proposed implementation timetable (including the proposed implementation date);

(d) specify the likely effects of the proposed variation if it is implemented;

(e) specify which Party Categories are likely to be affected by the proposed variation;

(f) specify whether the implementation of the proposed variation will require changes to DCC Systems, User Systems and/or Smart Metering Systems; and (if so) the likely development, capital and operating costs associated with such changes and any consequential impact on the Charges;

(g) specify whether, if the proposed variation is approved, this Code would better facilitate the achievement of the SEC Objectives than if the proposed variation was rejected;

(h) specify whether it is likely that there would be a material impact on Greenhouse Gas Emissions as a result of the proposed variation being approved, and (if so) assessing such impact (which assessment shall be conducted in accordance with any guidance on the evaluation of Greenhouse Gas Emissions issued by the Authority from time to time); and

(i) specify whether, if the proposed variation is approved, changes are likely to be necessary to other Energy Codes, and whether changes have been proposed in respect of the affected Energy Codes.

D9A.6 Upon completion of the Authority-Led Modification Report, the Code Administrator will place such report on the agenda for the next meeting of the Panel, which shall refer the report to the Change Board.

Change Board and Change Board Decision

D9A.7 In respect of each Authority-Led Modification Report referred to the Change Board, the Change Board shall vote whether to approve the Authority-Led Variation.

D9A.8 Each vote as referred to in Section D9A.7 shall take the form of a vote in accordance with Sections D8.15 to D8.17 (The Change Board Vote). The Authority's Significant Code Review conclusions document and/or the Authority's proposal submitted in accordance with Section D9A.4 shall not fetter the procedures or voting rights referred to in Section D8 (Change Board and Change Board Decision).

D9A.9 Following the vote of the Change Board in respect of the Authority-Led Variation, the Code Administrator shall populate the Modification Register to include the outcome of the vote and the reasons given by the Change Board Members pursuant to Section D8.17 (The Change Board Vote).

D9A.10 The Code Administrator shall communicate the outcome of the Change Board vote to the Authority and the Panel, and shall send copies of the following to the Authority:

(a) the Authority-Led Modification Report; and

(b) the outcome of the Change Board vote, including the reasons given by the Change Board Members pursuant to Section D8.17 (The Change Board Vote).

Authority Decision

D9A.11 An Authority-Led Variation shall be approved only where the Authority determines that the proposed variation shall be approved (which determination shall, without prejudice to section 173 of the Energy Act 2004, be final and binding for the purposes of this Code). In making such determination, the Authority will have regard to:

(a) its objectives and statutory duties under the Electricity Act and the Gas Act;

(b) whether or not the approval of the variation would better facilitate the achievement of the SEC Objectives than if the variation was rejected;

(c) the decision of the Change Board in respect of the variation, which shall be considered to constitute a recommendation by the Parties as to whether or not to approve the variation; and

(d) such other matters as the Authority considers appropriate.

Send-Back Process

D9A.12 Where the Authority considers that it is unable to form an opinion in relation to a proposed Authority-Led Variation, then it may issue a direction to the Panel specifying any additional steps that the Authority requires in order to form such an opinion. Where the Authority issues a direction to the Panel pursuant to this Section D9A.12:

(a) the decision of the Change Board in respect of the variation shall be null and void;

(b) the Panel shall seek to address the matters raised by the Authority, and shall (where necessary) have an updated Authority-Led Modification Report produced; and

(c) the Secretariat shall update the Modification Register to record the status of the proposed variation.

Implementation

D9A.13 Where an Authority-Led Variation has been approved in accordance with Section D9A.11, Section D10 (Implementation) shall apply.

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D10 IMPLEMENTATION

General

D10.1 Once a Modification Proposal has been approved in accordance with Section D9 (Modification Proposal Decision) or an Authority-Led Variations has been approved in accordance with Section D9A.11 (Authority Decision), the Panel shall ensure that this Code is varied in accordance with the Modification Proposal or Authority-Led Variation, as set out in this Section D10. Authority-Led Variations are to be treated as Path 1 Modifications for the purposes of this Section D10 (and references to Modification Proposals shall be interpreted accordingly).

Implementation

D10.2 The Panel shall, at the next Panel meeting after a Modification Proposal has been approved:

(a) determine what actions are required in order to ensure that the approved variation to this Code is made in accordance with the approved implementation timetable; and

(b) set a timetable for the completion of each of those actions.

D10.3 It shall be the duty of the Panel to ensure that the actions which are required to secure that an approved variation to this Code is made in accordance with the approved implementation timetable are taken.

D10.4 Each Party shall co-operate with the Panel to the extent required to ensure that such variation is made with effect from such date.

Subsequent Amendment to Implementation Timetable

D10.5 Where, having regard to representations received from the Code Administrator or from any Party, the Panel considers that it is not reasonably practicable to make the approved variation to this Code in accordance with the approved implementation timetable:

(a) the Panel may request the Authority to direct that a new implementation timetable be substituted for the first such timetable; and

(b) where the Authority makes such a direction following a request by the Panel, the implementation timetable directed by the Authority shall have effect in substitution for the first such timetable, and the requirements of this Section D10 shall be defined by relation to that later date.

D10.6 Without prejudice to the generality of Section D10.5, the Panel shall make a request to the Authority under that Section where:

(a) the decision of the Authority to approve the relevant Modification Proposal is subject to an appeal pursuant to section 173 of the Energy Act 2004 or is challenged by judicial review; and

(b) the Panel considers that it is appropriate in the circumstances for the timetable to be delayed given such appeal or challenge.

Release Management

D10.7 To the extent that implementation of an approved Modification Proposal will involve Release Management (or require the DCC or Users to undertake Release Management as a consequence of the Modification Proposal), the Panel shall ensure that such implementation is undertaken in accordance with a policy for Release Management (the "Panel Release Management Policy").

D10.8 The Panel shall ensure that the Panel Release Management Policy:

(a) defines the scope of the matters that are to be subject to the policy in a manner consistent with the Service Management Standards;

(b) includes a mechanism for setting priorities for different types of such matters;

(c) defines periods of change-freeze where no such matters may be implemented; and

(d) defines periods of notice to be given to the Users prior to the implementation of such matters.

D10.9 The Panel shall make the Panel Release Management Policy available to the DCC and Users on the SEC Website. The Panel shall consult with the DCC and Users before it first establishes the Panel Release Management Policy, and before it makes any changes

to the Panel Release Management Policy.