

P369 DRAFT ALTERNATIVE LEGAL TEXT

BALANCING AND SETTLEMENT CODE – POOL SUPPLEMENT Version 1.1

1. GENERAL

1.1 Introduction

1.1.1 This Supplement sets out:

- (a) provisions for the run-off of settlement relating to trading (and related matters) under the Pooling and Settlement Agreement for all periods up to (but excluding) the Go-live Date;
- (b) provisions for the satisfaction, performance and discharge of certain other rights and obligations of Pool Members accrued under the Pooling and Settlement Agreement;
- (c) the arrangements under which provisions contained in the Pooling and Settlement Agreement are to be treated as applying (for the purposes referred to in paragraph (a) and (b) and for certain related purposes) as between certain Parties;
- (d) the role and responsibilities of the Panel and of BSCCo in connection with the matters for which provision is made in this Supplement.

1.2 Definitions and Interpretation

1.2.1 In this Supplement, except where the context otherwise requires:

- (a) terms and expressions defined in the Pooling and Settlement Agreement (as in force immediately before the Pool Run-off Date) and not otherwise defined in this Supplement shall have the same meanings where used herein;
- (b) the provisions of the Pooling and Settlement Agreement (as so in force) as to its interpretation shall apply to the extent to which such provisions are capable of applying and are not inconsistent with any provisions of the Code which apply in relation to this Supplement;
- (c) references to ~~the Transmission Company~~NETSO include ~~the Transmission Company~~NETSO in its capacities (under the Pooling and Settlement Agreement) of Grid Operator and Ancillary Services Provider; and
- (d) references to rights, liabilities or obligations accrued or accruing shall be treated as including references to rights, liabilities or obligations which may accrue and references to accrued debts and credits shall be construed accordingly.

1.2.2 In this Supplement:

- (a) **"Pool Run-off"** means:
 - (i) the settlement and reconciliation of trading of electricity between Pool Members pursuant to the Pooling and Settlement Agreement in respect of Settlement Periods falling on any date prior to the Go-live Date and all matters reasonably incidental thereto;

- (ii) the determination and settlement of amounts owing between Pool Members and ~~the Transmission Company~~ NETSO pursuant to the Pooling and Settlement Agreement in respect of Settlement Periods falling on any date prior to the Go-live Date in respect of Ancillary Services Daily Charges, Energy Uplift Daily Payments, Transport Uplift and Transmission Losses Daily Payments;
- (iii) the satisfaction, discharge and performance of the rights and obligations (accruing with respect to periods before the Pool Run-off Date) of Pool Members in respect of the arrangements referred to in Part B of the Annex;
- (iv) the resolution of disputes relating to the matters referred to in paragraphs (i), (ii) and (iii);

to the extent to which such matters have not been fully performed and completed or such disputes fully settled at the Pool Run-off Date;

- (b) **"Pool Run-off Date"** means the day following the Settlement Payment Date in respect of the Settlement Day before the Go-live Date;
- (c) **"Pool Member"** means a Party which is a Pool Member immediately before the Go-live Date and any such person as is referred to in paragraph 1.5.1;
- (d) **"Pool Provisions"** has the meaning given to that term in paragraph 2.2; and
- (e) **"Subsidiary Pool Provisions"** means the Pool Provisions referred to in paragraph 2.2.1(b), (c) and (d).

1.2.3 Unless the context otherwise requires, references to the Code:

- (a) in Sections A, B, C, D, F, H and X include (so far as capable of applying thereto) this Supplement;
- (b) in all other parts of the Code, do not include this Supplement; and
- (c) in Code Subsidiary Documents, do not include this Supplement.

1.3 Effective date

The provisions of this Supplement shall (save where otherwise specified) have effect on and from the Pool Run-off Date.

1.4 Effect on Pooling and Settlement Agreement

- 1.4.1 The Pooling and Settlement Agreement, in accordance with clause 1A.8 thereof (introduced by the Implementation Scheme with effect from the Pool Run-off Date), does not apply in relation to Pool Run-off, but subject thereto and subject to any other express provision of this Supplement nothing in this Supplement shall affect or prejudice the continuance in force (as respects those matters remaining to be governed by it) of the Pooling and Settlement Agreement.
- 1.4.2 This Supplement shall not be affected in any way by any amendment, variation, suspension or termination of, or anything done pursuant to, the Pooling and Settlement Agreement at any time on or after the Pool Run-off Date.

1.5 Implementation Scheme

1.5.1 Pursuant to the Implementation Scheme, persons who are not Parties but were Pool Members on the Code Effective Date and are Parties under the Implementation Scheme are bound by this Supplement.

1.5.2 To the extent to which this Supplement makes provision for matters for which provision is also made in the Implementation Scheme, in the event of any conflict or inconsistency between such provisions as they apply in respect of periods commencing on or after the Pool Run-off Date, the provisions of this Supplement shall prevail.

2. INCORPORATION OF POOLING AND SETTLEMENT AGREEMENT PROVISIONS

2.1 Pool Run-Off

2.1.1 For the purposes of the Code:

(a) the Pool Provisions (other than Subsidiary Pool Provisions) shall be deemed to be incorporated (on the basis set out in paragraph 2.3.1) as if expressly set out in this Supplement; and

(b) all of the Pool Provisions shall have effect under this Supplement,

to the extent required to give effect to Pool Run-off, and the accrued rights and liabilities (whether actual, future or contingent) of Pool Members (as between themselves) in respect of Pool Run-off arising before the Pool Run-off Date under or pursuant to the Pooling and Settlement Agreement.

2.2 Pool Provisions

2.2.1 For the purposes of this Supplement, the “**Pool Provisions**” means the Pooling and Settlement Agreement, including:-

(a) the Pool Rules;

(b) the Service Lines and Supplier Service Lines;

(c) the Agreed Procedures; and

(d) the Codes of Practice,

in each case as in force immediately before the Pool Run-off Date, but

(i) with the modifications specified in, or determined under, paragraph 2.3.1;

(ii) subject to modification as described in paragraph 2.3.2; and

(iii) subject to any derogations, dispensations and other decisions of the Executive Committee and any sub-committee made before the Pool Run-off Date and which have the effect, pursuant to the Pooling and Settlement Agreement, of varying any of the foregoing as it applies in relation to Pool Run-off, but subject to any subsequent decisions (pursuant to the Code) of the Panel relating to any such matter.

2.3 Modifications

- 2.3.1 The Pool Provisions (as incorporated by paragraph 2.1) shall, subject to any modification as referred to in paragraph 2.3.2 or (as the case may be) 2.3.3, be construed on the basis set out in Part A of the Annex to this Supplement.
- 2.3.2 For the avoidance of doubt, a modification (by way of Code Modification pursuant to Section F) of this Supplement may include a modification of the Pool Provisions (not including Subsidiary Pool Provisions) as incorporated herein.
- 2.3.3 In accordance with Section F3.1.6, the Subsidiary Pool Provisions may be modified pursuant to Section F3.

2.4 Treatment of accrued debts and credits

- 2.4.1 For the purposes of Pool Run-off, all accrued debts and credits (as specified in paragraph 2.4.2), and rights and liabilities in respect of such debts and credits, shall be deemed to be constituted under and be governed by this Supplement.
- 2.4.2 For the purposes of paragraph 2.4.1 accrued debts and credits are debts and credits (as between Pool Members or any of them, or as between Pool Members or any of them and ~~the Transmission Company~~ NETSO) accrued under the Pooling and Settlement Agreement and undischarged at the Pool Run-off Date, which resulted from:
- (a) trading or transactions or payment obligations (or the settlement or reconciliation thereof) of the kinds referred to in paragraphs 1.2.2(a)(i) and (ii); or
 - (b) any provision of the Pooling and Settlement Agreement of a kind to which any of the arrangements in Part B of the Annex to this Supplement relate; or
 - (c) the resolution of disputes relating to the matters referred to in paragraphs (a) and (b).
- 2.4.3 For the avoidance of doubt, accrued debts and credits do not include amounts payable under Pool Contracts.

3. RUN-OFF ARRANGEMENTS

3.1 Pool Contracts

- 3.1.1 Subject to paragraph 3.1.2 BSCCo shall (or shall procure that Poolserco Limited shall) manage or administer the Pool Contracts for the benefit of Pool Members.
- 3.1.2 Where a Pool Contract is also a BSC Agent Contract, BSCCo shall (or shall procure that Poolserco Limited shall) manage or administer such contract for the benefit both:
- (a) of Trading Parties, in accordance with Section E, and as respects relevant provisions of the Code other than this Supplement, and
 - (b) of Pool Members as respects this Supplement and (to the extent not incorporated in this Supplement and insofar as such provisions relate directly or indirectly to such Pool Contract) the provisions of the Pooling and Settlement Agreement;

and in accordance with such principles or arrangements (including as to the making of claims and sharing of recoveries under such contract) as the Panel shall determine to be appropriate and consistent with the Pool Transfer Deed and the Implementation Scheme in the case of any conflict between the purposes in paragraph (a) and the purposes in paragraph (b) or in the administration of such contract for each of those purposes.

3.1.3 For this purpose, a “**Pool Contract**” is each of the following contracts, in each case only so far as such contract applies on and from the Pool Run-off Date:

- (a) the contracts which (for other purposes of the Code) constitute the BSC Agent Contracts with the SVAA, the Profile Administrator, the Technical Assurance Agent, the Teleswitch Agent and the BSC Auditor;
- (b) any contract which BSCCo or any Subsidiary of BSCCo has with the approval of the Panel, whether given before, on or after the Go-Live Date, entered into with any person for the provision of services in connection with Pool Run-off equivalent to any services provided by the Settlement System Administrator or Pool Funds Administrator under the Pooling and Settlement Agreement; and
- (c) any other contract approved by the Panel as being a Pool Contract and entered into (by a person other than BSCCo or its Subsidiary) by or on behalf of Pool Members, under which services are provided which are required for the implementation of Pool Run-off, provided that there have been put in place (with the agreement of BSCCo) arrangements pursuant to which BSCCo is able to manage or administer such contract.

3.2 Powers and duties of the Panel

3.2.1 If and for so long as the provisions of this Supplement apply, the powers, duties and functions of the Panel shall include those powers, duties and functions set out in this Supplement (including those which apply by virtue of the deemed incorporation of the Pooling and Settlement Agreement as modified in accordance with paragraph 2.3.1).

3.2.2 For the avoidance of doubt, the indemnity in Section B2.9 shall extend to Panel Members in relation to the exercise and discharge of the powers, duties and functions referred to in paragraph 3.2.1.

3.3 Powers and duties of BSCCo

3.3.1 If and for so long as the provisions of this Supplement apply, the powers, duties and functions of BSCCo shall include those powers, duties and functions set out in this Supplement (including those which apply by virtue of the deemed incorporation of the Pooling and Settlement Agreement as modified in accordance with paragraph 2.3.1).

3.3.2 For the avoidance of doubt:

- (a) the costs, expenses and other outgoings of BSCCo in the exercise and discharge of its functions under paragraph 3.1 (including payments made under Pool Contracts) and in the administration of the debts and credits referred to in paragraph 2.4 and of the powers, duties and functions referred to in paragraph 3.3.1 are BSC Costs for the purposes of Section D;
- (b) the provisions of Section C5 shall apply in relation to BSCCo in the exercise and discharge of its functions under paragraph 3.1 and in the administration of the debts and credits referred to in paragraph 2.4 and of its powers, duties and functions referred to in paragraph 3.3.1 and otherwise under the Supplement.

3.4 Miscellaneous

- 3.4.1 Pool Members shall take reasonable steps to exercise and enforce their rights (under the Pooling and Settlement Agreement) with a view to ensuring that Meter Operator Parties and Externally Interconnected Parties take any actions which may be required to be taken by them in order to give effect to Pool Run-off in accordance with this Supplement.
- 3.4.2 It is acknowledged that, subject to and in accordance with the Implementation Scheme, BSCCo will (unless removed by Pool Members) continue to act as Chief Executive for the purposes of the Pooling and Settlement Agreement as and to the extent it continues in force from the Pool Run-off Date; and it is agreed that BSCCo shall, at the request and cost of Pool Members, provide resources and administrative support in relation to the implementation of that Agreement as it relates to periods on and after and (but not as to matters within the scope of this Supplement) before the Pool Run-off Date, provided that BSCCo shall not be obliged to provide resources and administrative support where it would be unreasonable to do so, unless directed to do so by the Panel.
- 3.4.3 It is agreed that (in addition to any audits which may fall to be carried out by the Pool Auditor pursuant to the Pool Provisions in respect of Settlement Periods up to (but not including) the Go-live Date), any Pool Member or Pool Members may request the Panel that the Pool Auditor shall carry out an ad-hoc audit (within the scope of what may be required of the Pool Auditor under the Pool Provisions), at the cost of such Pool Member(s), of any matter falling within the scope of Pool Run-off; and so far as the relevant Pool Contract provides for such an audit to be carried out the Panel shall give reasonable consideration to such request.
- 3.4.4 For the avoidance of doubt, the term Default (in Section H3) shall be construed on the basis that references to the Code in that Section (except in Section H3.1.1(a)) include the Pool Supplement.
- 3.4.5 BSCCo shall (for such period as is reasonable in all the circumstances):
- (a) continue to maintain or preserve, or procure the maintenance and preservation of, all reports, records, data and other information which are in or come into its possession or that of any Pool Agents relating to the matters for which the Pooling and Settlement Agreement makes provision and the matters the subject of this Supplement;
 - (b) make such reports, records, data and other information available, or procure that they are made available, to Pool Members to the extent and on the terms that they are entitled to them under the provisions of the Pooling and Settlement Agreement or of this Supplement; and
 - (c) permit or procure access to the Pool Auditor (for the purposes of any Pool audit) to premises, personnel, reports, records, data and other information to the extent that the Pool Auditor is entitled to such information under the terms of the Pool Auditor Contract.

ANNEX TO POOL SUPPLEMENT

Part A: Pool Provisions

For the purposes only of the Supplement, the Pool Provisions (as and to the extent incorporated in and/or given effect under the Supplement) shall apply and be construed on the basis that, with effect from the Pool Run-off Date (but without prejudice to the effect of the Pool Provisions, as applying in respect of periods prior to the Pool Run-off Date, for the purposes of determining the accrued debts, credits, rights and liabilities referred to in paragraph 2.4 of the Supplement):

1. Unless the context otherwise requires or as specified below, all references to the Executive Committee and the members thereof and to Pool Members or any class of Pool Members in general meeting are references to the Panel (and related provisions as to voting majorities shall be disregarded).
2. Unless the context otherwise requires or as specified below, all references to the Performance Assurance Board and the members thereof are references to the Panel or a Panel Committee acting as Performance Assurance Board under the Code (and any related provisions as to voting majorities shall be disregarded).
3. Unless the context otherwise requires or as specified below, all references to the Chief Executive are references to BSCCo.
4. The following provisions of the Pooling and Settlement Agreement shall be disregarded (but without prejudice to paragraph (e) of Part B below):
 - (a) clause 3;
 - (b) clause 4 (to the extent that it is inconsistent with the provisions of the Code);
 - (c) clause 5;
 - (d) clause 6 (other than sub-clauses 6.8 and 6.12);
 - (e) Part III (other than sub-clauses 7.1 and 9.7 and save to the extent required in connection with the determination of Contributory Shares and as to clause 11.9 relating to the keeping of records);
 - (f) Part IV (save to the extent required to determine the powers, duties and functions of the Executive Committee, and so far as relevant for determining costs and expenses for the purposes of the arrangements referred to in paragraph (c) of Part B below);
 - (g) Part VI;
 - (h) Part VII (but for the avoidance of doubt without prejudice to any provisions of any Pool Contract which may be framed by reference to that Part);
 - (i) Part VIII (but for the avoidance of doubt without prejudice to any provisions of any Pool Contract which may be framed by reference to that Part);
 - (j) Part X;
 - (k) Part XI (save to the extent required for the determination and settlement of the matters referred to in paragraph 1.2.2(a)(ii) of this Supplement);
 - (l) Part XIII;

- (m) Part XIV;
- (n) Part XVI;
- (o) Part XVII;
- (p) Part XVIII (but for the avoidance of doubt without prejudice to any provisions of any Pool Contract which may be framed by reference to that Part);
- (q) Part XIX;
- (r) Part XXI;
- (s) Part XXII (except to the extent, if any, to which the Code does not contain provisions equivalent to those of that Part and provided that the relevant provisions of that Part are not inconsistent or in conflict with any provisions of the Code); and
- (t) clause 74.

5. The following Schedules to the Pooling and Settlement Agreement shall be disregarded:-

- (a) Schedule 1;
- (b) Schedule 2;
- (c) Schedule 3;
- (d) Schedule 4 (but for the avoidance of doubt without prejudice to any provisions of any Pool Contract which may be framed by reference to that Schedule);
- (e) Schedule 7;
- (f) Schedule 12;
- (g) Schedule 15 (but for the avoidance of doubt without prejudice to any provisions of any Pool Contract which may be framed by reference to that Schedule);
- (h) Schedule 16;
- (i) Schedule 17;
- (j) Schedule 18 (save to the extent required for the purposes of charges accrued in respect of the period to (but excluding) the Pool Run-off Date);
- (k) Schedule 19;
- (l) Schedule 20;
- (m) Schedule 21;
- (n) Schedule 22 (but without prejudice to paragraph (a) of Part B below;
- (o) Schedule 24;
- (p) Schedule 31 (but without prejudice to paragraph (c) of Part B below and, for the avoidance of doubt without prejudice to any provisions of any Pool Contract which may be framed by reference to that Schedule);

- (q) Schedule 33; and
 - (r) Schedule 34.
6. Any provision of the Pooling and Settlement Agreement:
- (a) requiring consent of any party to the Pooling and Settlement Agreement or of any class of party or of any other person to modifications of any provision of the Pooling and Settlement Agreement; or
 - (b) providing for any right of appeal against decisions of the Executive Committee or of Pool Members,
- shall be disregarded.
7. References (contained within the Pooling and Settlement Agreement) directly or indirectly to the Pooling and Settlement Agreement or any provision thereof or arrangement thereunder shall be construed as references to the Pooling and Settlement Agreement or such provision or arrangement as and to the extent incorporated in or constituted under the Supplement.
8. So far as relevant for the purposes of Pool Run-off, references to Contributory Shares shall be to the Contributory Shares determined in accordance with the Pooling and Settlement Agreement, on the basis that:
- (a) the last Accounting Period shall be treated as that beginning 1st April, 2000 and ending on the earlier of 31st March, 2001 and the Go-live Date; and
 - (b) no calculation of Contributory Shares shall be made in respect of any later period.

Part B: Other Pool Arrangements

The arrangements referred to in paragraph 1.2.2(a)(iii) of the Supplement are:

- (a) the arrangements in Schedule 22 to the Pooling and Settlement Agreement, so far as relating to periods prior to the period from which paragraph 1 of Annex D-5 applies;
- (b) the arrangements in Sections 2.6 and 9 of Schedule 26 and in the Appendix to Schedule 26 to the Pooling and Settlement Agreement, so far as relating to periods prior to the period from which Annex S-1 applies;
- (c) the arrangements in Schedule 31 to the Pooling and Settlement Agreement, so far as relating to any period before the Go-live Date including, for the avoidance of doubt, the provisions in sub-section 9.1 of that Schedule relating to disputes;
- (d) arrangements under the Pooling and Settlement Agreement applying between Pool Members *inter se* as to their rights and obligations (and the exercise, discharge, allocation and apportionment thereof), so far as accruing in respect of periods before the Pool Run-off Date, in relation to the Settlement System Administrator and Pool Funds Administrator;

but in each case only to the extent to which the Pooling and Settlement Agreement continues immediately before the Pool Run-off Date to provide for such arrangements; and

- (e) any other arrangements (so far as provided for by the Pool Provisions) under the Pooling and Settlement Agreement, where:
 - (i) Pool Members have before the Pool Run-off Date decided (in accordance with the Pooling and Settlement Agreement) that such arrangements should be treated as included in this Part B; and
 - (ii) the Authority has given its approval in writing that such arrangements should be treated as included in this Part B.