

## DRAT LEGAL TEXT FOR PROPOSED MODIFICATION P398

### SECTION B: THE PANEL

#### 3.3 Provisions relating to data

*Amend paragraph 3.3 as follows:*

3.3.1 The Panel (and, unless otherwise provided in its terms of reference, any Panel Committee) may use and disclose such data as it sees fit, whether provided by or on behalf of Parties or otherwise obtained under the Code, for the purposes of discharging its functions and duties under the Code in accordance with the provisions of paragraph 1.2, but only for those purposes, and subject to paragraph 3.3.3.

~~[P398]3.3.2 The Panel may decide not to disclose (under any provision of the Code other than Section F) any data to any person (other than the Authority) or persons to the extent that and for so long as the disclosure of such data would, in the opinion of the Panel, substantially prejudice the interests of all Parties collectively or of a class of Parties collectively, unless otherwise directed by the Authority.~~Not used.

~~[P398]3.3.3 Where the Panel is intending (pursuant to paragraph 3.3.1) to disclose data obtained under the Code, the provisions of Section H11 shall apply and accordingly:~~

~~(a) the Panel shall instruct BSCCo to perform the steps set out in Section H11 and:~~

~~(a) the provisions of Section H11 shall apply mutatis mutandis (as if references to the BCB were references to the Panel).~~

~~it shall act with a view to excluding therefrom data relating to the affairs of an individual Party which is, in the Panel's opinion, commercially sensitive, unless:~~

~~(a) the Panel considers that such data should be disclosed in order to fulfil the Panel's functions and duties under the Code in accordance with the objectives set out in paragraph 1.2.1 (other than the objective set out in paragraph 1.2.1(e)); or~~

~~(b) the Party consents to such disclosure.~~

~~[P398]3.3.4 Where a Party considers that data which it is providing under the Code (other than Trading Data) is commercially sensitive and should not be disclosed based on the principle set out in paragraph 3.3.3, the Party shall identify the data as such in writing to the Panel Secretary (specifically and on a case by case basis, and explaining why it is considered to be commercially sensitive) in advance or at the time of the provision of such data, making reference to this paragraph 3.3.4.~~Not used.

~~[P398]3.3.5 For the avoidance of doubt, where a Party identifies data pursuant to paragraph 3.3.4, the Panel shall not be bound by the Party's view in determining whether such data is commercially sensitive or whether such data should be disclosed in accordance with paragraph 3.3.3.~~Not used.

~~[P398]3.3.6 If the Panel concludes that data referred to in paragraph 3.3.3 is commercially sensitive but should nonetheless be disclosed in accordance with the provisions of that paragraph, the Panel Secretary shall, where reasonably practicable, notify and discuss the timing of such disclosure with the affected Party in advance of such disclosure, and otherwise shall notify the affected Party as soon as practicable after such disclosure.~~Not used.

3.3.7 The provisions of paragraphs 3.3.3 and 3.3.9 shall not apply to the disclosure of data:

- (a) to the Authority, BSCCo, any Panel Committee or (to the extent necessary for the purposes of the Code) any BSC Agent; or
- (b) where the data is in the public domain; or
- (c) where the Panel is required or permitted to disclose such data in compliance with any Legal Requirement; or
- (d) where the disclosure of such data is expressly required under the Code.

**[P398]** 3.3.8 In relation to any matter falling within the remit of the Performance Assurance Board or the Trading Disputes Committee, no data relating to the affairs of a Party and/or a Qualified Person which might reasonably be considered to be commercially sensitive shall be disclosed save as:

- (a) expressly provided by the Code; or
- (b) necessary to perform the functions and duties of the Performance Assurance Board or the Trading Disputes Committee respectively in accordance with the Code; or
- (c) agreed by that Party or Qualified Person; or
- (d) has been assessed and disclosed in accordance with the procedures and criteria set out in Section H11 with such mitigation options having been implemented as may be appropriate having regard to the sensitivity of the data.

**[P398]** 3.3.9 ~~Notwithstanding paragraph 3.3.1, the Panel shall not be entitled~~ In relation to the release of Trading Data which, for the purposes of Section V, may only be provided to a "Relevant" Party (as defined in Section V), unless such data is may only be released in a form in which it cannot reasonably be identified as relating to that Party.

## 5. PANEL COMMITTEES

*Amend paragraph 5.1.7 as follows:*

**[P398]** 5.1.7 The Panel shall establish a Panel Committee to act as the Balancing Mechanism Reporting Service Change Board (the "BCB") in respect of which the provisions of this paragraph 5 shall apply except that, in relation to the BCB's functions and duties in relation to BSC Data, the provisions of Section H11 shall apply.

## SECTION H: GENERAL

### 4. CONFIDENTIALITY AND OTHER INTELLECTUAL PROPERTY RIGHTS

#### 4.1 Interpretation

*Amend paragraph 4.1.1 as follows:*

4.1.1 In this paragraph 4:

- (a) **"Authorised Recipient"** means any Business Person to whom Protected Information has been divulged in accordance with paragraph 4.4 provided that such person:
  - (i) requires access to such Protected Information for the proper performance of his duties as a Business Person in the course of Permitted Activities; and
  - (ii) has been informed of the duties of the NETSO in relation to inter alia Protected Information under paragraph 4.4;
- (b) **"Business Person"** means any person who is a Main Business Person or a Corporate Functions Person, and **"Business Personnel"** shall be construed accordingly;
- (c) **"Corporate Functions Person"** means any person who:
  - (i) is an officer of the NETSO; or
  - (ii) is an employee of the NETSO, carrying out any administrative, finance or other corporate services of any kind which in part relate to the Main Business; or
  - (iii) is engaged by or on behalf of the NETSO as an agent or adviser to or otherwise to perform work in relation to services for the Main Business;
- (d) **"Disclose"** means disclose, reveal, report, publish or transfer by any means and **"Disclosure"** shall be construed accordingly;
- (e) **"Main Business"** means, in relation to the NETSO, any business of the NETSO as at the Code Effective Date and any business which the NETSO must carry out under the Transmission Licence;
- (f) **"Main Business Person"** means any employee of the NETSO who is engaged solely in the Main Business of the NETSO, and **"Main Business Personnel"** shall be construed accordingly;
- (g) **"Nominated Agreements"** means:
  - (i) the Code;
  - (ii) the Code Subsidiary Documents;
  - (iii) the Implementation Scheme;
  - (iv) the Scheme Subsidiary Documents;
  - (v) the Settlement Agreement for Scotland;
  - (vi) the Master Registration Agreement;
  - (vii) all Connection Agreements;

- (viii) the Data Transfer Service Agreement;
  - (ix) all Contracts for Difference; and
  - (x) any other electricity industry agreement or document as may be specified (or of a type specified) as a Nominated Agreement by the Panel from time to time (following such consultation with Parties as the Panel considers appropriate for this purpose);
- (h) **"Permitted Activities"** means activities carried on for the purposes of the Main Business;
- (i) **"Protected Information"** means any information relating to the affairs of a Party which is furnished to Business Personnel pursuant to the Code unless, prior to such information being furnished, such Party has informed the recipient thereof by notice in writing or by endorsement on such information that the said information is not to be regarded as Protected Information;

[P398](j) **"Relevant Instrument"** means any or, as the context may require, a particular one of the following:

- (i) the Act and all subordinate legislation made under the Act;
- (ii) the ~~Data Protection Act 1998~~ Data Protection Legislation and all subordinate legislation made under it;
- (iii) any Licence and any determination or notice made or issued by the Authority pursuant to the terms thereof;
- (iv) the Capacity Market Rules,

and whether under any of the foregoing or otherwise, all authorisations, approvals, licences, exemptions, filings, registrations, notarisations, consents, guidelines and other matters which are required or which a Party acting in accordance with Good Industry Practice would obtain or comply with for the purposes of the Code, of or from any Competent Authority.

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## 4.6 Data ownership

*Amend paragraph 4.6.3 as follows*

[P398]4.6.3 Each Party grants to each relevant person a non-exclusive licence to use the relevant party data provided by or on behalf of that Party to the extent necessary and solely for the purposes contemplated by the Code (including, for the avoidance of doubt, pursuant to paragraph 11), together with the right to sub-license the use of such data as necessary solely for those purposes.

*Amend paragraph 4.8 as follows*

**[P398]4.8 Data Protection Act**

4.8.1 The words and expressions used in this paragraph and not defined elsewhere in the Code shall be interpreted in accordance with any meaning given to them in the Data Protection Legislation.

4.8.2 To the extent that the performance of obligations under Code requires the processing of personal data, each Party:

(a) Each Party (other than BSCCo and the BSC Clearer) warrants that it has effected, and undertakes that it will (while it remains a Party) during the term of the Code effect and maintain all such notifications and registrations as it is required to effect and maintain under the Data Protection Legislation Data Protection Act 1998 to enable it lawfully to perform the obligations imposed on it by the Code, and exercise the rights granted to it by the Code;

(b) \_\_\_\_\_

4.8.2 Each Party undertakes to comply with the Data Protection Legislation Data Protection Act 1998 in the performance of its obligations under the Code, including, where applicable, ensuring that it has a lawful basis for sharing personal data and that it complies with the Data Protection Legislation in relation to such sharing of personal data;

(c) \_\_\_\_\_:

4.8.3 Each Party undertakes to that, in any case where information to be disclosed by it under the Code or any Code Subsidiary Document may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior consents so as to enable it, or the relevant BSC Agent, as the case may be, promptly to perform its obligations under or as envisaged by the Code provide the information required by the Data Protection Legislation in respect of the processing of personal data under the Code;

(d) undertakes to comply with the Data Protection Legislation as regards the exercise of rights by data subjects for which the Party is the data controller

(e) without limiting any other basis for processing which may be available in accordance with the Data Protection Legislation, each Party undertakes that, in any case where information to be disclosed by it under the Code may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior valid consent so as to enable it, or the relevant BSC Agent, as the case may be, to promptly perform its obligations under or as envisaged by the Code.

*Amend paragraph 4.9 as follows*

**[P398]4.9 Not usedPublication of data**

- ~~4.9.1~~ Wherever, pursuant to a provision of the Code or any Code Subsidiary Document, data (other than Trading Data, but without prejudice to Section V) is to be provided to all Parties, BSCCo shall make such data available to any third party on request unless the Panel considers:
- ~~(a)~~ that the release of such data to that third party (or to third parties generally) would substantially prejudice the interests of Parties collectively, or a class of Parties collectively; or
  - ~~(b)~~ (in the case of data relating to the affairs of an individual Party), that such data is commercially sensitive and release of that data is not necessary to facilitate fulfilment of the Panel's or BSCCo's functions and duties under the Code in accordance with the objectives set out in Section B1.2.1 (other than the objective in Section B1.2.1(e)).
- ~~4.9.2~~ Without prejudice to Section C3.6, BSCCo shall not be obliged to provide such data to a third party unless:
- ~~(a)~~ the request made by such third party is in writing, on a case by case basis and such that the data to which the request relates may be reasonably ascertained from such request; and
  - ~~(b)~~ such third party has paid to BSCCo a sum representing the reasonable costs of copying and providing such data to such third party.
- ~~4.9.3~~ Without prejudice to any specific requirement to place data on the BSC Website, the Panel may (but shall not be obliged to) publish any data which, by virtue of this paragraph 4.9 may be made available to third parties, on the BSC Website and each Party hereby consents irrevocably and unconditionally to such publication.

*Insert paragraph 4.9 as follows*

**[P398] 11. OPEN DATA**

**11.1 The Balancing Mechanism Reporting Service Change Board**

- 11.1.1 The principal function and power of the BCB under Section H (and without prejudice to any other functions and powers delegated to the BCB by the Panel in relation to the BMRS or otherwise) is to determine whether, the extent to which, and the terms (if any) on which BSC Data may be disclosed.
- 11.1.2 The Panel shall determine terms of reference ("BCB Terms of Reference") for the BCB in accordance with Section B5 and BSCCo shall publish the BCB Terms of Reference on the BSC Website.
- 11.1.3 The BCB Terms of Reference may include a right for the BCB to delegate to BSCCo the determination of BSC Data disclosure requests in which case:

- (a) the provisions of this paragraph 11 shall apply mutatis mutandis to BSCCo as if references to the BCB were references to BSCCo; and
- (b) the BCB shall periodically review whether any such delegated rights remain appropriate.

## **11.2 Data Disclosure Requests**

### **11.2.1 For the purposes of the Code:**

- (a) "BSC Data" means data or information held by, or on behalf of, BSCCo (including BSC Agents) and which is received, produced or sent by or on behalf of Parties under the Code (including, for the avoidance of doubt, by BSC Agents and Party Agents) for the purposes of Settlement but excluding any data or information that the Code explicitly identifies as confidential;
- (b) "BSC Data Disclosure Recommendation" means a recommendation made by BSCCo under paragraph 11.2.4;
- (c) "BSC Data Impact Assessment" means an assessment undertaken by BSCCo in accordance with the BSC Data Request Procedure assessing, in respect of a BSC Data Request, the time, effort and cost required to disclose that BSC Data, the impact of implementing the BSC Data Request identified by BSC Agents, the anticipated benefits of disclosing that BSC Data and the potential impacts on industry;
- (d) "BSC Data Request" means a request to disclose BSC Data made in accordance with the BSC Data Request Procedure;
- (e) "BSC Data Request Procedure" means the document established and maintained by [the Panel] and published on the BSC Website setting out:
  - (i) the criteria for assessing BSC Data Requests, the and determining the extent to which BSC Data may be disclosed, together with the classification of BSC Data;
  - (ii) the procedures for processing BSC Data Requests; and
  - (iii) any requirements in relation to the form and manner in which BSC Data may be disclosed,

and for the purposes of this paragraph 11, "disclose" shall mean disclose, reveal, report, publish or transfer with or without restrictions, in each case as may be determined in accordance with this paragraph.

### **11.2.2 Any Party and any person may submit to BSCCo a BSC Data Request and BSCCo shall process such request and, where so approved, disclose that BSC Data in accordance with this paragraph.**

### **11.2.3 Following receipt of a BSC Data Request, BSCCo shall, in accordance with the BSC Data Request Procedure:**

- (a) identify whether there are any issues which might prevent or limit the disclosure of that BSC Data including whether:
  - (i) the requested BSC Data includes personal data within the meaning of Data Protection Legislation, data relating to the private administration of a business or which is commercially sensitive, and/or data in respect of which publication is prohibited by a Legal Requirement;
  - (ii) the BSC Data would, if disclosed have a negative impact on existing or future consumers;
  - (iii) the disclosure of the BSC Data creates incremental security issues having regard to data that is already openly available, or exacerbates existing security issues, in each case which cannot be mitigated;
- (b) identify whether any mitigations can be put in place to allow the disclosure of some or all of the requested BSC Data notwithstanding any issues identified under paragraph 11.2.3(a);
- (c) undertake a BSC Data Impact Assessment;
- (d) prepare a BSC Data Disclosure Recommendation for the BCB which shall set out, in relation to the BSC Data, BSCCO's recommendation on whether the BSC Data should be disclosed together with the matters determined or established pursuant to this paragraph 11.2.3; and
- (e) consult with Parties and interested third persons for a period of not more than [15 Working Days] on BSCCo's draft BSC Data Disclosure Recommendation.

11.2.4 Upon completion of the consultation conducted under paragraph 11.2.3(e), BSCCo shall:

- (a) finalise its draft BSC Data Disclosure Recommendation taking into account any consultation responses; and
- (b) as soon as reasonably practical thereafter submit its BSC Data Disclosure Recommendation to the BCB together with copies of the consultation responses.

11.2.5 The BCB shall, in accordance with the BSC Data Disclosure Procedure, consider the BSC Data Disclosure Recommendation and any consultation responses and shall determine whether, the extent to which, and the terms (if any) on which the BSC Data shall be disclosed (including as to the recovery of the reasonable costs incurred by BSCCo of disclosing such BSC Data). In making such determination, the BCB must take into consideration the presumption that BSC Data should be openly available, and only refuse disclosure to the extent that concerns identified through the BSC Data Request Procedure warrant overriding this presumption.



11.2.6 Following a determination by the BCB, BSCo shall in accordance with the BSC Data Request Procedure:

- (a) inform the Party or person who made the BSC Data Request;
- (b) publish the outcome of the BCB's determination together with the rationale supporting that determination; and
- (c) no earlier than the expiry of the appeal period set out in paragraph 11.3.2, and subject to paragraph 11.3, implement, or procure the implementation of, the BCB's determination.

11.2.7 Each Party hereby consents irrevocably and unconditionally to the disclosure of data pursuant to this paragraph.

11.2.8 The provisions of paragraph 11.2 shall not apply to the disclosure of BSC Data:

- (a) to the Authority, BSCCo, any Panel Committee or (to the extent necessary for the purposes of the Code) any BSC Agent; or
- (b) where the BSC Data is in the public domain; or
- (c) where such BSC Data is permitted or required to be disclosed in compliance with any Legal Requirement; or
- (d) where the disclosure of such BSC Data is expressly required under the Code.

11.2.9 BSCCo shall keep a copy of all determinations made by itself or the BCB pursuant to paragraph 11.2.5 and shall publish a register of such determinations together with the disclosure rationale.

11.2.10 BSCCo shall, at least annually, submit a report to the Authority in relation to BSC Data Requests during the preceding year.

### **11.3 Appeals**

11.3.1 Where a Party or person who has requested the disclosure of BSC Data disagrees with the determination of the BCB under paragraph 11.2.5, the Party or (as the case may be) person may refer the matter to the Panel in accordance with the BSC Data Request Procedure.

11.3.2 A reference by a Party to the Panel under paragraph 11.3.1 shall be made no later than [10 Business Days] after the notification given by BSCCo under paragraph 11.2.6(b) in which case the disclosure of the relevant BSC Data shall be suspended pending the outcome of the Panel's determination.

11.3.3 The Panel shall adopt such procedures as it sees fit (having regard generally to the BSC Data Request Procedure) for the purpose of determining whether such BSC Data should be disclosed; and the Panel Secretary shall notify the decision of the Panel in respect of such BSC Data Request to the person making such appeal and publish the Panel's determination together with its rationale.

## SECTION V: REPORTING

### 3.2 Reports

*Amend paragraph 3.2.2 as follows*

[P398]3.2.2 For the purposes of Tables 2 to 7 in Annex V-1, and subject to paragraph 3.2.9:

- (a) "**Relevant Party**" indicates that the data in question is to be provided to the Party or Trading Party or Supplier to which the data relates (and not to other Parties, except for BSCCo);
- (b) "**Any Party (on request)**" indicates that the data in question (irrespective of the Party or Parties to which it relates) is to be provided to any Party which requests receipt of the same pursuant to paragraph 3.2.3;
- (c) "**All Suppliers**" indicates that the data in question is to be provided to all Suppliers in the GSP Group to which the data relates;
- (d) "**Any person (on request)**" indicates that, subject to paragraph 3.2.7, the data in question (irrespective of the Party or Parties to which it relates) is to be provided to any person (whether or not a Party) which requests receipt of the same pursuant to paragraph 3.2.3.

*Amend paragraph 3.2.7 as follows*

[P398]3.2.7 Where a person who is not a Party requests the provision of data to which it is entitled pursuant to this paragraph 3.2, such data shall not be required to be made available to such person until and unless such person has agreed to be bound by such terms entered into and remains party to an agreement with BSCCo, in such form as BSCCo with the approval of the Panel may from time to time determine, relating to the provision of such data and which may provide providing (inter alia) for the payment or periodic payment by such person to BSCCo of a sum (established and revised from time to time by BSCCo) representing the reasonable costs of providing such data to that person.

*Amend paragraph 3.2.8 as follows*

[P398]3.2.8 Subject to paragraph 3.2.9, and Wwithout prejudice to paragraph 3.2.7 each Party irrevocably and unconditionally consents to the publication of the data in Tables 2 to 7, to the extent only that such data:

- (a) is to be published pursuant to this paragraph 3, where paragraph 3 provides for such data to be published, and
- (b) is to be made available to any person on request.

*Amend paragraph 3.2.9 as follows*

[P398]3.2.9 Where it has been determined, pursuant to Section B3.3 or Section H11, that data referred to in Tables 2 to 7 of Annex V-1 shall be disclosed pursuant to the procedures set out in those Sections then such determination shall take precedence over this paragraph 3.2 and the data to which such determination relates may be disclosed notwithstanding anything to the contrary in this Section V.

## **ANNEX X-1: GENERAL GLOSSARY**

[P398]" <b>BSC Data</b> ":	<u>has the meaning given to that term in Section H11.2.1;</u>
[P398]" <b>BSC Data Disclosure Recommendation</b> ":	<u>has the meaning given to that term in Section H11.2.1;</u>
[P398]" <b>BSC Data Impact Assessment</b> ":	<u>has the meaning given to that term in Section H11.2.1;</u>
[P398]" <b>BSC Data Request</b> ":	<u>has the meaning given to that term in Section H11.2.1;</u>
[P398]" <b>BSC Data Request Procedure</b> ":	<u>has the meaning given to that term in Section H11.2.1;</u>
[P398]" <b>Data Protection Legislation</b> ":	<u>means the Data Protection Act 2018; and EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, which is known as the General Data Protection Regulation.</u>