

CMP309 Legal Text Overview

The CMP309 legal text is updated since the previous CAC as a result of The Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019 ([SI No 523](#)) The baseline legal text changes (2019) are shown in red, the additional legal text changes and deletions since the last CAC are shown in blue:

CUSC - SECTION 4 – BALANCING SERVICES

4.2B.5 ~~EBGL~~ EBR Article 18

Where and to the extent that:-

- (a) contractual arrangements for the provision of and payment for **Balancing Services** which are not set out in **CUSC** contain ~~EBGL Article 18 Terms and Conditions~~ **EBR Article 18 Terms and Conditions**; and
- (b) an ~~EBGL Amendment~~ **EBR Amendment** to such contractual arrangements is proposed which under the **Electricity Balancing Guideline Electricity Balancing Regulation** is subject to consultation and prior approval by the **Authority**, then, to the extent and from such date as is required by the **Electricity Balancing Guideline Electricity Balancing Regulation**, such ~~EBGL Amendment~~ **EBR Amendment** shall be effective only after appropriate consultation and prior approval by the **Authority**. Accordingly, **The Company** shall ensure that the amendment processes contained within such contractual arrangements provide for appropriate consultation and prior approval by the **Authority** before any ~~EBGL Amendment~~ **EBR Amendment** becomes effective.

Exhibit Y

18.5. f	the requirements on data and information to be delivered to the connecting TSO and, where relevant, to the reserve connecting DSO to evaluate the provisions of balancing services pursuant to Article 154(1), Article 154(8), Article 158(1)(e), Article 158(4)(b), Article 161(1)(f) and Article 161(4)(b) of the Electricity Transmission System Operation Regulation
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CUSC - SECTION 8 - CUSC MODIFICATION

8.1.3d an ~~EBGL Amendment~~ **EBR Amendment** will always be a **Standard CUSC Modification Proposal** unless an **Urgent CUSC Modification Proposal** or where it meets the **Fast Track Criteria**.

8.1.7 Where a **CUSC Modification Proposal** constitutes an ~~EBGL Amendment~~ **EBR Amendment**, **The Company**, when undertaking its role in the **CUSC Panel** or **Working Groups** during the **CUSC Modification Process**, shall provide justification for including or not including the views of stakeholders resulting from the Code Administrator consultation.

8.16.1c a proposal which constitutes an EBGL Amendment EBR Amendment may be made under (a) or (b) above even where not made by The Company and the Authority may make a proposal under (a) and (b) above to the extent that it constitutes an EBGL Amendment EBR Amendment .
8.16.4A CUSC Modification Proposal shall be submitted in writing to the Panel Secretary and, subject to the provisions of Paragraph 8.16.4A below, shall contain the following information in relation to such proposal: l) whether or not (and to the extent) that in the Proposer's view the CUSC Modification Proposal constitutes an EBGL Amendment EBR Amendment
8.16.7 Promptly upon receipt of a CUSC Modification Proposal , the Panel Secretary shall: c) note whether in the Proposer's view the CUSC Modification Proposal constitutes an EBGL Amendment EBR Amendment .
8.16.10 Subject to Paragraph 8.17A.8 (which deals with rejection by the Panel Secretary of CUSC Modification Proposals which are necessary to comply with or implement the Electricity Regulation and/or any relevant Legally Binding Decisions of the European Commission and/or The Agency legally-binding decisions of the European Commission and/or the Agency), Paragraph 8.17A.4 (which deals with withdrawal of an CUSC Modification Proposal in relation to a Significant Code Review) and Paragraph 8.17C.1 [...]
8.17A.1 The Authority may: (a) itself; or (b) direct The Company to raise a CUSC Modification Proposal where the Authority reasonably considers that such CUSC Modification Proposal is necessary to comply with or implement the Electricity Regulation and/or any relevant Legally Binding Decisions of the European Commission and/or The Agency legally-binding decisions of the European Commission and/or the Agency or in respect of a Significant Code Review.
8.17A.9 In relation to any CUSC Modification Proposal raised by The Company other than pursuant to Paragraph 8.17A.1, where the Authority reasonably considers such CUSC Modification Proposal to be necessary to comply with or implement the Electricity Regulation and/or any relevant Legally Binding Decisions of the European Commission and/or The Agency legally-binding decision of the European Commission and/or the Agency , the provisions of Paragraphs 8.17A.2 to 8.17A.8 shall apply.
8.18.8A The CUSC Modification Panel shall evaluate each CUSC Modification Proposal and determine whether the CUSC Modification Proposal constitutes an EBGL Amendment EBR Amendment and its expected impact on the objectives of the Electricity Balancing Guideline Electricity Balancing Regulation (and in the event of disagreement The Company's view shall prevail).

<p>8.19.1f) where the CUSC Modification Proposal constitutes an EBGL Amendment EBR Amendment the timetable shall be such that the Code Administrator's consultation is not less than one month.</p>
<p>8.20.8 The terms of reference of a Workgroup must include provision in respect of the following matters:</p> <p>e) whether, and the extent to which, the CUSC Modification Proposal may constitute an amendment to the EBGL Article 18 terms and conditions EBR Article 18 terms and conditions; and</p> <p>f) where the Workgroup considers that a CUSC Modification Proposal may constitute an amendment to the EBGL Article 18 terms and conditions EBR Article 18 terms and conditions, the impact of those amendments on the objectives of the Electricity Balancing Guideline Electricity Balancing Regulation.</p>
<p>8.22.2 After consideration of any Workgroup report on the CUSC Modification Proposal and if applicable any Workgroup Alternative CUSC Modification(s) by the CUSC Modifications Panel and a determination by the CUSC Modifications Panel to proceed to wider consultation, the Code Administrator shall bring to the attention of and consult on the CUSC Modification Proposal and if applicable any Workgroup Alternative CUSC Modification(s) with:</p> <p>i) where the CUSC Modification Proposal, and if applicable, any Workgroup Alternative CUSC Modification(s) constitutes an EBGL Amendment EBR Amendment with the Authority and other relevant stakeholders.</p> <p>ii) where the CUSC Modification Proposal, and if applicable, any Workgroup Alternative CUSC Modification (s) constitutes an EBGL Amendment EBR Amendment the Code Administrator's consultation will be not less than one month.</p>
<p>8.22.5 Where the CUSC Modifications Panel is of the view that the proposed text to amend the CUSC for a CUSC Modification Proposal or Workgroup Alternative CUSC Modification(s) is not needed in the CUSC Modification Report (and provided the CUSC Modification Proposal and/or Workgroup Alternative CUSC Modification(s) does not constitute an EBGL Amendment EBR Amendment), the CUSC Modifications Panel shall consult (giving its reasons as to why it is of this view) with the Authority as to whether the Authority would like the CUSC Modification Report to include the proposed text to amend the CUSC. If it does not, no text needs to be included. If it does, and no detailed text has yet been prepared, the Code Administrator shall prepare such text to modify the CUSC in order to give effect to such CUSC Modification Proposal or Workgroup Alternative CUSC Modification(s) and shall seek the conclusions of the relevant Workgroup before consulting those identified in Paragraph 8.22.2.</p>
<p>8.22.8 After determination by the CUSC Modifications Panel to proceed to wider consultation, such consultation shall be conducted by the Code Administrator on the CUSC Modification Proposal with:</p>

(i) where the **CUSC Modification Proposal** and if applicable, any **Workgroup Alternative CUSC Modification(s)** constitutes an **EBGL Amendment EBR Amendment** with the **Authority** and other relevant stakeholders.

(ii) where the **CUSC Modification Proposal** and if applicable, any **Workgroup Alternative CUSC Modification(s)** constitutes an **EBGL Amendment EBR Amendment** the **Code Administrator's** consultation will be not less than one month.

8.22.10 The Consultation Paper will contain:

c) where a **CUSC Modification Proposal** or any **Workgroup Alternative CUSC Modification(s)** constitutes an **EBGL Amendment**, the expected impact on the objectives of the **Electricity Balancing Guideline Electricity Balancing Regulation**

8.22.11 Where the **CUSC Modifications Panel** is of the view that the proposed text to amend the **CUSC** for a **CUSC Modification Proposal** is not needed (and provided the **CUSC Modification Proposal**, and if applicable, any **Workgroup Alternative CUSC Modification(s)**, does not constitute an **EBGL Amendment EBR Amendment**), the **CUSC Modifications Panel** shall consult (giving its reasons to why it is of this view) with the **Authority** as to whether the **Authority** would like the **CUSC Modification Report** to include the proposed text to amend the **CUSC**. If it does not, no text needs to be included. If it does, and no detailed text has yet been prepared, the **Code Administrator** shall prepare such text to modify the **CUSC** in order to give effect to such **CUSC Modification Proposal** and consult those identified in Paragraph 8.22.2.

8.23.1A Where a **CUSC Modification Proposal** or any **Workgroup Alternative CUSC Modification** constitutes an **EBGL Amendment EBR Amendment**, the **Panel** will consider any consultation responses received and any further work required to assess these as required under **CUSC** Paragraph 8.18.8A

8.23.2 The matters to be included in a **CUSC Modification Report** shall be the following (in respect of the **CUSC Modification Proposal**):

l) whether the **CUSC Modification Proposal** and if applicable, any **Workgroup Alternative CUSC Modification(s)** constitutes an **EBGL Amendment EBR Amendment** and if so, and in addition to (i) above, a **The Company's** justification for including or not including the views resulting from the relevant consultation in the **CUSC Modification Proposal** and if applicable, any **Workgroup Alternative CUSC Modification (s)**.

m) where a **CUSC Modification Proposal** or any **Workgroup Alternative CUSC Modification(s)** constitutes an **EBGL Amendment**, the expected impact on the objectives of the **Electricity Balancing Guideline Electricity Balancing Regulation**

8.23.12 If the **Authority** determines that the **CUSC Modification Report** is such that the **Authority** cannot properly form an opinion on the **CUSC Modification**

Proposal and any **Workgroup Alternative CUSC Modification(s)**, or where the **CUSC Modification Proposal** and/or any **Workgroup Alternative CUSC Modification(s)** constitutes an ~~EBGL Amendment~~ **EBR Amendment** where the **Authority** requires an amendment to **CUSC Modification Proposal** and/or any **Workgroup Alternative CUSC Modification(s)** in order to approve it, it may issue a direction to the **CUSC Modifications Panel**:

8.23.13 If a **CUSC Modification Report** is to be revised and re-submitted in accordance with a direction issued pursuant to Paragraph 8.23.12, it shall be re-submitted as soon after the **Authority's** direction as is appropriate, (and in the case of an ~~EBGL Amendment~~ **EBR Amendment** within 2 months), taking into account the complexity, importance and urgency of the **CUSC Modification Proposal** and any **Workgroup Alternative CUSC Modification(s)**. The **CUSC Modifications Panel** shall decide on the level of analysis and consultation required in order to comply with the **Authority's** direction and shall agree an appropriate timetable for meeting its obligations. Once the **CUSC Modification Report** is revised, the **CUSC Modifications Panel** shall carry out its **CUSC Modifications Panel Recommendation Vote** again in respect of the revised **CUSC Modification Report** and re-submit it to the **Authority** in compliance with Paragraphs 8.23.4 to 8.23.6.

8.23.14 where Paragraph 8.23.9 and/or Paragraph 8.23.10 is applied to a **CUSC Modification Proposal** which constitutes an ~~EBGL Amendment~~ **EBR Amendment** the process and timetable adopted shall meet the minimum consultation requirements of the ~~Electricity Balancing Guideline~~ **Electricity Balancing Regulation**.

8.24.3 The matters referred to in Paragraph 8.24.1 are:

(b) the procedure and timetable to be followed in respect of such **Urgent CUSC Modification Proposal** which in the case of a **CUSC Modification Proposal** and, if applicable, any **Workgroup Alternative CUSC Modification(s)** which constitutes an ~~EBGL Amendment~~ **EBR Amendment** shall meet the minimum consultation requirements of the ~~Electricity Balancing Guideline~~ **Electricity Balancing Regulation**

8.24.7 For the purposes of this Paragraph 8.24.7, the procedure and timetable in respect of an **Urgent CUSC Modification Proposal** may (with the approval of the **Authority** pursuant to Paragraph 8.24.4 or Paragraph 8.24.5) deviate from all or part of the **CUSC Modification Procedures** or follow any other procedure or timetable approved by the **Authority**, excepting in the case of a **CUSC Modification Proposal** or any **Workgroup Alternative CUSC Modification(s)** which constitute an ~~EBGL Amendment~~ **EBR Amendment**, which shall meet the minimum consultation requirements of the ~~Electricity Balancing Guideline~~ **Electricity Balancing Regulation**.

CUSC - SECTION 11 - INTERPRETATION AND DEFINITIONS

"**Competent Authority**" the **Secretary of State**, the **Authority** and any local or national agency, authority, department, inspectorate, minister (including Scottish

ministers), ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community;

Legally Binding Decisions of the European Commission and/or the Agency means any relevant legally binding decision or decisions of the **European Commission** and/or the **Agency**, but a binding decision does not include a decision that is not, or so much of a decision as is not, **Retained EU Law**;

~~“Retained EU Law” has the same meaning as that given by section 6(7) of the European Union (Withdrawal) Act 2018;~~

“Significant Code Review” a review of one or more matters which the **Authority** considers is likely to: (a) relate to the **CUSC** (either on its own or in conjunction with other **Industry Codes**); and (b) be of particular significance in relation to its principal objective and/or general duties (under section 3A of the Act), statutory functions and/or relevant obligations arising under **Retained EU Law** ~~EU law~~, and concerning which the **Authority** has issued a notice to the **CUSC Parties** (among others, as appropriate) [...];

~~“Electricity Balancing Guideline” means Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing;~~

“Electricity Balancing Regulation” means the English version of Commission Regulation (EU) 2017/2195 as converted into **Retained EU Law**;

~~“EBGL Amendment” means (a) any amendment to contractual arrangements for the provision of and payment for Balancing Services referred to in Section 4.2B5 or (b) any amendment to CUSC which amends the EBGL Article 18 Terms or Conditions in, as the case may be, such contractual arrangements or CUSC including to introduce a new provision for the purposes of Article 18 into, as the case may be, such contractual arrangements or CUSC;~~

“EBR Amendment” means (a) any amendment to contractual arrangements for the provision of and payment for Balancing Services referred to in Section 4.2B5 or (b) any amendment to **CUSC** which amends the ~~EBGL~~ **EBR Article 18 Terms or Conditions** in, as the case may be, such contractual arrangements or **CUSC** including to introduce a new provision for the purposes of Article 18 into, as the case may be, such contractual arrangements or **CUSC**;

~~“EBGL Article 18 Terms and Conditions” means terms and conditions which have been approved by the Authority pursuant to and for the purposes of Article 18 of the Electricity Balancing Guidelines. In the context of CUSC these terms and conditions are identified for convenience in CUSC Exhibit Y as such Exhibit Y is amended from time to time~~

“EBR Article 18 Terms and Conditions” means terms and conditions which have been approved by the Authority pursuant to and for the purposes of Article 18 of the ~~Electricity Balancing Guidelines~~ **Electricity Balancing Regulation**. In the context of **CUSC** these terms and conditions are identified for convenience in **CUSC** Exhibit Y as such Exhibit Y is amended from time to time

“Electricity Transmission System Operation Regulation” means the English version of Commission Regulation (EU) 2017/1485 as converted into **Retained EU Law**;

“Retained EU Law” has the meaning given to it by the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020;

“Electricity Regulation” means the English version of Commission Regulation (EU) 2019/943 (being the recast of (EU) 714/2009) as converted into **Retained EU Law**