T&SC Comments

Organisation	Page	Code	Document	Comments	RA response
SEM Programme	7	1.1	v1.2	A major concern for the SMO is whether it is to be the SMO or the Regulatory Authorities who "establish" the Code. As drafted, paragraph 1.1 states that it is a licence obligation on the SMO to establish and at all times maintain in force the Code. However, this does not reflect that it is the Regulatory Authorities who will "establish" the Code. The role of the SMO will be to comply with and administer the Code on behalf of participants. We have raised a similar point with Richard Haigh in th latest discussions on the MO licences.	The Regulatory Authorities will designate the Code that is to be established and maintained by the MO in accordance with the Licence(s)
SEM Programme	7	1.1	v1.2	We note the expanded introduction, which now makes reference to the legislative basis for the SEM. The reference to the pool nature of the market, however, could be further developed, for example, "The Code constitutes the trading and settlement arrangements for the SEM being a gross pool mechanism for the sale and purchase of wholesale electricity cross the entire Island of Ireland. All participating generators will sell and all participating suppliers will purchase electricity through the SEM pool mechanism as set out in the Code. The trading and settlement arrangements for the SEM will be administered by the Market Operator on behalf of Participants and will be overseen by the Regulatory Authorities."	Expansion is unnecessary and could restrict future change.
Moyle	8	1.3	v1.2	As we have noted in our previous comments, consistent with the European obligations of Ireland and Northern Ireland, the objectives of the SEM must include reference to furthering the integration of SEM with other markets of the European Union with a view to promoting trade and enhancing competition. The objectives of the Code must reflect the obligations of Members States under Regulation EC/1228/2003 (in particular having regard to the obligations on Regulatory Authorities under Article 9 to ensure compliance with the Regulation) as well as obligations in relation to the Regional Markets Initiative.	The Code cannot of itself further the integration of markets. In addition, the objectives of the Code are set by the MO licences.
VPE	8	Citation of Legislation	v1.2	No consistent protocol appears to have been used for citation of legislation and the same legislation i often cited in very different ways (eg. Electricity Regulation Act 1999, ERA, Republic of Ireland Electricity Act and Act of 1999 are all used for what we believe to be the same legislation). Some legislation is "(as amended)", some is not. Also, in most cases the jurisdiction of the legislation is no specified. We strongly recommend that a consistent approach is taken to citation of legislation and the jurisdiction is noted for convenience in all cases (eg. "Electricity Regulation Act 1999 (Ireland)")	A legal review has been undertaken as a part of the development of version 1.3 of the Code.
VPE	10	1.3	v1.2	Code Objectives The status of the objectives continues to remain unclear and inappropriate in a document such as the TSC. They have been developed as statements of principle rather than binding contractual obligations and either their legal effect, vis-à-vis the other provisions of the TSC would need to be clarified. We have assumed that they are not intended as an aid to interpretation of the remainder of the document but rather as perhaps objectives only to be referred to in considering proposed amendments to the TSC. Is this correct? If so, this should be explicitly stated. We continue to have concerns over the phraseology of the objectives and believe them to be unhelpfu in the way that they are stated. For example, objective 7 is vague and problematic. It refers to the 'short term and long term interests of consumers' which would be unworkable as an operative provision of the Code, and gives rise to significant concerns by referring to (a) price, which should be a matter for the Code mechanism; (b) quality and reliability which have no relevance in a trading document. As a drafting matter, the reference to "facilitate" in	The objectives form the basis for the identification of appropriate future changes to the Code. They are not an operational provision. Also see new paragraph 1.4
SEM Programme	10	1.3	v1.2	We note the amended list of Code objectives in paragraph 1.3. The SMO still has concerns over whether these objectives are intended to be contractually binding or simply statements of principle fo the Code. If they were to be contractually binding, against whom would they be enforced? This ties back in to the issue of whom (if anyone) "establishes" the Code. The SMO cannot take responsibility for the Code meeting a set of objectives as it has not created the Code. There needs to be greater clarity on what the objectives are seeking to achieve and what happens if they are not met.	The objectives form the basis for the identification of appropriate future changes to the Code. They are not an operational provision. Also see new paragraph 1.4
VPE	10	1.1 and 1.2	v1.2	Introduction The TSC is one of a number of documents which together will put in place the overall market structure. The inclusion of the legal and legislative background to the SEM is useful, however, this needs to go further and describe more fully the fact that the TSC sets out the rules for the wholesale mandatory pool spanning both Ireland and Northern Ireland and sets out the interfaces between the TSC and other documents such as the Grid Codes and Metering Codes. In any event, given the way that paragraphs 1.1 and 1.2 have developed, they are more akin to recitals or background and so would sit better as a fuller and non-binding introduction to the TSC that can be updated from time to time by the single Market Operator ("SMO").	The RAs do not believe that the extensive change suggested is necessary or helpful, but some drafting changes have been made to Section 1.
VPE	10	1.1 Introduction	v1.2	We agree that it is appropriate that the legislative basis of the Code has been reinstated. However, it i stated that the Code constitutes the trading arrangements and Trading and Settlement Code for the SEM pursuant to section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006. Section 23 does not provide for trading arrangements or a Trading and Settlement Code. Instead, it is an enabling provision which allows for agreements / arrangements entered into by the U.K. Government and Government of Ireland which relate to the establishment / operation of the SEM and have been presented to Parliament to be given effect by Order in Council. The Code should therefore be amended to cite the relevant section of the Order in Council that will provide for a TSC. The relationship between the roles of the RAs and the MO Licence obligations should also be clarified.	See redrafting of Section 1.
Moyle	11	1.7	v1.2	The Code should also provide that the Framework Agreement and Accession Deed form part of the Code or are to be read as one with the Code.	Appropriate changes have been made, following legal review
VPE	11	1.7	v1.2	Appendices and Agreed Procedures There has been further development of both the Appendices and the Agreed Procedures which are subject to a separate review. We will be commenting separately on the Agreed Procedures in due course. It is important, as recognised in 1.7 and the deletion of the wording previously in 1.9(5) (i.e. "Statements in … Agreed Procedures which explain or qualify any of the terms shall have binding effect and be fully enforceable as part of this Code"), that the Agreed Procedures set out procedures and not begin to provide substantive obligations which should always be in the TSC itself. To make this clear, the final sentence of 1.7 should be amended to read as follows "The Agreed Procedures shall set out only the detail of procedures to be followed by Parties in performing obligations and functions under the Code."	The recommendation is no change. The suggested change would have a major impact for review of the APs and we have assured ourselves that there are no significant code level obligations in the APs (except where APs are inconsistent with the Code & there is a programme of work to fix this. See also changes to Appendix L.
VPE	11	1.7 Appendices and Agreed Procedures	v1.2	The Code should also provide that the Framework Agreement and Accession Deed form part of the Code or are to be read as one with the Code.	All code provisions have been reviewed to ensure that appropriate references are included
VPE	12	1.9 (12)	v1.2	Interpretation 1.9(12) is an odd presumption to include in a document that requires many actions to be taken very quickly after notification. Why is it thought to be required?	included for clarity

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Moyle	12	1.9(16)	v1.2	Diagrams should be capable of being used as an interpretative aid to the text of the Code. If the Code drafting is unclear but the intention is clarified by a diagrammatic example, it is important that the diagram be capable of being used to aid interpretation.	Paragraph 1.9 16. removed
VPE	12	1.9(16) Interpretation	v1.2	Diagrams should be capable of being used as an interpretative aid to the text of the Code. If the Code drafting is unclear but the intention is clarified by a diagrammatic example, it is important that the diagram be capable of being used to aid interpretation.	Paragraph 1.9 16. removed
Moyle	12	1.9(18)	v1.2	Algebraic formulae should not take precedent over English language text in the Code. We are concerned that this approach is reflective of a broader issue in relation to the Code being drafted before there is clarity in relation to key issues of principle. As a consequence the drafting is sometimes confusing. The Code should clearly and transparently set out the principles of what it is trying to achieve. The formulae and agreed procedures etc. should support these principles. To the extent that they do not, the formulae must be amended.	Formulae take precedence because of their precision.
VPE	12	1.9(18) Interpretation	v1.2	Algebraic formulae should not take precedent over English language text in the Code. We are concerned that this approach is reflective of a broader issue in relation to the Code being drafted before there is clarity in relation to key issues of principle. As a consequence the drafting is sometimes confusing. The Code should clearly and transparently set out the principles of what it is trying to achieve. The formulae and agreed procedures etc. should support these principles. To the extent that they do not, the formulae must be amended.	Formulae take precedence because of their precision.
Moyle	12	1.9(9)	v1.2	Where the Code does not specify a time period within which an act must be performed by the MO, and SO or a Regulatory Authority, the Code must expressly require that the act be performed as soon as i reasonably practicable. Prompt performance by the SO, MO and RAs is essential for market participants.	This paragraph is not espressing an obligation about promptness, merely stating that missing a deadline does not remove the obligation.
VPE	12	1.9(9) Interpretation	v1.2	Where the Code does not specify a time period within which an act must be performed by the MO, and SO or a Regulatory Authority, the Code must expressly require that the act be performed as soon as i reasonably practicable. Prompt performance by the SO, MO and RAs is essential for market participants.	This paragraph is not espressing an obligation about promptness, merely stating that missing a deadline does not remove the obligation.
Moyle	13	2.2	v1.2	A technical drafting point, but while we understand the intent of this provision we do not believe that is technically possible to agree to the exclusive jurisdiction of more than one court. As a matter of drafting it is probably preferable to submit to the jurisdiction of both the Irish and Northern Ireland Courts and exclude the jurisdiction of any other courts.	The provision is legally possible and robust. No change required.
Moyle	13	2.3	v1.2	The process for determining the Commencement Date needs to be clarified. Consideration also need to be given to what this actually means in terms of the relationship between the day that the Code becomes live and the day that trading in the Pool actually commences.	This is a matter for later provisions dealing with the transition to Go-Live.
VPE	13	2.3	v1.2	Term We note that the Code will have a Commencement Date. Is it intended that the Commencement Date would be Go Active with the full code coming into effect incrementally thereafter or would the Commencement Date be Go Live? The transition process needs to be clarified.	The Transition strategy remains to be finalised by the RAs. The approach that is currently being considered, however, is that the Code will commence in a modified form at Go-Active (which will therefore be the Commencement Date), that most of its remaining provisions will then come into force at the Market Start Date, and that the full enduring version of the Code will come into force soon after Market Start Date.
VPE	13	2.4	v1.2	Priority It is conceivable that there may be an inconsistency between requirements in Ireland/Northern Ireland for example arising from the operation of the Code/Licences, and given the scope of the definition of Applicable Laws, we note that this issue may not arise solely from electricity specific legislation. There should be an obligation on the SMO to take forward into the Modifications process any identified conflict between Legal Requirements and the Code.	An obligation on the MO is not believed to be necessary. Such a modification could be raised by the MO; the Party concerned or the RAs.
VPE	13	2.5	v1.2	Priority We note that the priority between sections, which we considered unhelpful, has been deleted. The drafting however still leaves open the possibility of a manifestly inappropriate outcome by the application of the broadbrush and blanket priority between the body, schedules and APs. We suggest that the dispute resolution process allow the RAs to determine that where the application of such priority would lead to a manifestly incorrect result, it should not be applied.	The resolution of disputes is a matter for the DRB which has the implicit right to ignore such priority provisions if the result would be manifestly wrong. It is not necessary to give the DRB an explicit right to do this. Note that there has been some redrafting of the priority provisions in version 1.3 of the Code.
VPE	13	2.2 Jurisdiction	v1.2	A technical drafting point, but while we understand the intent of this provision we do not believe that is technically possible to agree to the exclusive jurisdiction of more than one court. As a matter of drafting it is probably preferable to submit to the jurisdiction of both the Irish and Northern Ireland Courts and exclude the jurisdiction of any other courts.	The Transition strategy remains to be finalised by the RAs. The approach that is currently being considered, however, is that the Code will commence in a modified form at Go-Active (which will therefore be the Commencement Date), that most of its remaining provisions will then come into force at the Market Start Date, and that the full enduring version of the Code will come into force soon after Market Start Date.
VPE	13	2.3 Term	v1.2	The process for determining the Commencement Date needs to be clarified. Consideration also need to be given to what this actually means in terms of the relationship between the day that the Code becomes live and the day that trading in the Pool actually commences.	The Transition strategy remains to be finalised by the RAs. The approach that is currently being considered, however, is that the Code will commence in a modified form at Go-Active (which will therefore be the Commencement Date), that most of its remaining provisions will then come into force at the Market Start Date, and that the full enduring version of the Code will come into force soon after Market Start Date.
Synergen	13	2.4.2	v1.2	The term "Competent Authority" has a wide ranging definition. The RAs should explain how any inconsistencies across the range of bodies would be managed? For example who do the RAs envisage having priority - The Competition Commission (http://www.competition-commission.org.uk) or The Competition Authority (http://www.tca.ie)?	The issue of Jurisdiction (or indeed priority) in relation to Competant Authorities is not a matter for the Code.

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VPE	13	2.4A	v1.2	Priority 2.4A suggests that "If and for so long as a Party complies with the Legal Requirements set out in paragraph 2.4.1 to 2.4.5, it will not be in breach of its obligations under the Code which are in conflict with any of the Legal Requirements taking priority." I.e. as a drafting point if a Party is in breach of any Legal Requirement (say an unrelated non-energy Legal Requirement such as an employment law matter), it automatically loses the right to claim priority in relation to any Legal Requirement (e.g. its electricity licence) that may be in conflict with the Code. We assume that this is not intention. Please clarify the drafting.	The RAs accept this comment. A Change Request against version 1.3 of the TSC, will be raised to add the word "relevant" before "Legal Requirements".
SEM Programme	13	2.4A	v1.2	We note the changes to the priority section but are not sure how new paragraph 2.4A works in practic with paragraph 2.4. Paragraph 2.4A says that where there is a conflict between the Code and any applicable laws, directions etc. and other codes a party that complies with such laws, directions etc. and other codes cannot be in breach of the Code. A party either breaches the Code or it complies wit it and we are not sure this approach works. The wording creates a potential loophole and makes it very difficult for the SMO whose role it is to monitor breaches of the Code and issue default notices etc.	This provision is necessary to cope this the (hopefully unlikely) circumstances where a Party is obliged by Legal Requirements to do something that is in conflict with the code. The Party is required to inform the MO of this.
VPE	13	2.4B Priority	v1.2	We query what happens if a Party suffers loss as a result of another Party being in breach of its obligations under the Code pending resolution through the Modifications Process. There should be some onus to ensure that no Party is unfairly disadvantaged as a result of an inconsistency becoming apparent.	The RAs do not believe that such a provision could be given effect.
Moyle	14	2.12 and 2.13	v1.2	We query why such strict time parameters are put on applicants in relation to the accession process. There does not seem to be any policy reason for this as it is entirely at the risk of the Applicants if they do not complete the process in the time that they require. For a person to be deemed to have their application withdrawn may have the effect of penalising people who are sufficiently organised to start the process early for no apparent gain. We note that a similar time restrictions are not typical in applying for Licences etc and masses of incomplete applications has never posed a problem. However, if this is the concern, perhaps a simple outer limit of a year to complete an application should deal with this. Time parameters for the MOs are of course essential for certainty for Applicants.	The timescales have been introduced in order to incentivise applicants to follow through with their applications in a timely manner, and to thereby enable the efficient deployment of the MO's registration resources.
VPE	14	2.12 and 2.13 Parties and Accession	v1.2	We query why such strict time parameters are put on applicants in relation to the accession process. There does not seem to be any policy reason for this as it is entirely at the risk of the Applicants if they do not complete the process in the time that they require. For a person to be deemed to have their application withdrawn may have the effect of penalising people who are sufficiently organised to start the process early for no apparent gain. We note that a similar time restrictions are not typical in applying for Licences etc and masses of incomplete applications has never posed a problem. However, if this is the concern, perhaps a simple outer limit of a year to complete an application should deal with this. Time parameters for the MOs are of course essential for certainty for Applicants.	The timescales have been introduced in order to incentivise applicants to follow through with their applications in a timely manner, and to thereby enable the efficient deployment of the MO's registration resources.
VPE	14	2.5A	v1.2	Priority We could not identify any instance of this provision being used in the TSC. Please clarify why it has been included.	Section 5 states that it takes priority over Section 4
Moyle	14	2.6 - 2.14A	v1.2	A fundamental issue with these provisions appears to be that all of the rights that they confer on an Applicant are unenforceable by the Applicant because it is not a party to the Code. Some mechanism must be developed for ensuring that an Applicant has the rights conferred by these sections. There are a number of ways for this to be addressed (for example by incorporating these procedures in AP1 and allowing a person to enforce these procedures by signing an application form or by defining "Applicant" as a person who signs an application form and so that person can then enforce the rights of an Applicant under the Code) . We are not prescriptive as to it is addressed, so long as it is clear what rights an Applicant party actually has.	Procedures are laid out in AP1. The process for accession should be simple and quick. Once a Party, a person has an enforceable right under the Code.
VPE	14	2.6 - 2.14A Parties and Accession	v1.2	A fundamental issue with these provisions appears to be that all of the rights that they confer on an Applicant are unenforceable by the Applicant because it is not a party to the Code. Some mechanism must be developed for ensuring that an Applicant has the rights conferred by these sections. There are a number of ways for this to be addressed (for example by incorporating these procedures in AP1 and allowing a person to enforce these procedures by signing an application form or by defining "Applicant" as a person who signs an application form and so that person can then enforce the rights of an Applicant under the Code) . We are not prescriptive as to it is addressed, so long as it is clear what rights an Applicant party actually has.	Procedures are laid out in AP1. The process for accession should be simple and quick. Once a Party, a person has an enfoirceable right under the Code.
VPE	14	2.6+	v1.2	Parties and Accession The drafting has improved here and we would hope to see that the provisions would continue to develop toward increased clarity and a balanced approach. In particular, from an applicant's perspective, there is a need to ensure that discretion is limited and that there are safeguards to ensure that all decisions must be fully justifiable and, where appropriate, reviewable against identified criteria. In addition, the applicant must be able to enforce its rights under this section. As an example, we note that under 2.10A there is the ability for the Regulatory Authorities to instruct the SMO that an applicant should not be permitted to accede to the Code, notwithstanding that all other conditions would otherwise be complied with. Further clarification is required as to why this is thought to be required and what checks and balances there will be in relation to RAs decisions. Given the immediate and significant impact on a participant, a lengthy process which deals with only procedural matters (such as judicial review) would not be appropriate.	This provision sets out the manner in which the registration procedures under the Code are to deal with circumstances where the RAs determine that a person should not become a party to the Code. However, the source of the RAs' power to make such a determination will lie outside the Code, so it would not be appropriate for the Code to attempt to restrict the manner in which the RAs (who are not parties to the Code) would exercise such a power. Participants are reminded that the RAs will in such matters be bound by the requirements of adminstrative law.
VPE	15	2.15	v1.2	De Minimis Participation This provision seems to be confusing and incorrect. (1) Generators are required to be registered, whereas the reference should be to Generating Unit. Generator links to Maximum Export Capacity and therefore to a specific entity. (2) The section is titled De Minimis Participation, but appears to deal with normal participation obligations. (3) See our general comments on Intermediaries which would need to be reflected here.	Appropriate drafting changes have been introduced into version 1.3 of the TSC.
Moyle	15	2.19	v1.2	It appears that this paragraph has some overlap with paragraph 2.9.	Paragraph 2.9 has been deleted and further legal redrafting undertaken in Section 2.
VPE	15	2.22	v1.2	Participation Notice We note that this provision has been amended to now state the areas that the Participation Notice is to include. It is not clear why, in the light of subparagraph 20, it is necessary for the list to be non-exhaustive.	It should be noticed that there are references to action pursuant to Appendix B and to AP1.
Airtricity	15	2.22	v1.2	We do not agree that the MO should have the level of unfettered decision making permitted by the current wording of this section. The Code needs to provide a guiding framework within which these MO decisions should be made.	2.22 is just a list of information to be provided on registration and it should be noticed that there are references to action pursuant to Appendix B and to AP1..
VPE	15	2.14A	v1.2	Accession Process The SMO should also publish the date of accession of the new party.	The RAs support this idea and have raised a Change Request to make an appropriate change to the baselined version of the TSC.

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VPE	15	2.15 De Minimis Participation	v1.2	We query why a person has to register as a Party if their Generator will be registered by an Intermediary. This imposes significant risks and obligations on small generators (above the de-minimis threshold) and appears to create significant amounts of unnecessary administration for the market to involve people who have no need or desire to participate themselves and therefore have chose to do so via an Intermediary.	Following the RA's decsiion on Intermediaries, the TSC has been amended to remove the obligation on generators using an Intermediary to be a Party to the TSC.
VPE	15	2.15-2.17 De Minimis Participation	v1.2	We are not sure exactly what is meant by "covered by" a connection agreement. Surely every Generator must have in place a connection agreement, otherwise it is not bound to the Grid Code, does not have an MEC and it is impermissible for it to export electricity. In this connection see paragraph 2.22(10).	The terminology is intended to be as general as possible to cover all the forms of such agreements that may exist.
VPE	15	2.16 De Minimis Participation	v1.2	We are not sure that it is appropriate to define the De Minimis threshold (in the Glossary) when Section 7(1) of the Electricity Regulation (Amendment) (SEM) Bill 2006 authorises the CER to set thresholds (in MW) under which generators are not obliged to make electricity available for trading under the SEM. In addition, the concept of De Minimis participation (or exemption) may not be consistent with the 2006 Bill. The 2006 Bill envisages exemptions if a holder of a Licence to Generate generates less than the threshold amount. However the Code appears to relate the De Minimis Threshold to individual power plants.	It is intended that the regulatory power set out in s7(1) of the 2006 SEM Bill will be exercised through the making of the SEM S.I., which is currently being drafted. The De Minimis threshold referred to in the Code is intended to complement the exercise of this power.
VPE	15	2.19 Participation and Registration of Units	v1.2	It appears that this paragraph has some overlap with paragraph 2.9.	Paragraph 2.9 has been deleted and further legal redrafting undertaken in Section 2.
Moyle	15	2.19-2.36	v1.2	These paragraphs are drafted generically in relation to registration of Units. However, we do not believe that all of the provisions are applicable to all types of Units. For example the registration data requirements of Supplier Units and Generator Units will be different (eg Supplier Units will not have Connection Agreements) but equally the requirements for the different types of Generator Units will be very different. These provisions look as though they were drafted for a generator but would not necessarily all be appropriate for a Interconnector Unit, Interconnector Error Unit or Interconnector Residual Capacity Unit. Furthermore, while some classes of Participant will be treated as Generator Units for the Code, they will not necessarily be licensed as Generators and this needs to be accommodated in the drafting. Also, these provisions are cross-referenced to registration of Interconnectors (which are not themselves Units) and therefore it is not clear how these provisions operate together.	Registration requirements (eg. para 2.22) have been qualified by “all necessary” to capture the differences between the various types of units. Specific registration provisions have been added to address the requirements applicable to each of Interconnectors, Interconnector Units, Interconnector Error Units and Interconnector Residual Capacity Units.
VPE	15	2.19-2.36 Participation and Registration of Units	v1.2	These paragraphs are drafted generically in relation to registration of Units. However, we do not believe that all of the provisions are applicable to all types of Units. For example the registration data requirements of Supplier Units and Generator Units will be different (eg Supplier Units will not have Connection Agreements) but equally the requirements for the different types of Generator Units will be very different. These provisions look as though they were drafted for a generator but would not necessarily all be appropriate for a Interconnector Unit, Interconnector Error Unit or Interconnector Residual Capacity Unit. Furthermore, while some classes of Participant will be treated as Generator Units for the Code, they will not necessarily be licensed as Generators and this needs to be accommodated in the drafting. Also, these provisions are cross-referenced to registration of Interconnectors (which are not themselves Units) and therefore it is not clear how these provisions operate together. It may be preferable to set out the Registration Data in respect of each type of unit in Appendix B and simply cross reference the Appen	There has been substantial redrafting of the Code in relation to Interconnectors.
VPE	15	2.21 Participation and Registration of Units	v1.2	We note that in the last version of the Code, a Party owning a generator could appoint a division of its business or an Affiliate as the Participant in respect of the relevant Generator Unit. We strongly endorsed this approach as it would facilitate management of many of our most significant concerns in relation to legacy contracts for these facilities and the ability to maintain and secure non-recourse debt finance in the Irish market in the future. We note however that this flexibility has been removed and we query the reason for this. Indeed, we previously queried why the right to act as Participant should be limited to Affiliates. We are of the view that this should be available to any licensed Party to the Code. Paragraphs 2.19 and 2.21 now appear to indicate that the Party and Participant must be the same entity.	A Participant is a Party which has registered a Unit. Parties must set up different Participants in each jurisdiction and may, with RA approval, set up further Participants (generally to reflect ringfencing arrangements). The RAs take the view that except for the intermediary role designed to facilitate a limited class of legacy arrangements, participation should remain with the entity that owns or controls the generator, in order to ensure that liability under the Code is appropriately distributed.
Moyle	16	2.22	v1.2	See our general comments, above, in relation to paragraphs 2.19-2.36: Participation and Registration of Units. We also query the relationship between sub-paragraphs 7 and 14 as they appear to deal with the same matters. Further, as defined, not all Generator Units will have a Trading Site, Trading Site Supplier Unit or Associated Supplier Unit (e.g. Interconnector Units).	Sub-paragraphs 7 & 14 refer to similar concepts, at different levels of Code participation. 7 sets out the Effective Date on which trading by a Unit is intended to commence, while 14 sets out the Effective Date on which the Party intends its participation to commence. It will be a requirement of registration that the two are consistent. In sub-para 2.22.16, generator has now been qualified by “relevant”.
VPE	16	2.22 Participation and Registration of Units	v1.2	See our general comments, above, in relation to paragraphs 2.19-2.36: Participation and Registration of Units. We also query the relationship between sub-paragraphs 7 and 14 as they appear to deal with the same matters. Further, as defined, not all Generator Units will have a Trading Site, Trading Site Supplier Unit or Associated Supplier Unit (e.g. Interconnector Units).	Sub-paragraphs 7 & 14 refer to similar concepts, at different levels of Code participation. 7 sets out the Effective Date on which trading by a Unit is intended to commence, while 14 sets out the Effective Date on which the Party intends its participation to commence. It will be a requirement of registration that the two are consistent. In sub-para 2.22.16, generator has now been qualified by “relevant”.
VPE	16	2.23 Participation and Registration of Units	v1.2	The M in market should be capitalised (third last line). Query whether ‘no’ in the second last line should be ‘not’.	corrected
Moyle	17	2.24	v1.2	For clarity this should be stated at the beginning of this section. The word ‘Notice’ appears to be missing from the end of this Paragraph.	This paragraph has been moved as suggested.
VPE	17	2.24	v1.2	For clarity this should be stated at the beginning of this section. The word ‘Notice’ appears to be missing from the end of this Paragraph.	This paragraph has been moved as suggested.
VPE	17	2.25	v1.2	It is difficult to understand what is intended by this. As indicated previously, it is not clear why a Participant must register as a Participant in each jurisdiction (Currency Zone). What is intended to be achieved by this and what are the consequences?	Parties are required to register as a separate Participant in each jurisdiction because they will be billed and paid in different currencies in each jurisdiction.

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VPE	17	2.26	v1.2	It appears discriminatory in the context of the SEM to charge a person additional fees because they are operating on an all island basis? Practically we would expect that the amount of such fees would only be reflective of additional costs and so would not be material and should not act as an active disincentive to participation in the market on an all island basis. On this basis we have no objection to this, but if this is not the case, it is hard to reconcile this approach with the objectives of establishing the SEM. We also note our comments at paragraphs 2.12 and 2.13 in relation to the fact that specifying a timeframe for payment is unnecessary and inappropriate in these circumstances. These comments apply equally in relation to this obligation.	Participation Fees are levied in respect of the registration of a Unit, not the registration, or deemed registration, of a Participant. No additional fees will therefore be payable under this provision by reason only of all-island operation. Our earlier responses in relation to timescales apply equally here.
Moyle	17	2.26, 2.29 and 2.30A	v1.2	We note our comments at paragraphs 2.12 and 2.13 in relation to the fact that specifying a timeframe for payment is unnecessary and inappropriate in these circumstances. These comments apply equally in relation to this obligation.	Timscales can be extended if necessary
VPE	17	2.27 Participation and Registration of Units	v1.2	It appears that this means that a person could be a single Participant in respect of multiple Generator Units, a Supplier Unit (or possible multiple Supplier Units), an Interconnector Unit, an Interconnector Error Units etc all in the same jurisdiction? Is this intended? Does this arrangement accommodate the fact that suspension and termination should be able to be implemented only in relation to Units that are in default and not in respect of the Participant (ie. all Units).	Such participation is possible. Suspension (except in the case of non-payment) may apply to any (or all) of a Participants Units and is subject to RA approval
VPE	17	2.29 and 2.30A Participation and Registration of Units	v1.2	We note our comments at paragraphs 2.12 and 2.13 in relation to the fact that specifying a timeframe in relation to registration obligations on applicants is unnecessary and inappropriate.	The purpose of the timescales (which can be varied) is to ensure that the MO's time is not wasted looking after applications which have in reality lapsed.
VPE	17	2.30(2)	v1.2	Participation Notice We note that there are references to requirements in the agreed procedures, such as agreed procedures 3 "communication channel qualification". It is important, to ensure the participants and prospective participants have certainty as to their obligations, and the scope of such agreed procedures should be known in advance. For example, we note that paragraph 3.3 of section 3 sets out in relation to the SMO the communication channels that must be established and maintained by the SMO. A similar description is required in relation to participants.	See redrafted Appendix L which lays out the scope of Agreed Procedures.
VPE	17	2.30.	v1.2	Participation Notice In sub paragraph 3, please clarify what is meant by "satisfactory" provision of data.	Satisfactory means complete and in the form required.
Moyle	18	2.31	v1.2	This paragraph should have an obligation on the MO to provide the confirmation required as soon as is reasonably practicable (see comments at 2.32, below). At present there is no obligation in relation to the timing of such notice. It is also not clear that the MO specifying satisfaction under 2.31 is done through the Commencement Notice under 2.32 or is this an additional step. This should be clarified. Also, there appears to be an inconsistency between paragraphs 2.31 and 2.32 in relation to provision of Credit Cover. 2.32 appears to contemplate that 2.31 could be satisfied without provision of Credit Cover but 2.31.1 appears to suggest that this is not possible.	Specific reference to 2.32 has been added, which imports the desired timing requirement, and clarifies that the listed items will be set out in the Commencement Notice. Credit Cover is dealt with in 2.32 and 2.32A.
Moyle	18	2.32	v1.2	Market participants must have certainty as to their rights and obligations vis a vis the Market Operator. The Market Operator must at least have an obligation to act reasonably and promptly in processing applications. Preferably this paragraph should specify a maximum timeframe within which a Commencement Notice will issue. The Regulatory Authorities will be aware that they have found it necessary to do this in other circumstances in the past (e.g. in the context of connection offers).	The words "as soon as reasonably practicable" have been added at the end of the first sentence. Any more detailed timscale requirement will be set out in the relevant AP.
VPE	18	2.30 B	v1.2	Participation Notice Insert reasonably before the words "assistance as the Market Operator requests"	See redrafting of these provisions.
VPE	18	2.30A	v1.2	Participation Notice Insert "reasonably" before the words "specified by the Market Operator".	Paragraph 2.30A redrafted.
ESB PG	18	2.30B	v1.2	This paragraph should state that this data should be shared solely for the purpose registration	The purpose of the sharing of data is stated in the paragraph. No change required.
VPE	18	2.31 Participation and Registration of Units	v1.2	This paragraph should have an obligation on the MO to provide the confirmation required as soon as is reasonably practicable (see comments at 2.32, below). At present there is no obligation in relation to the timing of such notice. It is also not clear that the MO specifying satisfaction under 2.31 is done through the Commencement Notice under 2.32 or is this an additional step. This should be clarified. Also, there appears to be an inconsistency between paragraphs 2.31 and 2.32 in relation to provision of Credit Cover. 2.32 appears to contemplate that 2.31 could be satisfied without provision of Credit Cover but 2.31.1 appears to suggest that this is not possible.	See the redrafted paragraph 2.32.
VPE	18	2.32 Participation and Registration of Units	v1.2	Market participants must have certainty as to their rights and obligations vis a vis the Market Operator. The Market Operator must at least have an obligation to act reasonably and promptly in processing applications. Preferably this paragraph should specify a maximum timeframe within which a Commencement Notice will issue. The Regulatory Authorities will be aware that they have found it necessary to do this in other circumstances in the past (e.g. in the context of connection offers).	The words "as soon as reasonably practicable" have been added at the end of the first sentence. Any more detailed timscale requirement will be set out in the relevant AP.
VPE	18	2.32B Participation and Registration of Units	v1.2	The reference to Paragraph 2.31A appears to be incorrect.	typo - now corrected
Moyle	19	2.37	v1.2	This paragraph should also be made subject to the relevant paragraphs of Section 5 (for example, under Paragraph 5.32, an Interconnector Residual Capacity Unit shall be a Predictable Generator Unit but not a Price Maker Generator Unit or Price Taker Generator Unit).	The RAs support this idea and have raised a Change Request to make an appropriate change to the baselined version of the TSC.
Synergen	19	2.22.9	v1.2	Please can the RAs provide further detail on what will suffice for Synergen, as an existing participant, as "evidence of compliance with metering requirements"?	The RAs anticipate that a statement by the relevant Meter Data Provider confirming general compliance with such requirements would suffice.
VPE	19	2.37 Registration as Price Maker Generator Unit or Price Taker Generator Unit	v1.2	This paragraph should also be made subject to the relevant paragraphs of Section 5 (for example, under Paragraph 5.32, an Interconnector Residual Capacity Unit shall be a Predictable Generator Unit but not a Price Maker Generator Unit or Price Taker Generator Unit).	The RAs accept this comment. A Change Request will be raised to add the words "and as otherwise set out in Section 5" to the end of the first clause of this paragraph.
Moyle	20	2.43	v1.2	It is not clear what happens at the end of the period in which the System Operator assumes this role (cf. Paragraphs 2.55 and 2.64). Moyle believes that this period should be longer - preferably at least 6 months to allow appropriate time to identify a suitable replacement and put in place all necessary arrangements.	Note that the 2 month period starts with the suspension which (unless with non-payment) is likely to be at the end of a period of defaults. Two months at the end of this is judged sufficient.

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Moyle	20	2.44	v1.2	It is not clear whether there is a separate process that must be followed for registering a Trading Site or whether when registering a Generator Unit, an associated Trading Site must be specified. This paragraph has been made subject to Section 5 - it should be made clear what paragraphs in Section 5 are being referred to. How does this paragraph apply to Interconnector Units, Interconnector Residual Capacity Units and the Interconnector Error Unit?	The detailed procedure for registering a Trading Site will be found in the relevant AP. The provisions of sections 2 or 5 that dominate para 2.44 are those that impose different registration requirements, and the RAs do not believe that it is necessary to list such provisions explicitly. The Code provides (see 2.58, 2.61 and 2.66) that none of the units referred to shall form part of a Trading Site.
VPE	20	2.43 Registration of Error Supplier Unit	v1.2	It is not clear what happens at the end of the period in which the System Operator assumes this role (cf. Paragraphs 2.55 and 2.64).	The period is described as an "initial period" because while it is clear that a registrant for the Error Supplier Unit is necessary, it would not be appropriate for parties to the Code to be given the expectation that the SO will assume the role on an indefinite basis. The RAs anticipate that under such circumstances, the identity of the enduring registrant of the Error Supplier Unit will be determined outside the Code, and cannot therefore be meaningfully set out within it.
VPE	20	2.44 Registration of a Trading Site	v1.2	It is not clear whether there is a separate process that must be followed for registering a Trading Site or whether when registering a Generator Unit, an associated Trading Site must be specified. This paragraph has been made subject to Section 5 - it should be made clear what paragraphs in Section 5 are being referred to. How does this paragraph apply to Interconnector Units, Interconnector Residual Capacity Units and the Interconnector Error Unit?	The detailed procedure for registering a Trading Site will be found in the relevant AP. The provisions of sections 2 or 5 that dominate para 2.44 are those that impose different registration requirements, and the RAs do not believe that it is necessary to list such provisions explicitly. The Code provides (see 2.58, 2.61 and 2.66) that none of the units referred to shall form part of a Trading Site.
VPE	20	2.47 Registration of Trading Site	v1.2	There appear to be errors or ambiguities in the definitions of Supplier Unit and Associated Supplier Unit. The reason for needing to register an Associated Supplier Unit to every Trading Site is unclear. This appears inconsistent with paragraph 2.45. Furthermore, if it automatically flows that an Associated Supplier Unit must be registered this should be included as part of the same process and not as a separate process.	See revised drafting in Version 1.3 of the Code. Each trading Site must have either a Trading Site Supplier Unit or an Associated Supplier Unit
VPE	20	2.48 Registration of Trading Site	v1.2	This should be done automatically and not be established as a separate obligation. See above.	See revised drafting on Trading Sites in Version 1.3 of the Code.
Moyle	21	2.53	v1.2	The person registering the Interconnector should be responsible for maintaining the Registration Data rather than the Interconnector Administrator. Capacity Holdings should be able to be provided by the person who registered the Interconnector or the Interconnector Administrator on its behalf.	There has been substantial redrafting of the Code in relation to Interconnectors.
VPE	21	2.48C Registration of Trading Site	v1.2	Presumably each such Trading Site should have not only a Netting Generation Unit but also an Associated Supplier Unit or Trading Site Supplier Unit?	yes
ESBCS	21	2.48D	v1.2	Query with MRSO as to whether the meter providers can accommodate multiple MPIDs (generator units) registered to different participants on the same trading site	See revised drafting on Trading Sites in Version 1.3 of the Code.
VPE	21	2.48D Registration of Trading Site	v1.2	Non-Firm Access is defined to have the meaning set out in Paragraph 4.2. However this paragraph is Intentionally blank. Firm Access Quantity / Firm Access Quantity of Trading Site is not defined.	corrected
VPE	21	2.48F Registration of Trading Site	v1.2	Presumably "allocated appropriately" means that Firm-Access Generator Units are allocated their full capacity. Can this be stated more clearly?	See revised drafting in Version 1.3 of the Code.
VPE	21	2.49 – 2.67	v1.2	Interconnectors SONI is commenting separately on these provisions and concerns remain about the registration process and allocation of notes. Also, the ability to deregister an interconnector seems inappropriate given the potential impact. The Code should set out an alternative mechanism that avoids this consequence. Also, we note that the TSO can temporarily assume a Participant's responsibilities for 2 months. What would be the position after the 2 months?	There has been substantial redrafting of the Code in relation to Interconnectors.
Moyle	21	2.49-2.52	v1.2	Moyle is of the view that the Interconnector should be registered by the Interconnector Owner or its nominee, who would be required to be a Party under the Code. It should not be registered by the Interconnector Administrator as this creates significant practical difficulties in changing Interconnector Administrator. The Code should contain separate provisions dealing with appointment and registration of an Interconnector Administrator. Furthermore, the Code should preclude the resignation of an Interconnector Administrator as is the case in BETTA and prevent suspension or termination without the consent of the Minister (as is also the case in BETTA) given the political sensitivity of terminating a cross border electricity flow. We also note that the ordinary Unit registration data requirements may not work for Interconnectors or Interconnector Administrators. We refer to our proposed alternative drafting for these sections submitted with these comments.	There has been substantial redrafting of the Code in relation to Interconnectors.
Moyle	22	2.54	v1.2	It is not clear what happens at the end of the two month period that the SO has acted as Interconnector Administrator? Moyle believes that this period should be longer - preferably at least 6 months to allow appropriate time to identify a suitable replacement and put in place all necessary arrangements.	Note that the 2 month period starts with the suspension which (unless with non-payment) is likely to be at the end of a period of defaults. In addition the period can be extended with the agreement of the System Operator.
Moyle	22	2.57	v1.2	The ordinary Unit registration data requirements may not work for an Interconnector Residual Capacity Unit. We refer to our proposed alternative drafting for these sections submitted with these comments. We also believe that it is important that the Code specify that the Participant in respect of the Interconnector Residual Capacity Unit cannot resign or be removed from this role.	There has been substantial redrafting of the Code in relation to Interconnectors.
Moyle	22	2.62	v1.2	It is not clear what happens at the end of the two month period that the SO has acted as Participant in respect of the Interconnector Error Unit. Moyle believes that this period should be longer - preferably at least 6 months to allow appropriate time to identify a suitable replacement and put in place all necessary arrangements.	Note that the 2 month period starts with the suspension which (unless with non-payment) is likely to be at the end of a period of defaults. Two months at the end of this is judged sufficient.

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VPE	22	2.54 Registration of an Interconnector	v1.2	It is not clear what happens at the end of the two month period that the SO has acted as Interconnector Administrator? This period should be longer.	Note that the 2 month period starts with the suspension which (unless with non-payment) is likely to be at the end of a period of defaults. In addition the period can be extended with the agreement of the System Operator.
Moyle	22	2.55 & 2.64	v1.2	There are significant policy implications of de-registering and interconnector (in particular with regard to security of supply, minimising price). We recommend that this be redrafted so power flows are set to zero for so long as an Interconnector Administrator is not appointed as per the GB Balancing and Settlement Code.	There has been substantial redrafting of the Code in relation to Interconnectors.
VPE	22	2.55 & 2.64 Registration of an Interconnector	v1.2	There are significant policy implications of de-registering and interconnector (in particular with regard to security of supply, minimising price). We recommend that this be redrafted so power flows are set to zero for so long as an Interconnector Administrator is not appointed as per the GB Balancing and Settlement Code.	There has been substantial redrafting of the Code in relation to Interconnectors.
Moyle	22	2.59 & 2.60	v1.2	These paragraphs appear to say essentially the same thing? That said, the ordinary Unit registration data requirements may not work for an Interconnector Error Unit. We refer to our proposed alternative drafting for these sections submitted with these comments. Furthermore, the Code should preclude the resignation of the Participant in respect of the Interconnector Error Unit (as is the case in BETTA) and prevent suspension or termination without the consent of the Minister (as is also the case in BETTA) given the political sensitivity of terminating a cross border electricity flow.	There has been substantial redrafting of the Code in relation to Interconnectors.
VPE	22	2.59 & 2.60 Interconnector Error Unit	v1.2	These paragraphs appear to say essentially the same thing?	There has been substantial redrafting of the Code in relation to Interconnectors.
VPE	22	2.62 Registration of an Interconnector	v1.2	It is not clear what happens at the end of the two month period that the SO has acted as Participant in respect of the Interconnector Error Unit. This period should be longer.	There has been substantial redrafting of the Code in relation to Interconnectors.
Moyle	23	2.65	v1.2	The ordinary Unit registration data requirements may not work for an Interconnector Unit. We refer to our proposed alternative drafting for these sections submitted with these comments.	There has been substantial redrafting of the Code in relation to Interconnectors.
VPE	23	2.68 – 2.76	v1.2	Intermediaries (1) There seems no need for the RAs to be directly involved under the Code in relation to registration of Intermediaries and specifying the time period for participation. Any matters relating to the RAs in this way would appropriately be addressed in the licence and not the Code. (2) Why the non-Intermediary needs to be a party to the Code at all remains unclear. This is particularly an issue for smaller Generators such as windfarms that exceed 10MW, but wish to have an Intermediary deal with all matters under the trading arrangements. It would be impractical and inappropriate for such parties to be required to acceded to the Code, and carry out the due diligence that would entail in relation to their obligations. (3) The same point arrises for larger generators who could in any event be required to register an Intermediary under their licence. This would avoid the need for such generators to accede to the Code. Currently, the position, rights and obligations of these 'background' parties to the Code remains unclear. 4) We reiterate out previous points on there being (5) it is unclear why there is a requirement for SMO	Following the RA's decision on Intermediaries, the TSC has been amended to remove the obligation on generators using an Intermediary to be a Party to the TSC. Other associated changes have been made.
VPE	23	2.68 - 2.76 Intermediaries	v1.2	Any person should be able to appoint an Intermediary that is a Party to register its Units. There should be no need for a person who has appointed an Intermediary to be a party to the Code. Furthermore, the Code should make it explicit that it will not be impermissible to sell physical power to an intermediary in order to ensure that existing contractual arrangements can survive in the SEM, but that all power is ultimately sold through the pool.	Following the RA's decision on Intermediaries, the TSC has been amended to remove the obligation on generators using an Intermediary to be a Party to the TSC. Other associated changes have been made.
VPE	23	2.69 Intermediaries	v1.2	Should be a capital N in "First Participation Information notice".	fixed
VPE	23	2.70.1 and 2.72 Intermediaries	v1.2	The obligations of the RA's should be clearly defined. As currently drafted it is not clear in what time frame the RAs are required to respond, nor the basis on which they may grant or withhold consent.	The Code cannot place obligations on the RAs
VPE	23	2.73 Intermediaries	v1.2	We are strongly of the view that joint and several liability between generators and intermediaries is an unworkable arrangement. On the one hand generators will not be able to secure non recourse financing where the generator is exposed potentially to its intermediary's liabilities. On the other hand an intermediary would potentially be exposed to generator liabilities or default. An intermediary could also have multiple generators and it would be inequitable to expose its entire business to the liability or default of a single generator. It would make more sense for the intermediary to be the sole participant on behalf of a generator, and for the regulatory authorities to use license sanctions if necessary to discipline a generator. Requiring an Intermediary to be a Party and a Participant and therefore to comply with the Code goes a long way towards achieving this. Intermediary provisions in licenses may also be appropriate in this context.	Following the RA's decision on Intermediaries, the TSC has been amended to remove the obligation on generators using an Intermediary to be a Party to the TSC. Other associated changes have been made.
VPE	23	2.74 - 2.75 Intermediaries	v1.2	It is not appropriate that a Market Operator should have the right to refuse consent to revocation of the appointment of an Intermediary. It is appropriate that it has the right to determine whether the Generator is capable of performing its obligations in the absence of an Intermediary, but the appointment of an Intermediary must be a matter of contract between Parties and if this is terminated in accordance with its terms it is not appropriate for the Market Operator to be able to force this to continue. Paragraph 2.75 also appears to be describing processes rather than outcomes. The obligations of a Generator should be clearly set out and if they are not satisfied the Generator should bear the consequences in relation to its future participation in the market.	Following the RA's decision on Intermediaries, the TSC has been amended to remove the obligation on generators using an Intermediary to be a Party to the TSC. Other associated changes have been made.
VPE	24	2.75(2) Intermediaries	v1.2	Appears to be a slight error in drafting.	corrected
VPE	24	2.76 Intermediaries	v1.2	It is not clear why a party should be obliged to appoint an Intermediary or register the Unit itself. Surely the Unit should simply not be permitted to participate in the pool until these requirements are satisfied and it should be the choice of the relevant Party to decide if and when it will appoint an Intermediary or register the Unit itself.	Following the RA's decision on Intermediaries, the TSC has been amended to remove the obligation on generators using an Intermediary to be a Party to the TSC. Other associated changes have been made.
VPE	24	2.77-2.78	v1.2	Voluntary Deregistration of Units The process for a Party to voluntarily deregister Units has been expanded and timetables have been set out. There are limitations on a Party's ability to deregister, including the obligation to follow a set Agreed Procedure and to pay sums to the SMO. Further, the SMO appears to have a wide scope of powers in relation to any Voluntary Deregistration. It is not clear what is intended would be contained in conditions placed on deregistering participants. The process and requirements should be set out in an AP rather than be left to the SMO's discretion in this way. 2.77 should be expanded to indicate the scope of what AP 1 is intended to cover.	Requirements for the deregistration of units are set out within the list in 2.77B. The additional need to comply with AP1 is qualified by the fact that it is the "procedure" that must be complied with.

Organisation	Page	Code	Document	Comments	RA response
Moyle	24	2.77B & 2.77C	v1.2	This appears to give the Market Operator an excessively wide discretion to impose terms and conditions of deregistration. Possible conditions should be clear in advance to Parties. For example could conditions include an obligation to provide Credit Cover, which was required by Clause 2.78 (now intentionally blank) in Version 1.1 of the Code? In addition, Paragraphs 2.77B & 2.77C appear to be contradictory in that Paragraph 2.77B obliges the MO to permit Deregistration providing the prescribed requirements are met, whereas Paragraph 2.77C permits the MO to make deregistration contingent upon further terms and conditions.	Redrafted to remove the Market Operator discretion.
VPE	24	2.77B & 2.77C De-registration	v1.2	This appears to give the Market Operator an excessively wide discretion to impose terms and conditions of deregistration. Viridian is of the view that the Code should clearly set out the conditions of de-registration (and this should be limited to a notice period and an obligation to provide Credit Cover and comply with surviving obligations (which should themselves be clearly specified in the Code - such as accrued rights and obligations). If any discretionary powers are exercisable, which Viridian does not believe is necessary, it is unacceptable that the Market Operator should have this discretion. Any such discretions should be strictly limited to the Regulatory Authorities. In addition, Paragraphs 2.77B & 2.77C appear to be contradictory in that Paragraph 2.77B obliges the MO to permit Deregistration providing the prescribed requirements are met, whereas Paragraph 2.77C permits the MO to make deregistration contingent upon further terms and conditions.	Redrafted to remove the Market Operator discretion.
Moyle	25	2.81	v1.2	As indicated in previous comments, this Paragraph provided that the MO may not participate in the Market. However, as a matter of law the MO will be the SOs. This meant that the SOs cannot participate in the Market. This has been amended in the current draft, but we query whether this is appropriate for the Code. This may be more appropriate for a licensing regime with appropriate ringfencing obligations rather than the Code.	This position will be a feature both of the Code and of the licensing regime
Synergen	25	2.81	v1.2	Synergen supports this provision but has some concern that SONI will be in technical breach of this. Please can the RAs clarify this matter in specifically responding to comments raised on v1.2 of the T&SC?	In version 1.3 of the Code, the words "save as provided for by law, or under this Code" have been inserted to cover the situation where SONI or Eirgrid may be required to act as a Participant.
Moyle	25	2.82	v1.2	The market participants should have full transparency in relation to the persons to whom functions are delegated under the Code. Parties should be notified when any functions are sub-contracted.	The RAs do not believe this is necessary or appropriate.
VPE	25	2.82	v1.2	Market Operator In the event of any delegation by the SMO with the RAs approval, the SMO must remain at all times primarily responsible for fulfilment of its obligations and functions and exercise of its powers.*We noted previously that wording on the dealing with one SMO being deemed to be dealing with both etc has been deleted. The TSC should include some wording clarifying the interface with SMO given that in practice there are two SMOs.	The Market Operator is defined in the Code as two parties who are jointly and severally responsible for the fulfillment of the role. The RAs believe this to be largely adequate, but have added a new paragraph 2.84C for increased clarity.
Synergen	25	2.83	v1.2	Please clarify the legal reason for the inclusion of this paragraph.	The RAs need the ability to propose modifications in order to ensure that the market develops in an appropriate manner.
Moyle	25	2.108 - 2.206	v1.2	In our view, the section on Modifications Provisions is still lengthy and complex. It raises a concern that the mere administration of the Modifications process is so complex and unwieldy in the context of a small market that it will create a significant disincentive for anyone to participate. This is largely narrative procedure and is inappropriate for this section of the Code. It should all be moved to an Agreed Procedure and Parties should be obliged to comply with the Agreed Procedures and the Code as modified from time to time in accordance with the Agreed Procedures. Furthermore, these pragraphs do not appear to provide for adequate representation of Parties that are not Participants e.g. an Interconnector Administrator. All Parties should have the same rights as Participants and references to Nominating Participants should be to Nominating Parties and the definition of Nominating Participant should be amended accordingly.	RAs take the view that the provisions for the modification of the code have to be laid out with clarity and openness.
VPE	25	2.108 - 2.206 Modifications	v1.2	In our view, the section on Modifications Provisions is still lengthy and complex. It raises a concern that the mere administration of the Modifications process is so complex and unwieldy in the context of a small market that it will create a significant disincentive for anyone to participate. This is largely narrative procedure and is inappropriate for this section of the Code. It should all be moved to an Agreed Procedure and Parties should be obliged to comply with the Agreed Procedures and the Code as modified from time to time in accordance with the Agreed Procedures.	RAs take the view that the provisions for the modification of the code have to be laid out with clarity and openness.
VPE	25	2.108-2.206 Modifications	v1.2	It is not clear whether Members (sometimes members of the Modifications Committee; naming not consistent) are accountable to their Nominating Participants or to the Market Operator.	The RAs note the inconsistency in nomenclature and are making corrections to the use of "Member" in version 1.3 of the TSC. Paragraph 2.113 defines the responsibilities of representative members of the Modifications Committee.
SEM Programme	25	2.79 - 2.84D	v1.2	The SMO has raised a number of points in relation to this section and to the extent these have not been incorporated the points remain outstanding. In relation to the new wording, - in paragraph 2.80 “unduly discriminate” has changed to “unfairly discriminate” and this needs to change back to be consistent with the discrimination provisions in the MO licences. - in paragraph 2.81 we would request that the obligation to obtain the prior written consent of the Regulatory Authorities be limited to contracts of a “material value” rather than the unnecessarily prescriptive €50,000 limit. - the obligation on the SMO to perform any calculation under the Code in paragraph 2.84 is a new obligation and is wrong. The SMO can only perform those calculations which the Code specifically makes provision and which the SMO systems have been designed to carry out. - the way in which the role of Market Operator is defined in the Code would be better dealt with as part of the definition of the MO as follows, “Market Operator means EirGrid plc and SONI Limited solely in their role as the undertakings authorised by the Regulatory Authorities to perform the Market Operator function pursuant to the MO - new paragraph 2.84C introduces the concept of the SMO having a “Disaster Recovery Plan”. This is	Appropriate drafting changes have been introduced into version 1.3 of the TSC.
VPE	25	2.79+	v1.2	Market Operator The SMO will be a Party to the TSC and the question of how these obligations can be enforced (and by whom) against the SMO has not been answered. Currently, the SMO's obligations appear to be unenforceable. If the SMO breaches these obligations, there does not appear to be any sanctions that can be taken against the SMO, especially as the provisions on Default do not apply to the SMO. The appropriate (if any) Credit Cover of the SMO will need to be considered if the actions of the SMO can cause loss to the other Parties and such loss is actionable.	If the Market Operator breaches the Code, it will be in breach of its licence(s) which will be a matter for the RAs
VPE	25	2.80.	v1.2	Market Operator The term “unfairly” is even more unclear than unduly. The provision should be clarified by an explanation of what constitutes undue or unfair discrimination. The wording should revert to “unduly” and clarification set out as to what would be considered undue.	"unduly" is more common under NI law and that change has therfore been made.
VPE	25	2.81 Market Operator	v1.2	As indicated in previous comments, this Paragraph provided that the MO may not participate in the Market. However, as a matter of law the MO will be the SOs. This meant that the SOs cannot participate in the Market. This has been amended in the current draft, but we query whether this is appropriate for the Code. This may be more appropriate for a licensing regime with appropriate ringfencing obligations rather than the Code.	This provision is necessary for the Code in addition to any licence provisions.

Organisation	Page	Code	Document	Comments	RA response
VPE	25	2.82 Market Operator	v1.2	The market participants should have full transparency in relation to the persons to whom functions are delegated under the Code. Parties should be notified when any functions are sub-contracted.	The RAs do not believe this is necessary or appropriate.
Moyle	25	2.84B	v1.2	We note that Paragraph 2.52 of Version 1.0 has been party reinstated so that the MOs are jointly and severally liable. The original paragraph, below, should be fully reinstated: 1. if any undertaking comprising the Market Operator is given and/or discharges any obligation or liability, then all undertakings comprising the Market Operator are deemed to have been given and/or discharged the obligation or liability; 2. where the Code confers a right on the Market Operator, such is a right for all undertakings comprising the Market Operator; 3. where any right or function of the Market Operator is exercised by any of the undertakings comprising the Market Operator, such right or function is deemed to have been exercised by all undertakings comprising the Market Operator; and 4. Where a Party owes an obligation or liability to the Market Operator, if that Party discharges that obligation or liability to either undertaking comprising the Market Operator, then the Party shall be deemed to have discharged the obligation or liability to all undertakings comprising the Market Operator."	The Market Operator is defined in the Code as two parties who are jointly and severally responsible for the fulfillment of the role. The RAs believe this to be largely adequate, but have added a new paragraph 2.84C for increased clarity.
VPE	25	2.84B Market Operator	v1.2	We note that Paragraph 2.52 of Version 1.0 has been party reinstated so that the entities which comprise the MO are jointly and severally liable. The original paragraph, below, should be fully reinstated:	The Market Operator is defined in the Code as two parties who are jointly and severally responsible for the fulfillment of the role. The RAs believe this to be largely adequate, but have added a new paragraph 2.84C for increased clarity.
VPE	25	2.84B Market Operator	v1.2	"Where the Market Operator comprises more than one undertaking, and where the Code confers an obligation on the Market Operator or the Market Operator has a liability under the Code, the obligation or liability shall be interpreted as being a joint and several obligation or liability on each undertaking comprising the Market Operator. In particular, and without prejudice to the generality of the foregoing	The Code continues to define the responsibilities of the bodies which compose the Market Operator as joint and several in paragraph 2.84B.
VPE	25	2.84B Market Operator	v1.2	1. if any undertaking comprising the Market Operator is given and/or discharges any obligation or liability, then all undertakings comprising the Market Operator are deemed to have been given and/or discharged the obligation or liability;	It is believed that this provision is covered by the "joint and several" point.
VPE	25	2.84B Market Operator	v1.2	2. where the Code confers a right on the Market Operator, such is a right for all undertakings comprising the Market Operator;	It is believed that this provision is covered by the "joint and several" point.
VPE	25	2.84B Market Operator	v1.2	3. where any right or function of the Market Operator is exercised by any of the undertakings comprising the Market Operator, such right or function is deemed to have been exercised by all undertakings comprising the Market Operator; and	It is believed that this provision is covered by the "joint and several" point.
VPE	25	2.84B Market Operator	v1.2	4. Where a Party owes an obligation or liability to the Market Operator, if that Party discharges that obligation or liability to either undertaking comprising the Market Operator, then the Party shall be deemed to have discharged the obligation or liability to all undertakings comprising the Market Operator."	See new paragraph 2.84C.
VPE	25	2.84C	v1.2	Market Operator It is not clear what is meant by "The Market Operator shall test the Disaster Recovery Plan for approval...". Please clarify.	Disaster Recovery Plan provisions have been removed
VPE	25	2.84C Market Operator	v1.2	Disaster Recovery Plan is not defined.	Disaster Recovery Plan provisions have been removed
VPE	25	2.85 Costs of Market Operator	v1.2	Given that there will be more than one Market Operator and more than one Regulatory Authority, query how the Regulatory Authorities will apportion responsibility for approving allowed revenues of Market Operators and which Participants will bear such costs. For example, will costs incurred in Ireland be approved by the Irish Regulatory Authority and borne by Irish Participants, with the same arrangement in Northern Ireland, or will some other arrangement be implemented?	This is a matter for the RAs.
VPE	26	2.86	v1.2	Obligations on Parties The drafting seeks to make clear that the Code is not the vehicle by which Parties are bound into complying with all Legal Requirements (which is a very wide definition) and while we acknowledge that the revised drafting goes some way to addressing this issue, it could still be construed as potentially leaving open a party to having Legal Requirements effectively enforced against it by the SMO under the Code. The intention appears to be where the exercise of rights and powers could impact on the Legal Requirements applicable to a Party, the Party is to ensure that it exercises its rights and powers consistent with such Legal Requirements. Also, while the reference in the paragraph is to "Party", it is unclear how this provision could be enforced against the SMO.	The words "with all legal requirements" have been removed from this paragraph.
VPE	26	2.88	v1.2	Obligations on Parties We note the amendments made to this provision. Subparagraph (2) continues to give rise to concern. The drafting requires Parties to "procure, comply with and maintain all consents, permissions, Licences (and the conditions attaching to any exemptions) required to be obtained to participate in the SEM or to be a Party to the Code". E.g. where a licence needs to be obtained for participation in the SEM, through this provision Parties are required to comply with every condition of such licence whether or not related to the SEM, and which thereby become enforceable by the SMO and subject to sanctions. The drafting needs to be revisited to ensure that only the need to maintain such licence is an issue for the TSC, with enforcement of the licence being a matter for the RAs and not the TSC.	The words "with all legal requirements" have been removed from this paragraph.
SEM Programme	26	2.89	v1.2	We note that the Regulatory Authorities are to appoint the Market Auditor and specify the terms of reference of the Audit with the SMO paying the fees and costs of the Market Auditor. As raised in comments on v1.1 of the Code, the SMO cannot guarantee that the costs and fees of the Market Auditor will be managed efficiently if it is the Regulatory Authorities which are responsible for contracting and setting the terms of reference with the Auditor. We would request this be changed such that either the fees and costs are borne by the Regulatory Authorities or if it is the SMO bearing these costs it should be the SMO who appoints and sets the terms of reference, subject to Regulatory Approval.	On consideration, it is true that there is an efficiency issue in relation to the ToR being set by a body other that that contracting for the Audit; however it is inappropriate for the MO to set the ToR.

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VPE	26	2.87A	v1.2	Obligations on Parties The SMO enforces the provisions of the Code and sues any other Party to recover Shortfalls or Unsecured Bad Debt. (a) The words "and obligation" should be inserted after the word "right" to ensure that the SMO does not have a free discretion as to whether to recover Shortfalls and Bad Debts. If it is intended that the SMO would not so enforce in some circumstances, the SMO should be required to publish a policy by which it would comply. (b) It is not accepted that the SMO is always the "entity appropriate to enforce the provisions of the Code". We would expect that enforcement could occur in different ways and could involve the SMO (e.g. in relation to bad debts), Parties directly (e.g. in the Courts where there has been a direct impact between Parties) and the RAs. (c) A clear process by which a Party can require the SMO to consider the need to enforce the Code against a Party. (d) As the SMO will not itself be owed monies under the Code, Parties would need to give the SMO authority to pursue and collect unsecured bad debts on their behalf. Is this what is intended under Appendix R?	The RAs do not believe that it is right to oblige the Market Operator to recover all shortfalls and bad debts, since this will result in the pursuit of debts on an uneconomic basis. In relation to the wording "entity appropriate to enforce ..", the this is believed to be necessary an appropriate to enable the Market Operator to pursue Parties on the behalf of other Parties. However, further legal advice is being sought on this point and a Change request against version 1.3 of the TSC may result.
VPE	26	2.87A Obligations on Parties	v1.2	Query whether this paragraph is effective at law to give this power to the MO. If a debt is not owed to the MO it may not be able to sue for it. Perhaps each party should appoint the MO as agent to sue on their behalf and also waive any right to contest the standing of the MO to sue it.	Further legal advice is being sought on this point and a Change Request against version 1.3 of the TSC may result.
Airtricity	26	2.88 3	v1.2	The requirement for Participants to agree that they have full understanding of the market risks is unreasonable – particularly as the Code is owned by the RAs and has not incorporated many proposals from Participants. For example, the Code requires the amount of settlement re-allocation to be provided to the MO, but the AP restricts the amounts to currency amounts and excludes percentage amounts. The impact of this is a significant and unquantifiable Participant risk, as a monetary over-nomination of 1 cent (compared with the MO calculation that is based on more complete information that is available to the Participant) could well result in breach of security cover requirements and potential expulsion from the market. The rules and APs need to reflect the ability of Participants to operate them and not result in excessive and unmanageable risk of which we are being expected to claim full understanding.	Paragraph 2.88 3. has been removed from the Code.
VPE	26	2.88 Obligations on the Parties	v1.2	We note that this Paragraph is characterised as containing obligations (whereas in Version 1.1 it was characterised as containing warranties). While this is more appropriate, Sub-Paragraph 3 still appears to be a warranty and is only appropriate in the context of a contract which is negotiated at arms length between the parties. It is not appropriate in the context of a regulatory instrument to which participants are required to be a party - in particular where we know that certain small generators that are likely to participate through Intermediaries certainly do not have a full understanding of the Code and the risks that they face under it. Sub-paragraph 5 should make it clear that, given the nature of the market, Participants must only provide complete information so far as this is possible.	Paragraph 2.88 3. has been removed from the Code, and replaced in the framework agreement as an acknowledgement, which is a more appropriate location for such a warranty. This provision places responsibility on participants to gain a full understanding of the Code, which the RAs do not consider to be unreasonable.
Synergen	26	2.88.3	v1.2	This clause implies that T&SC is a freely entered into contract however this is incorrect - it will be a regulatory imposed mandatory contract. The RAs should explain what would happen if a Party determines that it doesn't have a "full understanding of its material terms and risks" (e.g. as the SMO hasn't provided sufficient insight into the detailed functionality of the market clearing engine) and therefore isn't "capable of assuming those risks"?	Paragraph 2.88 3. has been removed from the Code, and replaced in the framework agreement as an acknowledgement, which is a more appropriate location for such a warranty. This provision places responsibility on participants to gain a full understanding of the Code, which the RAs do not consider to be unreasonable.
VPE	27	2.89 - 2.107 Market Audit, Consultation and Information Sharing	v1.2	This section highlights the issue of the status of the Code and the extent to which it can be binding upon third parties. Though the Regulatory Authorities and Market Auditor may enforce terms if the Code expressly provides they may or purports to confer benefits on them, the Code cannot confer obligations on these parties. Therefore the obligations imposed on the Regulatory Authorities and Market Auditors are unenforceable.	Comment Noted.
VPE	27	2.95 Market Audit, Consultation and Information Sharing	v1.2	The word 'be' appears to be missing in the first line.	fixed
VPE	27	2.97 Market Audit, Consultation and Information Sharing	v1.2	The Code should contain greater certainty about what information is disclosed and what isn't. We are of the view that all information in relation to plant characteristics, bids, volumes, the merit order, dispatch and prices should be published ex post for transparency. The Code should state explicitly that all information in Appendix K is excluded from any obligations of confidentiality.	see 2.312
SEM Programme	28	2.102	v1.2	As we have raised previously in comments on v1.1 of the Code, this remains a major concern for the SMO. It is not appropriate nor is it the role of the SMO to carry out a market monitoring function and the SMO does not have the systems in place to collect "statistical" information on the performance of Parties under the Code. There are detailed provisions in the MO licences dealing with the provision of information to the Regulatory Authorities which is the more appropriate place.	The MO does not have a market monitoring role; merely a requirement to report to the RAs on the operation of the market.
Moyle	29	2.114	v1.2	It is not clear who will represent the interests of persons other than Generators or Suppliers. What steps will be taken to ensure that the interests of participants such as Power Traders or Interconnector Owners are represented? It appears from this drafting that it is possible that there could be no industry representatives from one jurisdiction on the Modifications Committee. Is this intended?	Paragraph 2.114B provides that the RAs may identify and remedy inadequate representation.
VPE	29	2.114	v1.2	Constitution of Modifications Committee Is it intended that Intermediaries would be represented by the Members nominated under subparagraph (2)(a)? Given the different interests of Intermediaries, there should be a separate category of representation. Likewise, the Transmission Owners, MDPs and others who are a party to the TSC, but have no representation on the Modifications Committee should not be exposed to the risk of modifications affecting their position under the Code, particularly modifications of Agreed Procedures.	In relation to Intermediaries, see the RA decision paper (AIP-SEM-07-29). In relation to the Modifications Committee decisions on changes to Agreed Procedures, see paragraph 2.192.
VPE	29	2.108+	v1.2	Modifications Some changes have been made to the Modifications procedure and are helpful to the extent that they have addressed some of the confusion around Modifications and clarified procedures. We had also made additional points in our previous comments and not all of the issues raised have been addressed.	Noted
VPE	29	2.113 Modifications Committee	v1.2	Are there other interests that members of the Modifications Committee should give more priority to e.g. the efficient functioning of the SEM, consumers, security of supply? Does this mean that a Party is in breach of the Code if it votes in the interests of the SEM as a whole or, if the member is part of an integrated Group, if it acts in its own interests? What remedies does a Party have against another Party that doesn't represent the interests of the type of Participant that it was elected to represent?	Members duties are those of the Modifications Committee. The members are not Parties and connot therefore be in breach. The modifications Committee may, with the approval of the RAs remove a member who fails to perform.

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VPE	29	2.114 Constitution of the Modifications Committee etc.	v1.2	It is not clear who will represent the interests of persons other than Generators or Suppliers. What steps will be taken to ensure that the interests of participants such as Power Traders or Interconnector Owners are represented? It appears from this drafting that it is possible that there could be no industry representatives from one jurisdiction on the Modifications Committee. Is this intended?	see paragraph 2.114B
ESB PG	30	2.114a	v1.2	Why should there be an equal number of Generator and Supplier reps?	The RAs have not been persuaded that the makeup of the committee should be anything other than equal representation for the generation and supply sides of the electricity market.
VPE	30	2.114B Constitution of the Modifications Committee etc.	v1.2	The Code cannot oblige Regulatory Authorities to seek nominations from Participants that the Regulators do not think are adequately represented. This paragraph therefore provides a very limited form of safeguard for such Participants.	2.114B does not oblige the RAs, it says they "may" and provides an adequate safeguard.
VPE	31	2.128 Modifications Committee	v1.2	Why should Regulatory Authorities appoint participant members to the Modification Committee? Surely Participants should be entitled to do this?	This arrangement for appointment is only for the initial Modifications Committee memebers. If the Participants were to appoint (by election) it would be necessary to include a complex and general election process which could cover any group of participants. The process of nomination and appointment is simpler and adequate.
Moyle	32	2.131	v1.2	Despite the new Paragraph 2.114B, it appears readily foreseeable that certain interests may not be represented at all on the Modifications Committee - e.g. Interconnector participants.	See paragraph 2.114B
VPE	32	2.131 Modifications Committee	v1.2	Despite the new Paragraph 2.114B, it appears readily foreseeable that certain interests may not be represented at all on the Modifications Committee - e.g. Interconnector participants.	It is for the RAs to determine, once the Committee has been put in place, whether there is a group that is not adequately represented.
VPE	33	2.137 Modifications Committee	v1.2	Paragraph 2.128 only relates to the Initial Modifications Committee.	Noted
ESB PG	34	2.146	v1.2	If a mod panel member is removed there should be a election for a new member not just allowing the alternate to attend. Especially if the member was removed under clause 2.142.3 or 4	The RAs support this idea and have raised a Change Request to make an appropriate change to the baselined version of the TSC.
ESB PG	34	2.152	v1.2	Space at meetings of the modifications committee should be such that anyone should be able to attend and space should only be limited in exceptional circumstances and with prior written approval of the Ras	The RAs support this idea and have raised a Change Request to make an appropriate change to the baselined version of the TSC.
ESB PG	34	2.152	v1.2	People attending Mod Committee meetings under this clause should have the same speaking rights as anyone else attending the meeting	RAs take the view that the observers at Modifications Committee meetings should be restricted to observing
VPE	34	2.142 Modifications Committee	v1.2	Are there other matters in relation to a Participant that should result in their member ceasing to act on the Modifications Committee - e.g. being terminated?	2.142 1. covers all necessary cases through the words "ceases to be in a position to represent …"
ESBCS	35	2.155	v1.2	When a modification proposal is made by the Regulatory Authorities itself, must such proposal follow the prescribed modification procedures with the possible rejection outcome for the RA proposal.	RA proposals under the TSC are subject to the same procedure as all others
Moyle	35	2.165	v1.2	Parties should be added to the list of those the Modifications Committee may invite to express their opinions on any Modification Proposal.	The Code places no restrictions on this
ESB PG	37	2.182	v1.2	Can "sufficient time" please be better defined so that it will be consistently applied	Paragraph 2.182 has been redrafted to make the position clearer.
VPE	37	2.172A	v1.2	Urgent Modifications It is noted that there is a process to call an Emergency Meeting (undefined), but that the details of how such a meeting is to be held is unclear. In particular, where an Urgent Modification is passed there should be an ex-post reconsideration of the Modification and where the final Modification is different, any loss suffered by a Party as a consequence of the interim Urgent Modification should be recompensed.	There is no "passing" of an urgent modification that is different from the RA approval of any other modification. The urgency relates only to the timescale of consideration.
ESB PG	38	2.187	v1.2	The title to this clause mentions Decision by the mods committee. Does the Mods Committee make decisions or recommendations?	The Modifications Committee reaches decisions on AP changes and on spurious proposals
SEM Programme	38	2.165 - 2.186	v1.2	You have made provision in the modification process for the "opinion" of the SMO to be taken into account. We would request that the terminology referred here to a "report" by the SMO on the Modification as the term "opinion" introduces a concept of subjectivity that should be avoided.	The RAs believe that the word "opinion" is adequate. Each member of the Modifications Committee may have an opinion consitent with its role on the Committee.
VPE	39	2.192	v1.2	Modifications of Agreed Procedures As noted, certain types of Party may not be represented on the Modifications Committee. It is therefore of concern that the Agreed Procedures could be amended without the full modifications process.	The Agreeement of all parties is required for the amendment of Agreed Procedures and the RAs have veto. See also paragraph 2.114B in respect of Modifications Committee representation.
Airtricity	39	2.192	v1.2	Version 1.2 has now sought to introduce voting rights for market service providers; allowing those without a financial stake in the market to wield excessive influence on Participants' businesses. There are 5 non-RA Modifications Committee members and most likely 6 Participants. This attempt to introduce voting rights for non-Participants should be reversed and voting on all issues associated with the market and its operation, restricted to Nominating Participants, whose businesses are impacted by decisions of this Committee. In all cases the RAs have final authority over decisions, so Participant commercial and operational requirements should not be masked by the votes of service providers.	The purpose is to enable unanimous decisions in favour of AP changes only. This is different from the voting on Modification Proposals for the Code.
ESB PG	39	2.188.1	v1.2	Can you please clarify what "or otherwise" means in relation to this clause	The RAs may amend the proposal
VPE	39	2.190.	v1.2	Decision of Regulatory Authorities We reiterate the need for an appeal from the decision of the Regulatory Authorities in relation to Code modifications. While we accept that the TSC itself would not provide for this, the absence of such a check and balance remains of grave concern.	Not a code issue
Moyle	41	2.207	v1.2	What provisions apply in respect of defaults of the Market Operator?	Dispute process
ESB I	41	2.207	v1.2	Does the market operator have any power over the meter data providers and the system operators? Perhaps the market operator is the not the most appropriate party to issue default notices to the system operators and meter data providers.	MO issues default notices in effect on behalf of all other Parties.

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Moyle	41	2.208	v1.2	There must be some materiality threshold to being in Default - being in Default under an industry document or Code can be a material event under various project and financing documents and should not be taken lightly. A Default may have serious implications under cross-default provisions in financing documents and therefore care should be taken in determining that a party is in default under the Code. Furthermore, based on the current drafting of the Code it is readily foreseeable that parties will be in breach from time to time.	The Code carries different consequences for different "degrees" of default, in that prolonged or repeated defaults can lead to suspension. The consequences of Code default under other documents are best defined in these other documents, including materiality thresholds.
VPE	41	2.212	v1.2	Default notice What if the default is trivial or immaterial? How would the SMO determine if suspension is appropriate, e.g. where it is dealing with an SOLR or a large Generator? Should the SMO be required to take these steps in every instance of a Default (i.e. "any breach by a Party of any provision of the Code or the Framework Agreement" and which therefore could potentially extend also to the Legal Requirements referred to in the Code as indicated above). There is a need for a proportionality requirement in the SMO's actions.	Unless the Code Default is non-payment, the MO needs the approval of the RAs before initiating default processes (suspension etc.)
Moyle	41	2.215	v1.2	An entity may be a party to the Code in a number of capacities. When a person defaults in one capacity, it must be absolutely clear that it is suspended or terminated in only that capacity and not in all capacities. Is the Supplier of last resort capable of being suspended or does this provision not apply to the Supplier of last resort? Further, under Clause 2.215, a Suspension Order has immediate effect subject to Clause 2.220A which allows for a Supplier Suspension Delay Period (determined by the Regulatory Authorities). Such a proviso should also be considered for Generator Units. Immediate suspension of a large Generator Unit would have significant consequences in the market. A failure to provide Credit Cover would presumably be more of an issue for a Supplier Unit than a Generator Unit.	Automatic suspension applies to all units of the relevant Participant, as it is not thought appropriate to require or allow the MO to exercise discretion in selecting the units that are suspended. The suspension delay period has been inserted in order to provide for the supplier of last resort procedure, which applies only to supplier units.
VPE	41	2.207 Default	v1.2	What provisions apply in respect of defaults of the Market Operator?	Dispute process
VPE	41	2.207+	v1.2	Default, Suspension and Termination Concerns previously expressed by NIE in relation to the default / suspension / termination regime have not been addressed by the drafting provided in version 1.2.	Noted
VPE	41	2.207+ General	v1.2	Roles Where a Party has a number of roles and participations, it should not be at risk of falling into default in all roles and participations, only in the one in question. Unrelated activities should not come under threat of default or termination due to the actions of a separate business unit.	Unless the Code Default is non-payment, the MO needs the approval of the RAs before initiating default processes (suspension etc.)
VPE	41	2.207+ General	v1.2	SMO There are no default / suspension provisions in relation to defaults by the SMO. As with other participants, it is not sufficient for enforcement to be by Licence obligations and accountability needs to be provided for under the TSC.	Given its consequences for the market, suspension is not thought to be an appropriate sanction for the MO. The RAs take the view that licence enforcement is the best channel through which to proceed in the event of MO breach.
VPE	41	2.207+ General	v1.2	Defaults The default and suspension events are repetitive and excessive. Also, in subparagraph (9) wording such as "struck off" need to be clear and defined given the potential impact of these provisions on a participant. In subparagraph (12) the reference should be amended to incorporate a materiality threshold in the defaults (e.g. "material defaults"). Suspension Orders should not apply to minor breaches (defaults) and the drafting should be amended to ensure that there is no possibility of a hair trigger termination.	Except in circumstances of non-payment, the suspension of Participants or Units is subject to the approval of the RAs. The term "struck off" is in common usage in relation to removal from market listing.
VPE	41	2.208 Default	v1.2	There must be some materiality threshold to being in Default - being in Default under an industry document or Code can be a material event under various project and financing documents and should not be taken lightly. A Default may have serious implications under cross-default provisions in financing documents and therefore care should be taken in determining that a party is in default under the Code. Based on the current drafting of the Code it is readily foreseeable that parties will be in breach from time to time. Furthermore, 3 defaults (which may be minor or technical) can result in suspension or termination. This will be perceived by potential new entrants and lenders as being extremely hair trigger. We therefore recommend that the word "material" be inserted before the word "breach" in the first line.	Unless the Code Default is non-payment, the MO needs the approval of the RAs before initiating processes beyond the issuing of a Default Notice (suspension etc.)
VPE	41	2.210.	v1.2	Default notice Is there a timescale beyond which the ability of the SMO to issue a Default notice lapses?	no
Moyle	41	2.212.3	v1.2	This right of the MO to require a Defaulting Party to take actions is cast very broadly. This must be subject to reasonable limitations.	The Market Operator has no basis other than the remedy of the default and/or comfort with respect to re-occurrences. A Default Notice may be disputed.
VPE	41	2.212.3 Default Notice	v1.2	This right of the MO to require a Defaulting Party to take actions is cast very broadly. This must be subject to reasonable limitations. We recommend that this be limited to requiring a default to be remedied if capable of remedy or seeking comfort that the default will not re-occur if not capable of remedy.	The Market Operator has no basis other than the remedy of the default and/or comfort with respect to re-occurrences. A Default Notice may be disputed.
VPE	41	2.215 Suspension for Default	v1.2	An entity may be a party to the Code in a number of capacities. When a person defaults in one capacity, it must be absolutely clear that it is suspended or terminated in only that capacity and not in all capacities. It must also be clear that this works effectively where there is only one Participant in respect of all Units in the relevant jurisdiction. Is the Supplier of last resort capable of being suspended or does this provision not apply to the Supplier of last resort? Further, under Clause 2.215, a Suspension Order has immediate effect subject to Clause 2.220A which allows for a Supplier Suspension Delay Period (determined by the Regulatory Authorities). Such a proviso should also be considered for Generator Units. Immediate suspension of a large Generator Unit would have significant consequences in the market. A failure to provide Credit Cover would presumably be more of an issue for a Supplier Unit than a Generator Unit.	Automatic suspension applies to all units of the relevant Participant, as it is not thought appropriate to require or allow the MO to exercise discretion in selecting the units that are suspended. The suspension delay period has been inserted in order to provide for the supplier of last resort procedure, which applies only to supplier units.
VPE	41	2.215(1)	v1.2	Suspension Cross-reference is incorrect. Is the correct reference 6.136B, i.e. the Credit Cover should be payable within one working day?	Reference should be 6.33E. Paragraph corrected.
Moyle	41	2.215-2.238B	v1.2	Serious consideration must be given to the appropriateness of Suspension and Termination and the manner in which they can be exercised. It is not appropriate that the Market Operator(s) should be deciding whether a Participant is suspended or terminated. The MO may make a recommendation but cannot make a decision, even if consent is obtained. Furthermore, under no circumstances should a Default by a Party acting in a particular capacity result in that Party being suspended or terminated under the Code, other than in that specific capacity. The implications of this in terms of risk of participation in the SEM and creation of disincentives to investment are unacceptable and cannot be justified from a policy perspective. Other issues that remain unresolved are the consequences for the system if a major generator (ESB?) or a supplier of last resort is suspended or terminated.	Except in the case of non-payment any supension or termination is subject to the approval of the RAs

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VPE	41	2.215-2.238B Suspension and Termination	v1.2	Serious consideration must be given to the appropriateness of Suspension and Termination and the manner in which they can be exercised. It is not appropriate that the Market Operator(s) should be deciding whether a Participant is suspended or terminated. The MO may make a recommendation bu should not be able to make a decision to Suspend or Terminate, even if the consent of the Regulatory Authorities is obtained. This responsibility must rest with the Regulatory Authorities. Furthermore, under no circumstances should a Default by a Party acting in a particular capacity result in that Party being suspended or terminated under the Code, other than in that specific capacity. The implications of this in terms of risk of participation in the SEM and creation of disincentives to investment are unacceptable and cannot be justified from a policy perspective. Other issues that remain unresolved are the consequences for the system if a major generator (ESB?) or a supplier of last resort is suspended or terminated.	Except in the case of non-payment any supension or termination is subject to the approval of the RAs. We have commented already in relation to the merits of automatic suspension of all of a participant's units. The SEM rules are designed to be applicable to all participants and potential participants, and to that extent the consequences of default by those parties are clear.
Moyle	42	2.217	v1.2	Several sub-sections could also constitute an event of Force Majeure to the extent that they were beyond a Party's control. Consideration should be given to whether default proceedings are appropriate in these circumstances. Immediate suspension or termination for a failure of a credit cover provider without an opportunity to remedy it appears to be an excessive response in the circumstances – particularly given that it may be beyond the Participant's control. The circumstances in which all Units will be suspended should also be clearly clarified. We strongly believe that some level of materiality be introduced into sub-paragraphs 12 and 13. Comfort must be given that technica defaults that do not have a material impact do not result in suspension.	Notice of Default is disputable. Suspension (except for non-payment) is not possible without RA approval. Participants have 10 days to replace a failed Credit Cover Provider.
Moyle	42	2.217	v1.2	It should be clarified that Market Operator may issue a Suspension Order in respect of a Participant's Units rather than a Party's Units? Clause 2.215 indicates that a Suspension Order is issued in respec of a Participant's Units. All references in this Paragraph 2.217 to 'Party' should be to 'Participant'.	This paragraph permits the MO, with the agreement of the RAs to suspend "any or all" of a Party's Units. This is the appropriate provision.
SEM Programme	42	2.217	v1.2	Paragraph 2.217 lists a number of specific criteria for which the SMO can, with the prior written consent of the Regulatory Authorities, issue a suspension order. We consider it important that as a new point 14 there is a general criteria that the SMO may issue a suspension order where requested b the Regulatory Authorities. This would also provide for a degree of flexibility which is currently lacking.	It is not considered appropriate to provide the RAs with such a power through the code.
Moyle	42	2.219	v1.2	If a Suspension Order is served on a Participant a copy should also be served any other affected Part if such Party is different from the Participant. For example, a Suspension Order in respect of an Interconnector Error Unit should also be served on the Interconnector Administrator and Interconnector Owner.	2.219 says the MO shall publish the Suspension Order
Airtricity	42	2.217 (10)	v1.2	It is not clear why the Insolvency Act 1986 (England & Wales) has any relevance to the jurisdiction of Northern Ireland. Shouldn't the Code refer to more appropriate legislation.	The Act applies to a Party incorporated in England & Wales.
VPE	42	2.217 Suspension for Default	v1.2	Several sub-sections could also constitute an event of Force Majeure to the extent that they were beyond a Party's control. Consideration should be given to whether default proceedings are appropriate in these circumstances. Immediate suspension or termination for a failure of a credit cover provider without an opportunity to remedy it appears to be an excessive response in the circumstances – particularly given that it may be beyond the Participant's control. The circumstances in which all Units will be suspended should also be clearly clarified. We strongly believe that some level of materiality be introduced into sub-paragraphs 12 and 13. Comfort must be given that technica defaults that do not have a material impact do not result in suspension.	On failure of a Credit Cover Provider, Participants are given 10 days to replace it. Except in the case of non-payment, suspension is subject to the approval of the RAs.
Moyle	43	2.221	v1.2	Paragraph 2.220 states that a Suspension Order should specify Units to which it applies. Paragraph 2.221 states that when a Suspension Order takes effect, the Units to which it applies will be suspende until the MO issues a notice stating one of two eventualities. Firstly, it should be clarified that these eventualities are alternative contingents by adding an 'or' after Paragraph 2.221(1). Secondly, the las phrase in this paragraph seems to be intended to be a stand alone sentence though it is not drafted a such. Thirdly, under 2.221(2) the second eventuality is that participation of the the relevant Party in the Pool has been terminated. It should be clarified that this does not mean that the Party's accessio to the Framework Agreement has been terminated, but rather that the Participant has been deregistered in respect of only the Units specified in the Suspension Order.	Paragraph 2.221 has been redrafted.
VPE	43	2.221	v1.2	Effect of suspension order The Suspension Order should be lifted where the relevant default is no longer continuing, or where th participant could continue to participate without impacting on the integrity of the Pool arrangements. Suspension from the Pool should not be automatic, hair trigger or otherwise seen as a ready and easy sanction. Where the matter can be dealt with by additional restrictions in the interim until particular matters are resolved, the SMO should be required to take the approach that allows the participant to continue its participation.	Suspension, except for non-payment requires the agreement of RAs. See also paragraph 2.223 in relation to the removal of the suspension.
Moyle	44	2.222	v1.2	Sub-paragraphs (3) and (4) should be deleted. Monies are held by the MO on behalf of Participants and it is not acceptable that the MO should withhold such monies. This would create serious difficulties for financiers. Any right to withold payment should be limited to a right of set off (eg paragraphs 6.23K - U). Furthermore, it is critical that a suspension order can only be issued in respect of the units which are the subject of the default or in respect of the capacity in which the default occurred. It is not acceptable that, for example, notwithstanding the inappropriateness of withholding payment in any circumstances, the generation business of a company will not be paid because of default of a supplier affiliate (sub-section 3), nor that the Market Operator can require othe Parties to the Code to fulfil a defaulting Party's obligations e.g. temporarily supply their customers (sub-section 5).	the provisions in paragraph 2.222 3. have been amended to permit "set-off" rather than "withholding". This will be consistent with the other provisions of the Code.
VPE	44	2.222	v1.2	Suspension Order The ability for the SMO to withhold monies cannot be an unconstrained right. Where the suspension relates to matters impacting on the Party's right to payment, this may be appropriate. However, the ability to do this as a general unconstrained right gives cause for concern.	the provisions in paragraph 2.222 3. have been amended to permit "set-off" rather than "withholding". This will be consistent with the other provisions of the Code.
Moyle	44	2.221A, 2.222 & 2.225	v1.2	It would be more accurate to refer to "Participants" instead of "Parties" in these paragraphs.	Paragraphs 2.221A & 2.225 have been amended, but not 2.222 which refers to any or all of a Party's Units.
VPE	44	2.222 Effect of Suspension Order	v1.2	Sub-paragraphs (3) and (4) should be deleted. Monies are held by the MO on behalf of participants and it is not acceptable that the MO should withhold monies belonging to Participants. This would create serious difficulties for financiers. Any right to withhold payment should be limited to a right o set off (see for example paragraphs 6.23K - U). Furthermore, it is absolutely critical that a suspension order can only be issued in respect of the units which are the subject of the default or in respect of th capacity in which the default occurred. It is not acceptable that, for example, notwithstanding the inappropriateness of withholding payment in any circumstances, the generation business of a company will not be paid because of default of a supplier affiliate (sub-section 3), nor that the Market Operator can require other Parties to the Code to fulfil a defaulting Party's obligations e.g. temporarily supply their customers (sub-section 5).	the provisions in paragraph 2.222 3. have been amended to permit "set-off" rather than "withholding". This will be consistent with the other provisions of the Code.
Moyle	45	2.233	v1.2	The Participant in respect of the Interconnector Residual Capacity Unit should also be included in this provision.	The relevant System Operator will take this role, and both SOs are listed in the provision.

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VPE	45	2.207+ General	v1.2	Appeal Default/Suspension would have a dramatic effect on a Participant and an effective and speedy appeal process is required from any decisions taken to allow a Participant the ability to challenge the decisions of the SMO in relation to these procedures. Although outside the scope of the Code, there is also a need for an appeal mechanism from decisions of the RAs.	Suspension, except for non-payment requires the agreement of RAs.
VPE	45	2.230 - 2.232A Voluntary Termination	v1.2	Voluntary Termination and deregistration should not be subject to RA consent. A party should be entitled to terminate its participation and de-register its units as it sees fit. If necessary, certain provisions of the Code may need to survive termination, but it is not appropriate that the RAs should prevent a party that wishes to terminate its participation from doing so.	Consent is required if the Party is a licensee
Moyle	45	2.230 - 2.233	v1.2	Voluntary Termination and deregistration should not be subject to RA consent. A party should be entitled to terminate its participation and de-register its units as it sees fit. If necessary, certain provisions of the Code may need to survive termination, but it is not appropriate that the RAs should prevent a party that wishes to terminate its participation from doing so.	Consent is required if the Party is a licensee
VPE	45	2.230 & 2.238B	v1.2	Voluntary termination The procedure for voluntary termination does not seem consistent with the voluntary deregistration process. An element of consistency would be beneficial – for instance the requirement to provide ongoing credit cover for 14 months after termination/deregistration is consistent, but time periods and other terms are not. Also, it would be important for the SMO to publish information on a Party who deregisters / terminates, so that other Parties are aware of the position. It is also unclear why there is a requirement for RAs consent here.	The process for deregistration (which requires 60 days notice) is different from that for termination (which requires 90 days notice). The longer notice period and the need for RA involvement in the latter case is because those involved in the market will be licensees with licence conditions requiring them to be a Party.
VPE	45	2.233 Voluntary Termination	v1.2	The Participant in respect of the Interconnector Residual Capacity Unit should also be included in this provision.	The System Operator is the registrant of the IRCU and, in it's role as SO is included in the provision. In its role as registrant of the IRCU, it is not considered appropriate to exclude it from such provisions.
Moyle	46	2.236	v1.2	Is it appropriate that all Parties should be liable for Code obligations for seven years after termination (e.g. even Parties that have not been a Participant trading in the Pool)?	This provision is provided to be consistent with the requirement for the retention of data and the ability to recalculate settlement by the Market Operator. The purpose is to allow for the possible extensive period for the resolution of a dispute, which may end up in court.
ESB I	46	2.239	v1.2	It is important that there is some mechanism to dispute the market operator performing the credit cover calculations correctly. This dispute procedure should have short timeframes that are set out in the code. Albeit that the disputing party will have to put credit cover in place while the dispute is ongoing. This is essential because without it the participant may be terminated from the code before their dispute with the market operators' credit calculations has been heard.	The RAs support this idea in principle but recognise that the Market Operator cannot support such a process before go-live. The RAs would welcome a proposal to modify the new Code after go-live
Synergen	46	2.239	v1.2	For the avoidance of doubt, please confirm that a party can't raise a dispute regarding a directed contract or other CfD under the terms of this clause as these are considered to be "in relation to the Code".	It is not the intention or pupose of this clause to apply to disputes arising under a Contract for Differences (CfD). A CfD is a separate, stand alone agreement between two parties only. The entire agreement clause in the Code makes it clear that the Code is the only agreement between all of the Parties. This recognises that there may be bilateral contracts between parties outside of, and on covered by provisions of, the Code.
Moyle	46	2.24	v1.2	Is it appropriate to inform third parties of a dispute without consent of the Party which has raised the Dispute? Will it always be possible to keep such third parties informed of the nature and progress of the Dispute without disclosing the identity of the Disputing Parties? How will confidentiality be achieved and what consequences will flow from its breach?	The third party needs to be informed and this is a compromise position; it is expected that the MO will consult the Parties, but needs to be able to inform the third party.
VPE	46	2.24	v1.2	Is it appropriate to inform third parties of a dispute without consent of the Party which has raised the Dispute? Will it always be possible to keep such third parties informed of the nature and progress of the Dispute without disclosing the identity of the Disputing Parties? How will confidentiality be achieved and what consequences will flow from its breach?	The third party needs to be informed and this is a compromise position; it is expected that the MO will consult the Parties, but needs to be able to inform the third party.
VPE	46	2.236 Consequences of Termination	v1.2	It is not clear exactly what is intended by this provision. Is this intended to extend the liability period? If so why? It is certainly not appropriate that a Party should have to comply with Code obligations for seven years that may be inappropriate or irrelevant. This should be clarified.	This provision is not about extending liability; more about processes such as ensuring the retention of documentation.
VPE	46	2.238A & 2.238B Consequences of Termination (and Deregistration)	v1.2	It must be clear that the obligation to provide Credit Cover steps down over the 14 month period to reflect the scale of the potential liabilities.	The requirements for Credit Cover for a Terminated Party are specified in paragraph 2.226A.
Moyle	47	2.244	v1.2	It may also be appropriate to serve a copy of the Notice of Dispute on the Regulatory Authority/ies in other circumstances. Where this is the case, will it always be appropriate to serve a Notice of Dispute on both Authorities? (also relevant to Paragraph 2.254)	It is open to Parties to do so. Both RAs should be informed of a dispute with the MO, but not otherwise.
VPE	47	2.244	v1.2	It may also be appropriate to serve a copy of the Notice of Dispute on the Regulatory Authority/ies in other circumstances. Where this is the case, will it always be appropriate to serve a Notice of Dispute on both Authorities? (also relevant to Paragraph 2.254)	It is open to Parties to do so. Both RAs should be informed of a dispute with the MO, but not otherwise.
Moyle	47	2.246	v1.2	The right to commence interlocutory proceedings should not be limited to the Market Operator. Indeed, the MO should have no special rights under these provisions.	The RAs take the view that the MO's right is necessary to protect the collective position of Parties. For individual Parties it is necessary for them to undertake the Code disputes resolution process before going to court.
VPE	47	2.246	v1.2	The right to commence interlocutory proceedings should not be limited to the Market Operator. Indeed, the MO should have no special rights under these provisions.	The RAs take the view that the MO's right is necessary to protect the collective position of Parties. For individual Parties it is necessary for them to undertake the Code disputes resolution process before going to court.
VPE	48	2.257	v1.2	Is it not more appropriate to annex an agreed procedure to deal with establishment and composition of the DRB?	The establishement and composition of the Dispute Resolution Board and associated Panel is judged to be sufficiently important to Participants to be in the Code rather than an AP.

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Moyle	49	2.260, 2.261	v1.2	Is a suitably qualified person who has an ability to quickly acquire an understanding of the electricity industry an appropriate criterion for selecting Panel members? What are the relevant disciplines?	RAs believe this is an appropriate outline of the skills required.
VPE	49	2.260, 2.261 Dispute Resolution Board	v1.2	Is a suitably qualified person who has an ability to quickly acquire an understanding of the electricity industry an appropriate criterion for selecting Panel members? What are the relevant disciplines?	RAs believe this is an appropriate outline of the skills required.
VPE	49	2.262 Dispute Resolution Board	v1.2	This paragraph provides that if there is to be a 3 member DRB, each Party will appoint a member and those 2 members will appoint the third member. Within what timeframe must the 2 members must appoint the third member?	The objectives of the process include "simple quick and inexpensive. The RAs believe that this is sufficient to achieve timeliness.
VPE	50	2.267 & 2.268 Dispute Resolution Board	v1.2	How do paragraphs 2.267 and 2.268 sit together? 2.267 provides that "Each Disputing Party shall be responsible for applying a proportionate and equal share of the remuneration of the DRB in respect o the Dispute involving them. Each Party to the DRB procedure shall bear its own costs of the procedure." Paragraph 2.268 then provides that "Without prejudice to paragraph 2.267, the DRB may make a decision as to costs in any Dispute which shall be binding on the Disputing Parties."	The intent is clear. Unless the DRB determines otherwise, the costs shall be shared.
VPE	50	2.267 Dispute Resolution Board	v1.2	On what basis will remuneration of the DRB be calculated? This Paragraph should be subject to Paragraph 2.249.	The costs of the Panel will be what is necessary to put it in place. The costs of the DRB shall fall to the disputing Parties. This paragraph should not be subject to 2.249 which refers to a different topic.
VPE	50	2.275 & 2.276 Obtaining the DRB's decision	v1.2	Any dispute must be determined within 20 days of being referred to the DRB, failing which either Party may immediately commence legal proceedings. The primary objective of the Dispute Resolution Procedure is stated to be that it is "quick, simple and inexpensive". If there are delays in issuing the Notice of Dispute and delays in agreeing on the appointment of the DRB members, the whole Dispute Resolution Process could become quite protracted. Given that a dispute may end up in court anyway it is critical that a strict discipline be imposed on the Dispute Resolution Procedure, otherwise it will only add time, complexity and cost to a dispute that was destined to end up in court anyway.	The fact that disputing Parties are responsible for the costs of the Dispute Resolution Board provides an incentive to control costs.
VPE	51	2.281A and B Supplier of Last Resort	v1.2	This provision must contain a mechanism for transferring customers back from the Supplier of last resort, otherwise the remedy of suspension is, for all intents and purposes, the equivalent of termination. If it is determined that suspension is not available as a remedy in respect of Suppliers the Code should say this. These provisions should be renumbered 2.82A and B respectively.	The Code is refering to, and making use of, the Supplier of Last Resort Process, which is outside the Code. This process has never contemplated the return of customers who have been transferred to the SoLR. The interaction between the Code and the SoLR processes is under consideration and a Change Request is likely to be proposed.
SEM Programme	52	2.281A	v1.2	There are new obligations on the SMO in relation to the Supplier of Last Resort in the event of a suspension. These are not obligations that are envisaged in the MO licences and we would like to discuss the origin, implication and appropriateness of these with you. We would request that until such discussions take place, this clause should be removed.	See revised provisions at 2.282A and 2.282B. The obligations are not new; merely clarifications of a long standing position. The RAs are in discussion with the Market Operator and representatives of the retail market and are likely to raise a Change Request against verion 1.3 to further clarify the process.
VPE	52	2.281A & B	v1.2	Supplier of Last Resort These provisions are noted, although it is anticipated that they will need to be considered in much greater detail to ensure that they accord with the final proposals in both jurisdictions in relation to SoLR. There is no mechanism for transfer back of customers. Suspension would effectively lead to a supplier closing down, even if the default is capable of remedy.	Suspension of a Supplier Unit is a serious matter, as is the non-payment of an invoice and the failure of credit cover to make up the gap, which are required pre-cursors of such suspension.
Moyle	52	2.283 &2.285	v1.2	The Code still appears to be weighted in favour of protecting the Market Operator(s) rather than incentivising performance and thereby maximising the possibility of ensuring efficient functioning of the market. These paragraphs contain fairly standard boilerplate provisions in relation to limitation o losses to physical damage (a remote risk under a trading and settlement code) and exclusion of indirect losses, including loss of revenues (which is the single greatest risk arising under the Code). We do not believe that this is appropriate in the circumstances. If a party suffers loss of revenues or incurs additional costs as a result of a breach of the Code by another party (including the Market Operator), we believe that from a policy perspective that party should be entitled to be compensated at least up to the value of the insurance obtained by the Market Operator or any profit paid to the Market Operator for performing this role. It does not appear equitable that a Party should have no recourse in these circumstances. As currently drafted, the Market Operator(s) have few explicit, enforceable functions and no meaningful liability t	The management of the MO costs is a matter for the MO licence(s) under the price control mechanisms and the incentivisation of the MO is similarly operatated by the RAs though the licences. The Code Dispute and Resettlement provisions provide for the recovery of the direct losses resulting from any failure to comply with Settlement terms. The RAs believe this to be the right position.
VPE	52	2.283 &2.285 Limitation of Liability	v1.2	The Code still appears to be weighted in favour of protecting the Market Operator(s) rather than incentivising performance and thereby maximising the possibility of ensuring efficient functioning of the market. These paragraphs contain fairly standard boilerplate provisions in relation to limitation o losses to physical damage (a remote risk under a trading and settlement code) and exclusion of indirect losses, including loss of revenues (which is the single greatest risk arising under the Code). We do not believe that this is appropriate in the circumstances. If a party suffers loss of revenues or incurs additional costs as a result of a breach of the Code by another party (including the Market Operator), we believe that from a policy perspective that party should be entitled to be compensated at least up to the value of the insurance obtained by the Market Operator or any profit paid to the Market Operator for performing this role. It does not appear equitable that a Party should have no recourse in these circumstances. People do make mistakes and it is important in an immature marke where new entry needs to be promoted to ensure t	The management of the MO costs is a matter for the MO licence(s) under the price control mechanisms and the incentivisation of the MO is similarly operatated by the RAs though the licences. The Code Dispute and Resettlement provisions provide for the recovery of the direct losses resulting from any failure to comply with Settlement terms. The RAs believe this to be the right position.
VPE	52	2.283+	v1.2	Limitation on Liability We note that no Party is liable to any other Party for loss arising from breach of the Code other than for loss arising out of physical damage or liability in Law to a third party for physical damage. The possibility of seeking financial redress in a court against another Party has been left open as 2.28 provides that "The limitations of liability set out in the preceding paragraphs are without prejudice to any provision of the Code which provides for an indemnity, or which provides for any Party to make a payment to another". The wording should be expanded to add "… or where a payment arises betwee Parties pursuant to any provision of the Code."	The proposed wording change is not supported since it would drag in the issue of payment with respect to Settlement Reallocation Agreements, which is outside the Code. It also reduces the level of certainty with respect to the scope of the Code.
SEM Programme	53	2.283	v1.2	We note the changes to the limitation of liability provisions with no Party being liable to any other Party for loss arising from breach of the Code other than for loss arising out of physical damage or liability to a third party for physical damage. In addition, and in order to create further certainty for all parties to the Code, we would ask that the Regulatory Authorities consider including here an overall cap on liability in much the same way as is currently provided in the Trading and Settlement Code in the Republic of Ireland.	The RAs do not believe that a cap on the very unlikely even of physical damage is necessary.
Moyle	53	2.287		Fraudulent misrepresentation should not be limited to the extent that it results from negligence. By definition, fraudulent misrepresentation will not be negligent. Also, the word "Agreement" appears to be missing in the first line.	the paragraph has been redrafted
ESB	53	2.289	v1.2	We welcome that this section (addressing indemnification of SMO) has now been deleted.	Noted
Moyle	53	2.294		This paragraph refers to Paragraph 2.84 which is marked "Intentionally Blank".	changed to 2.285

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VPE	53	2.294	v1.2	Insurance We note that the provisions in relation to insurance have been deleted. While we recognise that the requirement on Parties (now deleted) was inappropriate, the requirement for the SMO to maintain insurance would need to remain and it is not clear why that has been deleted. Please clarify or reinstate.	The provision of insurnace by the Market operator is an element of its management of its costs under the terms of its licences and their price control mechanisms. It is not judged appropriate to include such a requirement in the Code. (This issue was discussed in some detail at the RLG meetings). Were the RAs to conclude that such insurance was necessary, they would include the require through the licences.
SEM Programme	53	2.297	v1.2	New point 6 makes it a force majeure event where a party to the Code is prevented from complying with it obligations due to the coming into affect of any "Legal Requirement". The term is so widely drafted as to give rise to the concern that this could unintentionally create a loophole for parties seeking to escape their obligations under the Code. We would request that the Regulatory Authorities give further consideration to this point.	redraft to remove sub-section 6
VPE	53	2.287 Limitation of Liability	v1.2	Fraudulent misrepresentation should not be limited to the extent that it results from negligence. By definition, fraudulent misrepresentation will not be negligent. Also, the word "Agreement" appears to be missing in the first line.	Paragraph 2.287 has been redrafted.
VPE	53	2.288 Limitation of Liability	v1.2	Why are statutorily implied terms proposed to be excluded? Such terms are implied into contracts for good policy reasons and while Parties negotiating on an arms length basis may choose to exclude them, the Code is clearly not an arms length negotiated contract. It is a regulator prescribed instrument which parties are obliged to sign if they wish to participate in the market. I also note that the liabilities which cannot be excluded in law may be slightly different in each jurisdiction (although we have not undertaken the work to determine whether this is the case at this stage).	The implied terms relate to aspects of consumer protection legislation such as merchantable quality which are inapropriate for a market in wholesale electricity.
Moyle	53	2.290 & 2.291		Query what is the policy rationale for excluding all other remedies other than those in the Code? Why is it considered to be in the best interest of the market that Parties should have such limited recourse to each other and the MO. As the Code has very limited rights as between Parties this effectively limits Parties recourse to the MO and each other. We have never seen a policy rationale from the Regulatory Authorities in relation to why they have decided to pursue this approach to risk allocation. We cannot understand how it is in the best interest of an immature market where we are trying to encourage new entry.	The purpose of the clause (together with the dispute resolution provisions and the limitation of liability) is to seek to exclude the Party's rights to have recourse to such other remedies. This enables Parties to have certainty about the extent of their liability under the Code, and it could assist a party if, for example, they were to negligently submit inaccurate data, thereby causing loss to another party. Such problems would be subsequently corrected through the Resettlement process once data had been corrected.
VPE	53	2.290 & 2.291 Limitation of Liability	v1.2	Query what is the policy rationale for excluding all other remedies other than those in the Code? Why is it considered to be in the best interest of the market that Parties should have such limited recourse to each other and the MO. As the Code has very limited rights as between Parties this effectively limits Parties recourse to the MO and each other. We have never seen a policy rationale from the Regulatory Authorities in relation to why they have decided to pursue this approach to risk allocation. We cannot understand how it is in the best interest of an immature market where we are trying to encourage new entry.	The purpose of the clause (together with the dispute resolution provisions and the limitation of liability) is to seek to exclude the Party's rights to have recourse to such other remedies. This enables Parties to have certainty about the extent of their liability under the Code, and it could assist a party if, for example, they were to negligently submit inaccurate data, thereby causing loss to another party. Such problems would be subsequently corrected through the Resettlement process once data had been corrected.
VPE	54	2.297 Force Majeure	v1.2	As we indicated in previous comments, in addition to an Affected Party being relieved from its obligation to perform to the extent caused by an event of Force Majeure, any or all other Parties should be released from the performance of any corresponding obligations to the extent that they are unable to perform them as a result of the Affected Party not performing its obligations.	The RAs do not believe that an event of force majeure on a Participant has the potential to cause knock-on effects on other Parties. An event of force majeure affecting the Market Operator does have such a potential, but the potential effects are dealt with by specific provisions under the Code. The RAs do not therefore believe that this sort of provision is required.
Moyle	54	2.297(8)		As we indicated in previous comments, sub-section (8) does not appear appropriate. Surely the breakdown of plant owned by one party (e.g. the transmission system owned by the System Operator or the Market Clearing Engine) should constitute FM in respect of any other Party whose ability to perform its obligations as a result is adversely affected.	See redrafting of these provisions.
VPE	54	2.297(8) Force Majeure	v1.2	As we indicated in previous comments, sub-section (8) does not appear appropriate. Surely the breakdown of plant owned by one party (e.g. the transmission system owned by the System Operator or the Market Clearing Engine) should constitute FM in respect of any other Party whose ability to perform its obligations as a result is adversely affected.	See redrafting of these provisions.
Moyle	55	2.301		Is it intended that there be a distinction between the Force Majeure provisions applicable to the Market Operator and those applicable to other Parties? If that is the case it is not clear that this is achieved by the drafting given that the Market Operator appears to be caught by the remaining provisions of this paragraph also. In any event, as a matter of principle, if the obligations on the Market Operator are intended to be different (and we do not agree that they should be) then the payment obligations must be the same, including as to payment of interest. There appears to be an error in the drafting of the first line of this paragraph.	Paragraphs 2.299 - 2.301A have been redarfted to clarify the position.
ESB PG	55	2.299,2.301	v1.2	Under clause 2.299 the MO must review a claim of force majeure by a participant but 2.301 does not allow the Ras to review a claim of force majeure by the MO. Why?	The Market Operator is required to report the event of force majeure to the Regulatory Authorities, whose responsibility it is to manage the performance of the Market Operator in accordance with its licence(s). The Market Operator, on behalf of all other Parties, is the right person to take a view on any claim of force majeure by another Party.

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VPE	55	2.301 Force Majeure	v1.2	Is it intended that there be a distinction between the Force Majeure provisions applicable to the Market Operator and those applicable to other Parties? If that is the case it is not clear that this is achieved by the drafting given that the Market Operator appears to be caught by the remaining provisions of this paragraph also. In any event, as a matter of principle, if the obligations on the Market Operator are intended to be different (and we do not agree that they should be) then the payment obligations must be the same, including as to payment of interest. There appears to be an error in the drafting of the first line of this paragraph.	The provisions of paragraph 2.301 have been amended to remove the drafting error mentioned. The position of the Market Operator in relation to force majeure needs to be different from other Parties to allow for the fact that a force majeure event impacting the Market Operator will impact other Parties indirectly, through the impact on the Market Operator. This is not expected to be the case with Participants.
Moyle	56	2.303	v1.2	As we indicated in previous comments, this clause should specify what happens if a provision of the Code is severed. It may not be possible for the Code to operate effectively with a key provision severed. In these circumstances, some arrangement must be made for coming up with alternative provisions which give effect to the intention of the Parties.	It is not possible to specify what should occur if any particular clause is severed. The remainder of the Code must stand to the extent that it can. Such circumstances would have to result in (possibly urgent) modifications.
Moyle	56	2.305	v1.2	The reference to Market Operator in the fourth line should be to Market Auditor.	corrected
VPE	56	2.303 Severance	v1.2	As we indicated in previous comments, this clause should specify what happens if a provision of the Code is severed. It may not be possible for the Code to operate effectively with a key provision severed. In these circumstances, some arrangement must be made for coming up with alternative provisions which give effect to the intention of the Parties.	It is not possible to specify what should occur if any particular clause is severed. The remainder of the Code must stand to the extent that it can. Such circumstances would have to result in (possibly urgent) modifications.
VPE	56	2.305 Third Party Beneficiaries	v1.2	The reference to Market Operator in the fourth line should be to Market Auditor.	corrected
VPE	56	2.305A	v1.2	Third Party Beneficiaries We reiterate our points previously made on the use of the Contracts Rights of Third Parties legislation. In any event, the reference to the SMO in this provision appears to be a typographical error.	The legislative references in this section of the Code are believed to be appropriate. The reference to Market Operator in paragraph 2.305 has been corrected to Market Auditor.
VPE	57	2.310 Entire Agreement	v1.2	We query whether this section is correct. Certain bilateral agreements including contracts with intermediaries or bidding agents would, at least, appear to form part of the agreement between the Parties relating to the subject matter of the Code. We recommend that this provision be clarified or deleted.	The wording of this paragraph has been amended slightly to clarify the scope of the Code, including the fact that it is the entire agreement between all Parties to the Code.
Moyle	59	2.318	v1.2	It is not clear why the Market Operators and System Operators are covered by this clause. We were not aware that SONI or EirGrid were subject to FoI legislation?	It is unclear whether the Market Operator and the System Operators as quasi public bodies are, or are not, covered by the Freedom of Information acts. If they are, the clause works. If they are not it has no effect. No change is therefore required.
VPE	59	2.318 Freedom of Information	v1.2	It is not clear why the Market Operators and System Operators are covered by this clause. We were not aware that SONI or EirGrid were subject to FoI legislation?	It is unclear whether the Market Operator and the System Operators as quasi public bodies are, or are not, covered by the Freedom of Information acts. If they are, the clause works. If they are not it has no effect. No change is therefore required.
ESB PG	60	2.328,2.332	v1.2	Why in one case are Notices "deemed" received and yet in the other case must be "actually" received?	Because notices to the RAs cannot properly be deemed to be received.
VPE	63	3.10	v1.2	If the MO revoke the Participant's qualification, what is the channel for the Participant to appeal this action, is a dispute to be raised?	Dispute process
VPE	63	3.19	v1.2	The MO should provide high visibility to such actions and publish a timetable for scheduled activities, a minimum notice period should be established, perhaps included in the appropriate AP.	This is a matter for the relevant AP
VPE	63	3.20	v1.2	Bullet 1- the term reasonable should be replaced with an actual duration	Such a change is not believed necessary
VPE	63	3.4	v1.2	Market Participants are required to designate at least one of Types-2 and 3 Channels (or both) for the purpose of their participation in respect of any of their units. At present type 2 and 3 channels are not functionally equivalent, for example with regard to notifying Market Participants of reports' publication. This is reflected in AP6, Version 3, Page 7, Section 3.5 where the Type-2 'Report Manager' is described as the 'primary mechanism for data publication'. Equivalent functionality ought to be available over both types 2 and 3 channel.	The Code does not distinguish between the functionality provided over different channels, because it expects them to be equivalent. The alignment of APs with the Code is underway and is expected to resolve any such issues.
VPE	63	3.7	v1.2	It is unclear whether the Type 2 communications will enforce the number of decimal places submitted	The requirement is set out in Agreed Procedure 4.
SEM Programme	63	3.53B	v1.2	Paragraph 3.53B introduces new obligations on the SMO in relation to querying offer data after gate closure. The SMO will only query offer data up to gate closure and we do not believe that the SMO should be querying offer data after gate closure. We would request that this paragraph is removed.	This paragraph has been removed on the ground that the Market Operator has no ability to intervene and alter submitted data.
ESBCS	64	3.20 (1)	v1.2	The term "reasonable duration" is vague. There should be some sort of KPIs set for the downtime duration.	Performance standards for the Market operator are a matter for the RAs through the Market Operator licences.
VPE	65	3.35	v1.2	"A CMS Data Transaction shall be deemed to be received by the Market Operator when it enters the Market Operator's Isolated Market System via a valid, functioning Type 2 Channel or Type 3 Channel, or by such other means as permitted under paragraphs 3.58 to 3.75."The meaning of the abbreviation CMC isn't defined.	This provision has been redrafted. CMS is defined in paragraph 3.31
VPE	67	3.41	v1.2	"The Market Operator may" should be "The Market Operator will"	No- this is permissive not an obligation
VPE	68	3.53	v1.2	If the MO is to use the Queried Data but knows that this will have a detrimental effect on the operation of EPUS how may this be resolved?	See paragraph 3.53A.
VPE	68	3.53A	v1.2	The unconstrained schedule should not fail if the submitted data is within the specified limits, how does the MO know that the schedule will fail before it is run?	The Market Operator may be able to anticipate failure of the schedule dependent upon the values submitted.
VPE	68	3.53B	v1.2	The time line for the defined query process must be stated in this section.	This paragraph has been removed on the ground that the Market Operator has no ability to intervene and alter submitted data.
VPE	69	3.59	v1.2	Party should read Participant.	No- it is not necessary to change.
ESBCS	70	3.74	v1.2	There should be a provision to determine the lead time for the SMO to inform participants of when the failures will be resolved so that the participants can start to submit their bids and offers. The process should not be a drip feed process.	This is a matter for the relevant AP
VPE	70	2.310.	v1.2	Entire Agreement Would this supersede the information in the Participation Notice?	Since the Code requires the Participation Notice - no.

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ESBCS	70	Sections on Comms and System Failures	v1.2	The SMO system performance should be tied to some form of service level agreements to incentivise it to respond speedily and effectively in such situations.	The performance of the Market Operator is a matter for the Market Operator licence(s) and the RAs.
VPE	72	3.82	v1.2	Subject to finalised list from RAs and awaiting the outcome of AIP/SEM/206/06.	A revised version of Appendix K has been published with version 1.3 of the Code.
VPE	73	3.94	v1.2	The MO should maintain copies of all data used, inputs and outputs and the version of the software (o at least the changes to the baseline) that was current for each of the calculations.	No - the MO is only require to be able to rerun the systems for 2 years. For 7 years it needs to be able to recalculate (by hand).
VPE	74	4.4	v1.2	While this clause does not preclude dual fuel and CCGT mode issues being addressed elsewhere, it should be noted that the bids made under the TSC reflect the technical offer only and does not limit the actual capability of generating units.	Noted
VPE	74	4.6	v1.2	This clause states that all COD are deemed to apply to levels of output that are net of Unit Load, yet payment is made on the basis of "Loss-Adjusted" quantities. This is inconsistent and in order to ensure true efficiency in despatch, the PQ bids should reflect the incremental cost after loss adjustment.	Since payment is made on the basis of TLAF adjusted qualtities and the Q(uantity) in PQ pairs is before TLAF adjustment, it is expected that Participants will allow for that difference (subject to the requirements of their licences) in setting the prices associated with those quantities. In part this situation is the consequence of the design of the MSP Software and is not capable of change prior to November 2007.
VPE	74	4.8	v1.2	The COD price bids submitted under paragraph 4.7 reflect incremental prices but are compared against "PFLOOR" which are floor prices for SMP which includes startup and No-Load costs. This could create a strange outcome where a bid could be rejected even though the resulting SMP is in excess of PFLOOR. It would seem more logical to have symmetry by having an "INCREMENTAL" Price Floor.	The question of the relationship between the determined values for PCAP and PFLOOR and the values of shadow SMP and SMP together with its effect on submitted prices is subject to futher consideration.
Airtricity	74	4.8	v1.2	The complex structure of bids means that it will not be possible to ensure that bids fall within the cap and floor range, once startup and other prices are taken into account. Also, clarification must be provided as to whether the price cap and floor values apply to the market price inclusive or exclusive of uplift and how generators can understand the likely relationship of their bid to the effective value o PCAP.	The question of the relationship between the determined values for PCAP and PFLOOR and the values of shadow SMP and SMP together with its effect on submitted prices is subject to futher consideration.
VPE	74	4 Conclusion on Pricing Section	v1.2	The current version of the SEM rules contains some rules relating to SMP that are unclear and which merely require clarification. However, the design of the capacity payment is fundamentally flawed, because it is based on the misinformed adoption of rules used in a different kind of market in England and Wales. The current formulation produces perverse results, in that peaking plant will be paid less than other kind of plant (and hence less than the cost of a peaking plant which sets the capacity payment). This distortion to incentives is does not reflect any economic rationale and is therefore unjustified. Given the nature of the SEM, there is simply no reason to lower the capacity payment at times when SMP is higher, or for plant whose offer price is higher. The solution is to replace the inappropriate borrowings from the Electricity Pool of England and Wale with a more stable formula in which CPGPFuh has a fixed value. By this means, the capacity paymen will serve the purpose for which it was intended.	This matter is being considered together with the related point raised against sections 4.74-4.98 (page 90) by the Capacity Payments and Modelling workstreams
VPE	74	4 Uplift	v1.2	As per our previous response to the Uplift mechanism submitted to the RAs in January VP&E are concerned by: 1) the implicit inclusion of infra marginal rent in the uplift mechanism 2) the inclusion of the delta constraint in the uplift mechanism 3) the effects of weighting towards alpha on price signals and refer the RAs to the specific recommendations made to address these concerns in our previous response. Furthermore, we are concerned by paragraph N.36 in Appendix N that excludes price taking generator units from being included in the cost recovery constraint and therefore being able to effect uplift payments. It seems likely that price taker generator units will incur some form of costs associated with start-up and no-load and it seems unnecessarily restrictive to prohibit them from recovering these costs via the market. VP&E however acknowledge that given the unique characteristics of price taking generator units - i.e. the ability to self-schedule - their start up and no-load costs would need to be consistent with SRMC bidding principles.	The form of the uplift approach was the subject of consultation which concluded in September 2007. The values of the Uplift parameters was the subject of separate consultation which concluded earlier this year. The RAs take the view that this is the proper form for the Code at least for the start of the Market. Apart from plant which is not despatchable, all Generator Units have the choice to be Price Makers. Plant which is not despatchable starts and stops to meet its own needs, not those of the Market. The RAs therefore believe that it is right to exclude Price Takers from the uplift provisions.
Airtricity	74	4.8 - 4.10	v1.2	In the context of making commercial offer data, generators do not need to include the subscript "h" in their PQ pairs, as the values are valid across the trading day. The differences for interconnector units is adequately covered in 5.47.	Noted
ESB PG	75	4.11	v1.2	"After any such exclusions, should the greatest remaining Quantity (Quhi) be less than the Actual Availability (AAuh), then, for th purposes of the EPUS Software, the Actual Availability (AAuh) will be used in place of the greatest remaining Quantity (Quhi)." should this read "greater"	No. No change required.
VPE	75	4.17A	v1.2	The only instances where TOD requires scaling by DLAFs must relate to embedded generators and this should be clearly stated rather than using the unclear statement "where appropriate".	drafting is adequate
VPE	75	4.17A Technical Offer Data	v1.2	It is not clear what difference can arise between Technical Offer Data and data submitted under the Grid Code, since the latter provides the former. The source of the potential difference should be clarified. Preferably 4.17A should be removed to avoid the possibility of ambiguity.	Participants provide (separately) Technical Offer Data to the Market Operator and data to the relevant System Operator under the relevant Grid Code.
VPE	75	4.18-4.20	v1.2	The use of the same variables "e.g. Actual Availability) for forecast as for post-event is confusing and would be better described as forecasts but when describing the EPUS runs, clarify that for ex-ante runs, the forecast values are used.	Detail of the data to be used in the various runs of the MSP software is set out in Appendix N.
VPE	76	4.28	v1.2	The only instances where Generator Unit data requires scaling by DLAFs must relate to embedded generators and this should be clearly stated rather than using the unclear statement "where appropriate".	the drafting is believed to be sufficiently clear
VPE	76	4.21A	v1.2	The drafting of this clause is loose and the data items that are used in EPUS which are net of Unit Loa should be tightly specified. It is also incorrect to say that the values used in "Settlement" are net of Unit Load since all settlement is completed using Loss Adjusted values.	The drafting is believed to be sufficiently clear and though it is true that Settlement data is loss adjusted it is also net of unit load.

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VPE	76	4.23 Net Output Function	v1.2	The Net Output Function is to be used by the system operator to convert values relating to gross Unit Output to values that are net of Unit Load (4.22): XNu = ULSu x XGu – FULu, where ULSu is the Unit Load Scalar, and FULu is Fixed Unit Load. However, the current drafting does not provide a full explanation of how and when this function is used This is partly due to the continuing lack of detail in Appendix P. For clarification, it would also be useful if the RAs could clarify how the rules deal with non-unit station load, i.e. load within the premises of the power station that is not attributable to any particular unit. Is this load to be included within FULu(h), or treated as a separate demand?	Paragraph 4.21A specifes that all values of MW, MW/min or MWh provided by the System Operators should be net of unit load. No further detail will be provided in Appendix P, which relates to instruction profiling. The treatment of non-unit load is a matter for initial consideration with the Meter Data Provider.
Synergen	77	4.27	v1.2	This section now is blank but previously said "The title to all products and services settled through the trading arrangements set out in this Code will transfer at the Trading Boundary." Synergen proposes that this section is reinstated to provide clarity that: 1. legal title to the electricity produced belongs to Generators initially; 2. legal title to the electricity transfers to Suppliers (in proportion to the their consumption); and 3. the title of electricity transfers at the at the Trading Boundary. In addition please confirm, in the RAs response to comments raised, how the definition of the "Trading Boundary" impacts onto transmission connected customers?	The definition of "Trading Boundary" which was inadvertently ommitted from version 1.2, makes this clear.
VPE	77	4.31	v1.2	The derivation of TLAFs (and other parameters, e.g. capacity payments sums) is a concern and it is surely not reasonable for the code to leave them entirely to the RAs' discretion. The method should be described in the code, at least in principle.	The code now describes the process for agreeing the SO proposals for TLAFs.
ESB I	77	4.36	v1.2	The solution set out which allocates firm access capacity equally across all generator units on a trading site would be improved by allocating the capacity to the cheapest generator units first. For example if there are a gas turbine unit and a distillate set on a single site, it would be better if firm access was granted to the cheaper unit first. At this stage it is accepted that it may not be possible to implement the solution for Nov 2007, however a derogation could be included in section 7.	The Code currently incorporates a simple and straightforward process. The RAs take the view that the alternative process described is much more complex and may not result in a significantly better solution. It is also true that a change could not be incorporated before November 2007. It is open to Parties to propose Code Modifications after that time.
VPE	81	4.38B	v1.2	The only instances where Generator Unit data requires scaling by DLAFs must relate to embedded generators and this should be clearly stated rather than using the unclear statement "where appropriate".	the drafting is believed to be sufficiently clear
Moyle	81	4.38B	v1.2	We assume that the reference to "ramp rates" in this paragraph are intended to be to "Ramp Rates" as defined. If so, we note that, subject to our comments in relation to the definitions of Ramp Rates, there is an inconsistency between this paragraph and paragraph 5.34 insofar as that paragraph 5.34 requires the Interconnector Administrator to submit Ramp Rates. That said, we believe that this paragraph is correct and the System Operator should submit Ramp Rates for Interconnectors.	There has been substantial redrafting of the Code in relation to Interconnectors.
VPE	81	4.38B Dispatch Quantity	v1.2	We assume that the reference to "ramp rates" in this paragraph are intended to be to "Ramp Rates" as defined. If so, we note that, subject to our comments in relation to the definitions of Ramp Rates, there is an inconsistency between this paragraph and paragraph 5.34 insofar as that paragraph 5.34 requires the Interconnector Administrator to submit Ramp Rates. That said, we believe that this paragraph is correct and the System Operator should submit Ramp Rates for Interconnectors. Statement 4.38 remarks that SOs should submit Dispatch Instructions to the MO on a daily basis, with the possibility of ex-post revisions. The meaning of "ex-post revisions" is not clear. Does it mean, for instance, despatch instructions issued after a generator has tripped, in order to reconcile the outstanding instruction with what is actually happening?	There has been substantial redrafting of the Code in relation to Interconnectors.
VPE	82	4.44	v1.2	While a Generator Unit is subject to a Maximisation Instruction, the revised Dispatch Quantity (DQ'uh) shall be calculated by the Market Operator as set out below: DQ'uh = max { DQuh, min { STMCut, (MGuh / TPD) } } Where STMCut is the Short-Term Maximisation Capacity for Generator Unit u for the relevant Trading Period h within Trading Day t. It is not clear who sets STMCut, or how. The source of this variable should therefore be clarified.	STMCut, the Generator Unit Short Term Maxisation Capability is a part of Technical Offer Data. A definition of STMC has been included in the Glossary.
VPE	83	4.48	v1.2	This version of the code contains more information on the calculation of SMP and answers some of the questions posed by NIE six months ago, although it still remains vague on the actual operation of EPUS and Appendix N has little description of the actual EPUS methodology. it is clear from N23 that the cost minimisation from which shadow prices are derived is after unit commitment and takes no account of start-up and no-load costs. Therefore, although the shadow prices are derived as duals of this minimisation, they do not result from a system cost minimisation and do not reflect underlying market dynamics. Neither of the supplementary objectives set out in 4.49A effectively promotes the aim that SMP should reflect the system marginal cost and so the stated aim of 4.49A is not achieved. Both the objectives bias SMP down towards incremental energy cost. The likelihood is that SMP will understate the marginal cost and that efficient investment in baseload plant will be deterred. Moreover, the fact that SMP does not reflect marginal cost undermines the economic rationale for adherence to the bidding principles.	the assertion that shadow prices do not result from a system cost minimisation and do not reflect underlying market dynamics is not true; although the approach to the solution of those requirements is a multi-stage process. No code change is required.
VPE	83	4.49(3)	v1.2	This clause states that EPUS will function taking account of the technical capabilities of the generating units as determined by MINGEN and the TOD. However, it is clear from recent presentations at TLG/BLG forum that EPUS averages various of these patrameters and hence this statement in the TSC is incorrect.	The drafting is adequate. MSP takes account of the technical characteristics of generating plant.
VPE	83	4.49A-C EPUS Software	v1.2	The overall objective of that part of the EPUS Software which calculates Uplift is to set the System Marginal Price to reflect the marginal cost of producing or consuming electricity during the Optimisation Time Horizon, subject to balancing the following supplementary objectives and as set out in further detail within Appendix N: "1. energy prices should be reflective of underlying market dynamics; consequently the recovery of Start Up Costs and No Load Costs through SMP should not deviate significantly from the Shadow Prices (termed the Uplift Profile Objective); and 2. the revenue paid through Uplift revenues should be minimised (termed the Uplift Cost Objective)." It is not at all clear what is meant the demand that 'recovery' should not 'deviate significantly from the Shadow Prices'. To avoid confusion, the language should either be clearer, or it should copy the language used to define the "a" constraint.	These objectives were part of a RA decision in September 2006 - See AIP-SEM-142-06 (18 September 2006)
ESB PG	83	4.49c	v1.2	Will the Ras consult on Uplift input parameters on an annual basis?	for consideration by the RAs
ESB I	83	4.49C.2	v1.2	It is not clear why the sum of alpha and beta needs to be 1. It is only the relative values of alpha and beta that are important, although this does not constrain the result on the optimisation, it should be enough to state that both alpha and beta lie between 0 and 1.	These objectives were part of a RA decision in September 2006 - See AIP-SEM-142-06 (18 September 2006)

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VPE	84	4.50	v1.2	The rules state that "For the avoidance of doubt, and with the exception of the treatment of Generator Units with Non-Firm Access, the EPUS Software will not take explicit account of the topology of the Transmission System or any requirements for reserve." It is understandable that the EPUS should not attempt to model reserve requirements in any detail. However, omitting any allowance for reserve will lead the EPUS to underestimate SMP because it will ignore way in which reserve requirements "sterilise" some capacity so that in the form of non-productive spinning reserve, which necessitates the use of alternative, higher cost capacity to meet demand. The simplest way to correct for the SMP underestimation bias is to run the EPUS to match generation to demand plus operating reserve, to ensure the identification of the correct marginal plant. The part loading of plant for reserve will then be indistinguishable from other differences between MSQuh and DQuh, and can be remunerated the same way. Making this change only requires the system operator to state (once and for all, or on a daily basis) how much capacity will be held as operating reserv	Reserve will be remunerated through the difference between the Market Schedule Quantity and the Disptch Quantity for the generators so affected. It is not necessary to remunerate all generators by increasing SMP.
ESB I	84	4.50A	v1.2	Jon O'Sullivan explained in his presentation to the RLG that there will have to be a penalty cost associated with any notional generator. It was also stated that the penalty cost should be in excess o the VoLL. This approach seems to make sense, however the fact that the penalty cost is greater than VoLL should be written in the code if this is what is intended. Is it intended that the notional generato is included in the post-processing stage used for pricing? If this is not the case, then it should probably be stated explicitly.	The circumstances described apply when there is insufficient generation to meet demand. This is covered in the Code under Insufficient Capacity Events under these circumstances SMP is set to the price cap.
ESB PG	85	4.51	v1.2	Will actual dispatch use the same systematic process of random selection? If not why?	This is a Grid Code issue. There are many reasons for differences between actual dispatch and the MPC software.
Synergen	85	4.51	v1.2	This clause requires scheduling "Tie-Breaks" to be resolved via "a systematic process of random selection". However, Synergen considers that such "random selection" must be reproducible within the SMO software (for any given set of inputs) so that the schedule produced can't change just because the software is re-run without changing the inputs. Therefore Synergen suggests that 4.51 is amended accordingly as follows "a systematic process of random selection based on a random seed that is fixed and recorded such that the specific schedule is repeatable".	Paragraph 4.51 has been amended to require that the selection should be repeatable.
VPE	85	4.52A SMP Calculation	v1.2	The current draft is not clear as to whether the System Marginal Price (SMP) covers all running costs or not. Paragraph N.3 states that the SMP will "cover the marginal cost of meeting the last unit of Schedule Demand..., including uplift", i.e. the SMP will be no less than the highest offer price of any plant running to meet demand. Paragraph 4.52A notes that the SMP will also allow for the recovery of Star Up Costs and No Load Costs. However, 4.52A also remarks that the SMP will not under all circumstances recover all running costs. Make Whole Payments (4.108A and 4.109) are intended to make up any shortfalls of energy payments with respect to production costs – thus confirming that not all costs are reflected in the SMP. This sentence appears to contradict the other statements, unless there are specific cases where some costs will not be covered by SMP. It would be useful to indicate what these cases are Or else remove the contradictory assertions. In general VP&E would like to emphasise that Make Whole Payments should not be used to take money out of the market (i.e. reduce SMP) and ther	The circumstances where a generator's costs may not be fully recovered include where the Price Cap is applied.
VPE	85	4.53 - 4.55	v1.2	Either the value of the PCAP and PFLOOR should be specified in the TSC or the methodology by which they will be determined should be set out. It is also not clear how this sits alongside the SMP Uplift calculation. Is this a constraint on the calculations or does this only apply after the Uplift algorithms have been run?	The question of the relationship between the determined values for PCAP and PFLOOR and the values of shadow SMP and SMP together with its effect on submitted prices is subject to futher consideration.
VPE	89	4.69	v1.2	The error supplier unit balance is not subsequently distributed. Who receives or pays it and how is it ultimately recovered from customers?	The registrant of the Error Supplier Unit is responsible for the energy (and costs) allocated to that Unit.
VPE	89	4.69(3)	v1.2	The definition of NIJleh makes reference to "appropriate adjustment for Transmission Losses". The adjustment needs to be fully defined, e.g. is it adjusted using a pre-determined TLAF as is applied to any other Generating Unit?	NIJleh is not adjusted for losses and this is now set out in the Code.
VPE	90	4.74-4.98 Capacity Paymants and Capacity Charges	v1.2	It has been established that the capacity payment will (over a year as a whole) be set equal to the cost of Best New Entrant (BNE) peaking capacity. However, simulation of the capacity payment rules shows that peaking plants will receive less than other plants – i.e. less than their own fixed costs. The bias will distort investments in favour of baseload stations, even when Ireland needs more peaking generation. The source of this problem is a total misunderstanding of the capacity payments, and in particular the indiscriminate adoption of rules from the Electricity Pool of England and Wales that are unrelated to the capacity payment proposed for the SEM. The resulting mishmash of formula lead to unjustified distortions in the capacity payments received by certain plants. In the following section, we set out why these rules are inappropriate and how they should be replaced with fixed coefficients. Pool , and less than is needed to – so why do peaking plants get less than others? o Need to set PCAP high enough to permit all peaking plants to set SMP o Need to set VOLL high enough to avoid perve o Why use the VOLL-SMP part? o Why use VOLL-UCOP? Surely, capacity payn The capacity payment system of the SEM bears a	This issue is being considered by the Capacity Payments and Modelling workstreams in their consideration of these parameters.
Synergen	91	4.78	v1.2	FCPPy and ECPPy should be set out in the code i.e. algebra should say FCPPy=0.5 or similar as per the RAs' original agreement.	The RAs will determine values for these parameters annually as set out in paragraph 4.74.
VPE	94	4.84	v1.2	The use of COD bids to reduce capacity payments when bid prices are higher than SMP is not appropriate and reduces the capacity payments to capacity that is not scheduled in the unconstrained schedule but which may in fact be running or providing standing reserve. This may have a detrimental effect on new entry and security of supply.	This is related to the above comment on sections 4.74-4.98 and will be considered with that point.
ESB I	95	4.96	v1.2	Scaling suppliers capacity charges by (VoLL-SMP)/VoLL in every trading period make a certain amount of sense, but this was a lot more pertinent when capacity payments were being charged to the demand-side on the same basis that they were being paid to the capacity-side. Since this link has been broken, the ex-ante signal provided by the MO forecast, should provide sufficient signals.	Noted
ESB I	104	4.109	v1.2	Make-whole payments as drafted do not account for generators being held-whole in each optimisation period by the post-processing algorithm. Make-whole payments here are calculated on a billing period basis. This will result in generators who are otherwise being held-whole by the pricing algorithm being double-paid in some instances.	it is recognised that this is a consequence of the current MWP provisions in the Code but no changes to systems can be implemented in the required timescales to put this right. RAs take the view that the benefits of meeting the required timescale for implementation outweigh the disadvantages of this position.
VPE	104	4.110	v1.2	VPE request instructions as to how Uninstructed Imbalances will work in the new market.	See 4.110-4.118 and relevant parts of Section 5

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VPE	104	4.109 Make Whole Payments	v1.2	The formula for Make Whole Payments may over-remunerate generators who declare high offer prices but who then manage to ensure that they are despatched, by offering a combination of technical parameters that prevent or discourage the system operator from stopping them. Recovering costs outside of the SMP will lead to SMP being underestimated and given an incentive for plants to overstate their offer prices. Ideally, the rule should apply some test to see if plants were flexible at times when they appear to be failing to cover their costs. (This was the approach adopted by the Pool in England and Wales.) If plant is not flexible (e.g. running up or down, or at Mingen) its offer price should be set equal to SMP for the purpose of calculating its running costs. On the other hand, it is difficult to see how plants will fail to cover their costs, given the rules in 4.52A	The sort of behaviour described would be a matter for the Generator licence and bidding principles and possibly for the Market Monitor. In the short term no changes are posible prior to November 1 2007.
VPE	105	4.116	v1.2	It is not clear that the same frequency adjustment should apply to each generator since they are not all required to provide the same frequency response. This issue needs further consideration.	This provision reflects how the adjustment woirks currently and is OK: the same droop applies in Northern Ireland and in Ireland and if the generator is not frequency responsive it gets the benefit of the doubt if it errs in the direction that helps correct the system frequency.
VPE	105	4.115(3)	v1.2	The variable MWTOLt does not vary across trading periods "h".	But it has a value in each trading period h of the Trading Day t; each of which values are the same.
VPE	107	4.119	v1.2	NIE consider that an estimate of the Billing and Capacity Period Currency Costs should also be included within the imperfections charges rather than through the method currently proposed.	The systems are designed to do it through the process in the Code
VPE	108	4.120	v1.2	It is likely that the profile of constraint costs incurred will not be equal throughout the year and it would seem more appropriate to profile the recovery of such imperfection costs from customers (i.e. IMPFh should not always equal 1). The current proposal is likely to discriminate against high load factor customers by making the same charge for night-time consumption when constraint costs should be lower.	This may be a modification proposal after go-live, but would probably need some operational experience post go-live.
Moyle	109	5.1	v1.2	The Conditions in Section 5 should be stated to be in addition to or in replacement of the Conditions in both Sections 2 and 4, not just section 4 - particularly in the context of registration requirements for Interconnectors and Interconnector Units.	This has been carefully considered and it is not believed to be necessary to make such a generic change.
VPE	109	5.1 Definitions and General	v1.2	The Conditions in Section 5 should be stated to be in addition to or in replacement of the Conditions in both Sections 2 and 4, not just section 4 - particularly in the context of registration requirements for Interconnectors and Interconnector Units.	This has been carefully considered and it is not believed to be necessary to make such a generic change.
VPE	110	5.10 - 5.13	v1.2	As referenced in our response to 2.40, NIE does not consider any unit that is predictable should be a price taker since the effect is to distort the calculation of the true market price and the transparent identification of any costs.	Only Units which have priority dispatch may slect to be price takers - no change to Code required
Airtricity	111	5.17	v1.2	The process for deriving "Real Time Availability" must be properly defined; in cannot be at the discretion of the SO.	This will be defined in Appendix P
VPE	112	5.22(4)	v1.2	There is no description of how a "Decremental Price" (DECPuh) is determined or the source of the input.	A Decremental Price is required to be submitted by Predictable and by Variable Price Taker Generator Units and by Generator Units Under Test. In each case the Code specifies that the value to be submitted shall be zero (see 5.13A, 5.15A and 5.136A).
Moyle	114	5.34	v1.2	The ramping limitations applicable to a DC interconnector are system constraints, not interconnector constraints. The relevant System Operator should therefore provide details of ramping limitations in respect of any interconnector. Also, the technical data must include any minimum flow limitations as well as maximum flow limitations (ie. interconnector dead bands).	There has been substantial redrafting of the Code in relation to Interconnectors.
ESB I	114	5.37	v1.2	Though it is accepted that SO incentivisation is outside of the scope of the trading and settlement code, it is clearly inappropriate for the SO to be incentivised to perform intra-day trades with other system operators when they are the party who determines the ATC of the Moyle.	The RAs agree that the incentivisation of the System Operators is outside of the Code but take the view that Interconnector Users should have the priority on the use of the interconnector capacity, but that the relevant SO should be enabled to use any unused capacity (including superposition) to trade with other system operators.
VPE	114	5.34 Interconnector Technical Data	v1.2	The ramping limitations applicable to a DC interconnector are system constraints, not interconnector constraints. The relevant System Operator should therefore provide details of ramping limitations in respect of any interconnector. Also, the technical data must include any minimum flow limitations as well as maximum flow limitations (ie. interconnector dead bands).	There has been substantial redrafting of the Code in relation to Interconnectors.
Moyle	114	5.37A	v1.2	It is inappropriate that the ATC is calculated by the SO, as well as being practically difficult given that the SO is not in possession of the information to enable it to do so. This should ideally be the ultimate responsibility of the person who registers the Interconnector, recognising that it may be done by another entity (such as the Interconnector Operator). Against this background, Moyle would accept that this information could be provided by the Interconnector Administrator.	There has been substantial redrafting of the Code in relation to Interconnectors.
Moyle	114	5.37A	v1.2	The words "decision by the Relevant Regulatory Authority for the terms of access to the Transmission System" should be replaced by "the provisions of any Licence in respect of the Interconnector". This paragraph is acceptable provided it is clarificatory only and does expressly or impliedly change the existing position at law.	The proposed wording change would make no difference. No change proposed.
Moyle	115	5.41	v1.2	Moyle is of the view that it is preferable that Capacity Holdings be calculated by the Interconnector Administrator than the Market Operator. We understand that SONI have provided revised drafting to reflect this with which we agree in principle.	There has been substantial redrafting of the Code in relation to Interconnectors.
Airtricity	115	5.38 - 5.53	v1.2	The Code is too prescriptive in this section, as it pre-empts development of a wider range of capacity product by the asset owner. The Code should be drafted on the basis of an "active" interconnector agent, who will manage and prioritise bids, in line with its commercial arrangements with interconnector users. The MO only needs to be provided with a set of PQ pairs and Participant IDs. The IA can work out rationing on the basis of its commercial relationship with users, rather than on the prescriptive and constraining basis set out in 5.43.	There has been substantial redrafting of the Code in relation to Interconnectors.
ESB I	117	5.59	v1.2	In the event of technical failure of the interconnector, the imbalances should be carried by the interconnector residual capacity unit. In principle this is consistent with participants getting firm schedules at the ex-ante stage.	See Agreed Procedure 2, which defines the process.
VPE	117	5.60	v1.2	The time period (and communication channels) for the MO to inform Interconnector Users of revised MIUNs must be tightly defined.	There has been substantial redrafting of the Code in relation to Interconnectors.
ESB I	117	5.62	v1.2	Similar to the comment made on 5.37 – SO Interconnector trades should be clearly examined since they may provide the SO with incentives to reduce the ATC of Moyle so that they can earn revenue.	There has been substantial redrafting of the Code in relation to Interconnectors.

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ESB PG	122	5.86C	v1.2	0.25 may not be the best figure to use in each season. Seasonal figures be should looked at. Should this be in an AP to make it easier to review?	RAs take the view that the a full review by the Mods Committee prior to any change is desirable. No change proposed.
ESB I	123	5.90A	v1.2	It is not clear from this which variables are to be changed in order to achieve the minimisation.	Paragraph reworded to state "select values of IEAuh to maximise"…
ESB I	123	5.90B	v1.2	Similar comment to 5.90A	Paragraph reworded to state "select values of IEAuh to maximise"…
VPE	126	5.102	v1.2	It is not clear what capacity payments Pumped Storage Units pay when it is scheduled to pump. This must be clearly defined.	The payments to Pumped Storage Units can be + or - . Thus payments can become a charge when pumping.
ESB I	126	5.104	v1.2	Similar comment to above	The payments to Pumped Storage Units can be + or - . Thus payments can become a charge when pumping.
ESB PG	126	5.97C	v1.2	This is a fundamental change to the management of Pump Storage units in the T&SC. In all previous versions of the code this was a hard limit not a lower limit. Why has this become a lower limit. If this is due to IT system constraints were any other solutions available and why were these not raised at RLGs for discussion? This takes away the ability of Pump storage owners to manage their reservoir levels. PG modelling has shown that the most efficient optimisation period of Pump Storage is a week. Allowing Pump storage to set a hard end of day limit allows pump storage owners to approximate this. However, if this limit is only a lower limit this will result is less efficient optimisation of pump storage over a week and an increase in electricity prices.	The central systems treat the reservior level as a lower limit; but since they treat the energy avialable from the reservior as essentially free, there is virtually no difference in treating the limit as a lower or as a fixed level.
VPE	131	5.110	v1.2	In line with our response to 2.40 and 5.10-5.13, NIE does not consider that generating units with priority despatch should have any distortionary impact on the calculation of the true market price and the transparent identification of any costs.	Noted
VPE	131	5.115	v1.2	The normal metering application on an Autoproducer Site would provide for import and export registers within the same meter. Clarification/confirmation required that such metering is eligible.	The acceptability or otherwise of the site metering is a matter initially for the Meter Data provider and the MO.
VPE	131	5.111 Autoproducers	v1.2	The definition of Autoproducer is unclear. It seems to cover sites with demand other than Unit Load and 'House Load' for power station, but without referring explicitly to either. The rule could state that Unit Load and other House Loads for the purpose of generation will not qualify a generator on the same site to be counted as an Autoproducer.	5.111 makes clear that an autoproducer is a demand site not a generator.
VPE	134	5.133 - 5.136	v1.2	The proposals for generator testing are too inflexible to be of any value in normal operational conditions (e.g. a generator testing after an outage). They are more aligned with commissioning tests where day ahead testing profiles could be submitted but even then, variations will be necessary and the proposals would be too inflexible to be fit for purpose. More flexible within day testing facilities are required.	RAs are advised that it is not possible to implement facilities for the provision of within-day Under Test facilities prior to go-live, but recognise the desirability of such facilities in the longer term. Provision is included in the Code for the System Operator to confirm (or otherwise) that a Generator Unit seeking Under Test status is considered to be under test in accordance with the relevant Grid Code.
VPE	134	5.133B Generator Units Under Test	v1.2	Query whether it is practical for a Generator to specify with certainty its Under Test Start Date and Under Test End Date. The Code should contain the flexibility for these to be easily modified if required.	RAs are advised that it is not possible to implement facilities for the provision of within-day Under Test facilities prior to go-live, but recognise the desirability of such facilities in the longer term. Provision is included in the Code for the System Operator to confirm (or otherwise) that a Generator Unit seeking Under Test status is considered to be under test in accordance with the relevant Grid Code.
VPE	137	6.1 (5) and (6)	v1.2	The draft TSC proposes that Currency Cost is settled on a weekly basis for energy and monthly for capacity. Our preference is for annual settlement, as it is not anticipated that this should be a significant amount and over time it allows setting off of losses and gains and reduces the administration surrounding weekly and monthly settlement. Exchange rates need tighter definition.	The RAs recognise the attraction of such an approach but understand that the Market Operator cannot support such a process before go-live. In respect of the issue of exchange rates, the RAs recognise that the way of achieving the most competitive exchange rates should be through a contract with the SEM Bank.
VPE	138	6.3	v1.2	When is the ex-post LOLP published to enable the reconciliation of capacity income and ensure there is an opportunity to raise a data query prior to settlement.	See Table 47 part 7 - 5 days after the end of the Capacity Period.
VPE	138	6.3	v1.2	Energy and Capacity payments must be made by participants by 12.00 noon. Why has the code been changed from a previous 5.00pm timetable which allowed SDMT to be completed and delivered to the SMO within day. VP&E believes the time line must be changed to 5.00pm.	The deadline has been brought forward to 12.00 to allow for the calling of credit cover over the following 24 hours and still leaving time for any necessary adjustment of Self Billing Invoices before payment to Participants.
VPE	138	6.4	v1.2	The definition of Trading Day Exchange Rate states that it will be defined in the banking agreement between the MO and the MO banking partner. The source of the exchange rate should be explicitly defined within the TSC, e.g. the forward rate for the Trading Day as published by XXXX at the end of the previous business day.	The RAs would wish the MO to be able to get the best exchange rate possible by negotiating with the SEM Bank. The MO is responsible for managing the costs of currency exchanges.
VPE	138	6.7	v1.2	The means by which the Annual Capacity Exchange Rate is determined should be explicitly defined within the TSC (e.g. it is the forward rate published by XXXX applying on the date the Capacity Payments are determined).	Annual Capacity Exchange Rate is approved by the RAs folowing a proposal by the MO.
VPE	138	6.8	v1.2	Please provide details of how the Market Operator will manage the Currency Cost and how he will be incentivised to minimise these costs.	This is a matter for the MO licence not for the Code.
VPE	138	6.9	v1.2	It is not clear what is meant by "in proportion to their gross financial participation in the market". Does this include Suppliers and Generators? What precisely is included in the derivation of the "gross financial" participation?	This is further specified in the algebra in the paragraphs referred to.
ESB	138	6.10-6.23	v1.2	Banking arrangements: ESB would like clarification on what happens with the funds that are received from suppliers and not paid to generators until the following day - who gets the benefit of these funds over night? Is there a mechanism to return this benefit to market participants?	Interest will offset the Balancing cost and reduce MO costs; thus reducing costs to all Participants
ESB	138	6.2 - 6.9	v1.2	ESB remains concerned that the treasury function within the SMO has not been adequately described and requests that details be provided so that market participants may understand the currency exposures that may arise from hedging and cash management activities within the SMO.	The Market Operator is responsible for managing currency costs see paragraph 6.8.
VPE	138		v1.2	Exchange rates need tighter definition	

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VPE	139	6.23b	v1.2	Clarity should be provided by the SMO on the SEM bank and EFT facility procurement and operating processes. No assessment can be made by VP&E as to the banking impact based on the information provided in the code. This information is required as soon as possible to ensure that the appropiate banking arrangements are put in place. Details of how in practictal terms the expected EFT facility is going to operate should be published as soon as possible.	See updated paragraph in version 1.3 of the Code. The Market Operator has not procured a facility for use by Participants only for its own use in paying Participants.
VPE	139	6.23b	v1.2	Participants should be consulted and rules should be adhered to in the appointment of the SEM bank For example the code does not set out the credit rating parameters of the SEM bank eg: The SEM bank should have a credit rating of A (S&P) or A2 (Moodys) and gross assets of >€1,000m or Net assets of >€1,000m	See redrafted paragraph 6.23B1.
VPE	139	6.23E.2	v1.2	As for 6.23C and 6.23D the code should state that the SEM Collateral reserve account is interest bearing.	The Participant sets up the account - see 6.23E1 and the Market Operator will repay interest - See 6.23P.
VPE	139	6.23E.2	v1.2	The collateral reserve account should be held in the participant name not the SMO name. There would be restrictions in terms of withdrawing funds from the account and the SMO would have access to the account information. All interest gained on the account would be payable monthly to the participant.	SEM Collateral Reserve Accounts must be in the joint names of the Participant and the Market Operator. See paragraph 6.23E1.
VPE	139	6.23G1-3	v1.2	Further details on how the Electronic Funds Transfer (EFT) Facility will operate and how participants will use the EFT Facility are required. At this stage it is not possible to assess if it will impose unreasonable restrictions on our current banking arrangements.	See updated paragraph in version 1.3 of the Code. The Market Operator has not procured a facility for use by Participants only for its own use in paying Participants.
ESBCS	139	Banking arrangements 6.23 E.2	v1.2	Collateral Reserve Account shall contain the cash element of that participant's posted credit cover. Wish to confirm that this facilitates the 'option of' rather than the 'obligation to' provide a cash deposit	see paragraph 6.136B
VPE	141	6.23K Establishment of Trusts	v1.2	It is not clear what is meant by "proportionate entitlements" in this paragraph? We also query the basis on which it is considered appropriate that the MO should withhold payment to market participants given that these monies are held on trust by the MO (see paragraph 2.222(3) and (4))	No change is required - see reference to paragraphs 6.180 and 6.222, there the algebra is laid out.
VPE	142	6.24	v1.2	Billing period does not align with Trading Days	Noted
ESBCS	142	6.23 P	v1.2	"The participant shall be entitled to change the composition of its posted credit cover in satisfying the required credit cover provided any reduction in any amount standing to the credit of the relevant SEM Collateral Reserve account does not result in a breach of the required credit cover." This implies that the participant can post collateral in whichever form it decides and is in conflict with the 67% threshold in AP 9 version 2.	AP9 will change.
VPE	142	6.23P Establishment of Trusts	v1.2	The rights to retain funds in this provision are in the nature of a set-off. This is more appropriate than the ability to withhold monies owed under Paragraph 2.222.	Provision has been changed to "set-off" in 2.222
Synergen	142	6.23T	v1.2	Please explain why the provisions of section 10(2)(c) of the Trustee Act, 1893 won't apply as per 6.23T.	Because the Market Operator is two people and the Act concerned places limitatiuons on trusts with two trustees.
ESB PG	144	6.33	v1.2	Why has the time that Suppliers must pay by been pulled back to 12:00. Why does the SEM Bank need 29 hours?	The deadline has been brought forward to 12.00 to allow for the calling of credit cover over the following 24 hours and still leaving time for any necessary adjustment of Self Billing Invoices before payment to Participants.
Airtricity	144	6.33	v1.2	In the first instance, the MO should be required to make credit calls on the SEM Collateral Reserve Account, before calling on any letter of credit.	No- there may be no (or insufficient) cash in the Collateral Reserve Account. The MO must have the freedom to call any part of the Participant's credit cover.
Synergen	145	6.33.4	v1.2	The day gap in this processing of payments to Generators is inconsistent with normal commercial practice and should be removed.	The gap is necessary to enable an effective credit call process to be effected before payments have to be made to Pool creditors.
VPE	145	6.33a	v1.2	Clarity is needed in terms of the jurisdictional interest rates applied in the code, current drafting of the code seems to indicate use of Euro rates of default interest whereas the borrowing rate in UK is substantially different to that in Ireland.	See revised definition of Default Interest in the Glossary.
VPE	145	6.33C Invoice and Self Billing Invoices	v1.2	The fact that a payment is not received may be no fault of the market participant (eg. Error of a financial institution). There should be a short window of opportunity for a market participant to remedy and such situation without having credit cover called as this has the potential to have serious consequences in terms of cost and cross default provisions (particularly in the context of third party financing).	Debtors are required to pay ionvoices by 12.00 3 working days after the invoice date. Parties need to ensure that they are in the position to do this reliably.
SEM Programme	145	6.33D & 6.33E	v1.2	This new section is of concern as drafted since it in effect allows the participant a 'days grace' from the invoice due date to pay its outstanding invoice amount. This cannot be allowed as the SMO requires 24 hours to process the receipts and make the payments to the generators. The participant should not be providing "funds" after the invoice due date since this amounts to a "late" payment which the SMO cannot guarantee will be included in the payments to generators.	This is not a day's grace. The credit call process starts and may complete. This is a significant disincentive.
VPE	145	6.33E	v1.2	The reference point 3 to 6.33F-L does not exist?	drafting OK
VPE	145	6.33E(2) Invoice and Self Billing Invoices	v1.2	Withholding payments from one participant because of the default of another participant will make no recourse project finance impossible and this will result in a massive disincentive to investment in generation. If revenue streams to project financed vehicles are depending on third party compliance with the Code, lenders will require full recourse to such third parties to the extent of the exposure. Very careful consideration needs to be given to this issue. Further the implications from a regulatory perspective need to be considered.	The RAs consider the Defaulting Participant Group provisions to be a necessary and appropriate manner to protect the other Participants in the market.
VPE	145	6.33E.2 and 6.141.2	v1.2	We have very significant concerns on these provisions, which could lead to cross-defaults and consequences across a wide range of regulated and non-regulated affiliates, and which would cut across specific ring-fencing arrangements. We also note that these provisions are inconsistent with the RAs approach on ring-fencing and PPB neutrality as they would effectively mean that the competitive business within the Group could impact on the monopoly and vice versa. The provisions are therefore not appropriate for the Market and inconsistent with the regulatory arrangements. Also in relation to this, the definition of "Affiliate" is of concern as it would lead to a breach by one company immediately impacting "any holding company or subsidiary or any subsidiary of a holding company of the relevant Party" in either jurisdiction.	The RAs are giving further consideration to the question of Defaulting Participant Groups.
SEM Programme	145	6.33F.2	v1.2	The SMO has received financial advice which recommends that in the event that there is a bad debt which must be levied against all generators the appropriate treatment is to send a 'debit note' to each participant for the amount that needs to be deducted. VAT will also be charged on this debit note. Thus the proposal to send an "Adjusted Self-Billing Invoice" would not be the appropriate term to use. With regard to suppliers and any payments which need to be credited, the recommended approach is to issue a "credit note".	Provisions have been altered in version 1.3 of the Code to provide for Debit Notes to be submitted to Creditors for their share of the Unsecured Bad Debt. However, these provisions are incomplete and a further Change Request is has been raised to alter the baselined Code.

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ESBCS	145	Invoice & Self Billing invoices 6.33B	v1.2	If MO fails to pay the full amount owing to a self billing invoice by the due date, then interest shall accrue on the amount outstanding which shall be a cost of the MO - ESBCS seeks clarification that th associated interest charges are not recovered from participants through the MO charges?	This is a matter for the RAs management of the Market Operator pricing under the Market Operator licences.
Airtricity	147	6.33N (1)	v1.2	Line 5, "underpayment" would appear to mean "overpayment".	fixed
VPE	148	6.34-6.43 Settlement Reruns	v1.2	IT must be acknowledged that MO or system error may also be the reason for a re-run. There must be an obligation on the MO to publish the results of each Settlement Re-run to all Participants.	If such a rerun was undertaken as a result of the Market operator identifying an error, it would not be considered a rerun; merely a replacement for the original faulty run. The requirement to publish results is set out in Appendix K.
ESB I	149	6.44	v1.2	It would be appropriate to introduce the concept of a query to credit cover amount notification, although it is of greater importance that the amount can be the subject of an accelerated dispute process.	The RAs support this idea in principle but recognise that the Market Operator cannot support such a process before go-live. The RAs would welcome a proposal to modify the new Code after go-live
VPE	149	6.44-6.72 Queries to Settlement Data	v1.2	There must be an obligation on the MO to notify the existence of Data Queries and Settlement Queries and publish the resolution of such Data Queries to all Participants to give full transparency to Parties affected thereby.	RAs take the view that this is not an appropriate process and that the data query flag (when available) is the right approach.
VPE	150	6.54	v1.2	A specific timeframe for a Settlement rerun to be performed for resolved queries and disputes should be included.	This is inappropriate for circumstances which cannot be clearly defined in advance.
VPE	150	6.56	v1.2	We believe the Dispatch Quantity should also be included as an item.	The RAs take the view that the objectives of the three elements of the query and disputes processes are to allow the maximum early query of data; to resolve early queries as rapidly as possible and to lock down the calculated SMP as early as possible, while recognising that some base data (metered data) will change over time. In this context it is judged necessary to limit the extent of Settlement Queries in order ensure that Participants have an incentive to resolve problems during the Data Query process. If queries were permitted on all data under the Settlement Query process, there would be no incentive on Participants to use the Data Query process.
VPE	150	6.73	v1.2	The proposal is that payments are due irrespective of Queries or Disputes. However, further consideration should be given to the situation where there is clearly a manifest error, which is of a level that makes it wholly unreasonable for a Participant to pay, irrespective of the unresolved dispute	Such circumstances will lead to a dispute which will be brought to the attention of the RAs.
VPE	154	6.81	v1.2	It is not clear what "Testing Charges to MO discretion generator Unit" means. Is it proposed that the MO has discretion whether to apply the testing charge? Assuming the testing arrangements can be appropriately developed, the application of charges should not be open to discretion by the MO.	typo - now corrected
ESBCS	158	6.94	v1.2	Billing Period Currency Cost is based on a participants proportion of both payments and charges applicable to that participant. However SMO provides separate invoices for supplier and generator units and currency costs apply to both invoices. Will the calculations in the T&SC be adjusted to align with the SMO system process	T&SC and systems are aligned
ESB I	158	6.94	v1.2	APPENDIX 2 of AP 15 states BPCd is set using an estimate by the market operator. While this is known to be an estimate the reconciled amount is not used to reset BPCd. The MO will know the volume of payments at the time of invoicing and can use currency forwards (simply) to lock-in the currency cost of the payment period while the invoice is being raised. It is not acceptable for the MO to say that this amount cannot be known.	The code expects that the value will be known. The AP will be aligned with the Code.
ESBCS	159	6.98	v1.2	Capacity Period Currency Cost is also based on a participants proportion of both payments and charges applicable to that participant. However SMO provides separate invoices for supplier and generator units and currency costs apply to both invoices. Will the calculations in the T&SC be adjusted to align with the SMO system process	T&SC and systems are aligned
VPE	159	6.99, 6.102	v1.2	This should be defined as the Market Operator's Revenue Entitlement rather than “costs”.	both paragraphs deleted
VPE	160	6.100	v1.2	Further clarification is required as to the proposed split of the recovery of Market Operator operating costs between the fixed annual fee to all Participants and unit based charges to Supplier only. Furthermore, the demand charges treat all demand, regardless of when it occurs the same and hence MO charges at night will be a higher percentage of the overall cost of electricity at that time. It would be better to have profiled charges. Please explain how the MO will be incentivised to minimise its costs.	This is a matter for the RAs under the MO licences
VPE	160	6.100	v1.2	V 1.2 of the code does not require the regulatory authorities verify the fixed component of the MO charges. VP&E believe that the previous version 1.1 drafing should be reinstated.	All elements of MO charging under its licence(s) will be subject to RA approval.
Synergen	160	6.102C	v1.2	Synergen understands that this clause will require participants in RoI to be invoiced in € by Eirgrid and participants in NI to be invoiced in £ by SONI and each invoice will be charged VAT at the standard rate Synergen understand that this means it is only getting services from Eirgrid. Please can the RAs specifically confirm: 1. that this is the intended approach; and 2. that both tax authorities have approved this approach. As this confirmation is unlikely to take the form of T&SC wording, can the RAs make this confirmation in a published document on which the participants can rely.	The Market Operator is in discussion with the revenue authorities and the RAs understand that the VAT position is still subject to confirmation.
VPE	160	6.102D	v1.2	Why is it required that fixed market operator chages are paid annualy in advance instead of monthly. The code also needs to outline how the fixed costs are going to be charged to new entrants and would this include rebates to existing market participants. VP&E would favour monthly billing and payment of MO fixed charges.	See revised paragraph 6.102A, which states that fixed Market operator charges shall be invoiced monthly in arrears.
Synergen	162	6.118 and 6.122	v1.2	The Unsecured Bad Debt Energy Charge and Unsecured Bad Debt Capacity Charge calculations need to reflect the bilateral risk from within settlement reallocations and therefore the algebra needs to be amended accordingly as per the RAs' agreement at the RLG last year.	No change required and no RA agreement at the RLG has been minuted.
VPE	163	6.130	v1.2	The cost of interest to be added to Market Operator Charges. Please confirm if this is purely for late interest on the Market Operator Charges or is this interest due to Participants for late payment? If the former, further definitions of interest are required to differentiate the various types of interest. If the latter, then interest due from Suppliers should be passed directly onto the Generators and should not be included within the Market Operator's costs which are spread across Generators & Suppliers.	This paragraph has been deleted because all income and costs to the Market Operator are a matter for the RAs and the price control mechanisms under the Market Operator licence(s)

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Synergen	163	6.124 - 6.127	v1.2	This section of the T&SC should require the MO takes action to recover the Shortfall unless participants can be persuaded that it isn't efficient to take action for the recovery of such bad debt.	This approach has been considered previously and abandoned on the basis that the processes necessary for consulting with Participants and seeking a view that is legally robust introduce unnecessary complexity into the Code.
VPE	163	6.125 Recovery of Unpaid Market Operator Charge	v1.2	It is not clear exactly what is intended by this provision. It appears that any variable Market Operator Charge would be included in a Shortfall or Unsecured Bad Debt in any event as they are invoiced together. The fixed Market Operator Charge may not be included in this amount based on current drafting, but if this is the case it is not clear what is intended by ranking the liabilities together given that settlement amounts are secured? Otherwise, is it intended that the fixed Market Operator Charge is also covered by the credit cover and the Market Operator ranks equally with all Participants?	Since the Market Operator Charges and the Trading Charges are not invoiced together, they must be stated to rank together (i.e. equally).
VPE	164	6.136	v1.2	We welcome the opportunity to comment further on the calculations of Required Credit Cover when both the Code and AP9 have been baselined. However we can generally follow the intended methodology which more closely reflects the capabilities of the vendor's settlement systems.	Noted
ESBCS	164	6.136	v1.2	The acceptable forms of credit cover which participants can post are: * An irrevocable standby letter of credit. * Cash held in a SEM Collateral Reserve Account. This implies that it is at the participant's discretion to post its credit cover in whichever of these two forms that it chooses. This is in conflict with the 50/50 rule of AP 9 version 2	AP9 will be changed
ESB	164	6.136B	v1.2	T&SC has been revised to indicate that 50% cash collateral requirement is now an option rather than an obligation. Agreed Procedures need to be updated to reflect this. On a wider level, APs need to align with T&SC.	noted
VPE	164	6.136B Credit Cover	v1.2	The words "and/or" should be added at the end of sub-paragraph 1© to clarify that a person can provide such mix of credit cover as they wish provided that in aggregate it satisfies the requirements of the Code.	fixed
VPE	164	6.136C.2B	v1.2	Definition of total balance sheet assets should be net assets and not gross assets.	Gross assets is clearer - no change required
VPE	165	6.136D	v1.2	Definition of total balance sheet assets should be net assets and not gross assets.	Gross assets is clearer - no change required
VPE	165	6.140 Credit Cover	v1.2	There must be an obligation on the MO to notify the Participant if a Credit Call has been made and its Credit Cover is no longer sufficient. Time should not run until the Participant is so notified.	The RAs support this idea and have raised a Change Request to make an appropriate change to the baselined version of the TSC.
ESB I	165	6.141.5	v1.2	Since a participant cannot reduce their credit cover below the amount calculated by the market operator (6.141.4) and the market operator does not have any discretion in the matter, why do participants have to notify the MO of any changes to their credit cover amounts. This part of the code could mean that a participant is in default because they are prudently increasing their credit cover before the MO requires them to because they fail to give the MO notice of a working day. This clause is a provision to participants dynamically managing their credit cover provisions to minimise costs.	Since it is likely to take a Participant one working day to make a change (increase) to their credit cover (through a transfer into their SEM Collateral Reserve Account) such a requirement is not seen as restrictive.
VPE	167	6.152	v1.2	and / or should be insterted at the end of point 1.	this paragraph has been removed
VPE	167	6.148 Monitoring of Credit Cover	v1.2	The MO must also calculate Required Credit Cover for terminated Participants every day for 14 months following termination to ensure that they are not liable to post more Credit Cover than is necessary (see paragraphs 2.234.2, 2.238A and 2.238B.2).	See paragraph 2.226A which specifies the basis for the Required Credit Cover for a Terminated Party.
VPE	167	6.148 Monitoring of Credit Cover	v1.2	The "and" at the end of point 1 should be replaced with "or" and the "or" at the end of point 2 should be replaced with an "and". A Party should have to either pay invoices or increase Credit Cover. It should not have to pay invoices early if Credit Cover is in place or increase Credit Cover if no amounts are owing.	These sections have been redrafted in the devleopment of version 1.3 of the Code.
ESBCS	168	Calculations for the actual exposure period in respect of Supplier Units (6.164A)	v1.2	Rules of credit risk paper needs to be updated to reflect any changes in the T&SC	Not an issue for the Code
ESBCS	169	Calculations for the actual exposure period in respect of Generator Units Para 6.168A	v1.2	Can you confirm that generators will be required to post credit cover	see paragraph 6.171A, which species the components of the calculation of the Required Credit Cover for a Participant in respect of its Generator Units and paragraphs 6.165 to 6.170ZA which describe the calcualtion of those components.
ESBCS	172	6.169B	v1.2	The percentile being used in the calculation has not been defined - Refers to AP 9 which is 95th percentile (page 7 AP9 Version 2) - However, RA's have said this will not be the case. This issue requires clarification.	The Analysis Percentile Parameter is to be proposed by Market Operator and approved by RAs as set out in paragraph 6.147.
ESB I	175	6.168	v1.2	The summation x in y in the code was previously only used when there was an integer number of x in y. For example there is an integer number of trading periods h in a billing period b. There is an integer number of generator units u in each participant p. It is not certain that as defined there is an integer number of billing periods in during the time of the Actual Supplier Exposure. i.e., there may be 1-billing period and 3-billing days elapsed in the period. Does the notation b in f still apply?	There is only an integer number of Billing Periods in the Actual Supplier Exposure period.
VPE	175	6,170A, 6.170O. 6.171	v1.2	Undefined Supplier Exposure (UPESpg) can be calculated in 2 ways depending on the assessment of supplier being a new/adjusted participant or a standard participant. Consideration should be given to assigning separate terms for these calculations and how they feed into the Required Credit Cover (RCCSpr) calculation.	Comment is true; but the resultant answer is used the same way in subsequent equations. Different variable names are not required.
VPE	175	6.170C, 6.170ZA, 6.171A	v1.2	Undefined Generator Exposure (UPEGpg) can be calculated in 2 ways depending on the assessment of a generator being a new/adjusted participant or a standard participant. Consideration should be given to assigning separate terms for these calculations and how they feed into the Required Credit Cover (RCCGpr) calculation.	Comment is true; but the resultant answer is used the same way in subsequent equations. Different variable names are not required.
ESBCS	177		v1.2	If generators are required to post credit cover, how are outages treated in the calculation of the required credit cover amounts?	See paragraphs 6.165-6.175
ESBCS	186	6.171B	v1.2	A participant in respect of it's generator units shall always post at a minimum the fixed credit requirement as required credit cover - This is indicating that the generator must post credit cover - see points above raised in relation to the previous version of the code	Comment is true; but the resultant answer is used the same way in subsequent equations. Different variable names are not required.
ESBCS	186	6.171C	v1.2	AP 9 states that there is a minimum credit cover requirement of Euro 50,000/STG 35,000. This is not clear from the code - is there now no minimum credit cover - has this been replaced by the "fixed credit requirement". Clarity is required.	The level of Fixed Credit Cover for each Unit will be proposed by the MO and approved by the RAS. There is no other concept of 'minimum credit cover'. The AP will be amended to reflect this.
ESBCS	186	6.171C.3	v1.2	In the formula, the explanation of FRCGy says this is the fixed credit requirement for the year for a participant in respect of its supplier unit - This should be generator unit?	drafting corrected
ESBCS	187	6.175A	v1.2	States in the code that the MO will notify the participant "where practicable" that it is drawing down on it's letter of credit or posted collateral - require clarification around this. It is most important that there is a robust process in place to notify participants when there is a change to their posted credit cover	The RAs will consider this matter further.

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VPE	187	6.175A Calling in Credit Cover	v1.2	The MO must be obliged to notify a Participant in advance where practicable that it is calling in Credit Cover or as soon as practicable thereafter if it is not practicable to do so in advance.	The RAs will consider this matter further.
Synergen	188	6.189	v1.2	The SMO and RAs have indicated that the assessment of Settlement Re-allocations will be made across billing periods not for each trading period in isolation. T&SC should be amended to clarify that this approach is permitted and accordingly Synergen suggests the following amendment to paragraph 6.189 as it is not clear that SRAs will be treated in aggregate across each billing period. "A Participant may not request or enter into a Settlement Reallocation Agreement as a Debited Participant in respect of its registered Generator Units that covers more than the payment that it expects to receive under the Code in respect of such Generator Units over the relevant billing period."	the paragraph has been redrafted
Synergen	190	6.202 - 6.210	v1.2	Synergen requires further clarity regarding the intention of the SEM VAT treatment as the VAT proposals seem to imply RoI generators are trading mainly with retailers in the RoI and NI generators are trading with NI retailers as VAT is adjusted based on the extent to which volumes are exported north rather than the proportional volume of power generated in each jurisdiction. As per Synergen's comment on 6.102C, this should be in a specific published document. The stated treatment of VAT is contrary to the views put forward by RAs on the nature of the participant transaction (that all generators output is sold pro-rata to all retailers) and instead redefines the underlying nature SEM as two markets with a common code where participants primarily trade within jurisdiction.	The Market Operator is in discussion with the revenue authorities and the RAs understand that the VAT position is still subject to confirmation.
VPE	190	6.202-6.210	v1.2	We note that the treatment of VAT is subject to approval and further change. We would welcome the opportunity to comment at a later stage.	Noted
VPE	190	6.204 Management of Taxes and VAT	v1.2	It is not clear why collection of VAT is treated any differently to any other amounts payable under the Code (to the extent that VAT is payable)? Will the MO have a VAT liability to Participants? Will it be required to provide the same indemnity?	The Market Operator is in discussion with the revenue authorities and the RAs understand that the VAT position is still subject to confirmation.
VPE	190	6.206 / 6.208	v1.2	VAT amounts should be split seperately on invoices showing the cross border supply adjustment seperately.	The Market Operator is in discussion with the revenue authorities and the RAs understand that the VAT position is still subject to confirmation. However the approach suggested is not in accortdance with the agreement with the revenue authorities.
SEM Programme	190	General	v1.2	The estimate of cross border trades cannot be carried out on a bi-monthly basis. This is not correct as the systems do not support this time-frame. The Revenue Authorities have accepted this and have indicated that they would be happy with an annual adjustment. We would request that the next version of the code reflect this treatment.	The Market Operator is in discussion with the revenue authorities and the RAs understand that the VAT position is still subject to confirmation.
VPE	191	6.209	v1.2	Reference to "output VAT" should be replaced with "input VAT".	The paragraph is correct.
ESBCS	192	7	v1.2	Clarity is required as to how the SEM will be opened. Will it be with full code plus APs provisions on Day 1 or partial provisions. In other markets where they introduce transitional arrangement it means a number of provisions will be 'switched off' for Day 1, but are subsequently turned on after the market go-live (when the system is ready or rules become certain). This new section has been added to the latest T&SC draft 1.2 but without much details. This issue was raised at the RA forum in Belfast on 15th December 06.	Under consideration as part of the transition workstream. Appropriate provisions will be included later.
VPE	193	Accepted	v1.2	There is a typo (two 'or's in fourth line).	fixed
VPE	193	Adjusted Self Billing Invoice	v1.2	There are typos ('an' in first line instead of 'a' and 'it' in second line instead of 'to'). Query whether 'credit cover' should be capitalised?	fixed
Synergen	193	Glossary	v1.2	Please can the RAs explain why "Publish" is no longer a defined term?	The meaning of the term is set out in paragraph 1.9.15 of the Code
Moyle	194	Aggregate Capacity	v1.2	This definition may contain an internal inconsistency in that the Registered Capacity of all Interconnector Units may not equal the Aggregate Import or Aggregate Export Capacity unless the full capacity of the Interconnector is contracted. The difference between the two should be the capacity available to the Interconnector Residual Capacity Unit. We therefore recommend that the reference to the Registered Capacity of all Interconnector Units be deleted.	There has been substantial redrafting of the Code in relation to Interconnectors.
Moyle	194	Agreed Procedures	v1.2	This definition seems quite generic and, prima facie, is not necessarily confined to those documents which are referred to as Agreed Procedures. We recommend that this definition be modified to make clear what the Agreed Procedures are.	No change is needed. See also the revised Appendix L.
Moyle	194	Ancillary Code Document	v1.2	What is the significance of this definition? What is envisaged by Ancillary Code Documents. By definition these will form part of the Code but it is not clear what they are envisaged to be, nor is it clear how a Party will necessarily be able to know what documents are Ancillary Code Documents?	This is provided for any documents that may be required for (e.g.) transition. Such a document would be referred to in the Code as such.
VPE	194	Ancillary Code Document	v1.2	What is the significance of this definition? What is envisaged by Ancillary Code Documents. By definition these will form part of the Code but it is not clear what they are envisaged to be, nor is it clear how a Party will necessarily be able to know what documents are Ancillary Code Documents?	This is provided for any documents that may be required for (e.g.) transition. Such a document would be referred to in the Code as such.
VPE	195	Annual Capacity Payment Sum	v1.2	Query whether 'capacity payments' in third line should be capitalised?	fixed
VPE	195	Annual Load Forecast Data	v1.2	Trading Boundary', in the fourth line, is not defined.	now added
VPE	195	Audit Report	v1.2	Market Audit' is not defined.	fixed
VPE	195	Autoproducer Site	v1.2	As currently defined, a plant which was required to run to meet a heat load would not appear to be an autoproducer if it was not producing a house electrical load. Is this intended? Also, suggest removing comma in first line and inserting an 'and' before 'which' in the second line. The definition of Autoproducer Site is incomplete in terms of presenting the philosophy/rationale behind an Autoproducer. We suggest the definition includes " and where the primary purpose of the generation is to serve the site demand."	The definition of Autoproducer Site now covers the circumstances described.
VPE	196	Bad Market Operator Debt	v1.2	Neither Variable Market Operator Charge nor Invoiced Market Operator Charge are defined.	fixed
VPE	196	Balancing Cost	v1.2	operator' should have a capital O. This definition refers to Paragraph 6.108, which in this version of the Code is Intentionally Blank.	fixed
VPE	197	Capacity Period Currency Cost	v1.2	Is 'Charges' in the fourth line correct or should this be 'Capacity Charges'?	No change required.
VPE	197	CHP Unit	v1.2	This is a very general definition and may result in a situation in which a generator is treated as CHP for the purposes of the TSC but not for the purposes of relevant legislation. Query whether this is intended.	Removed from Glossary
VPE	197	Cold Start	v1.2	Refers to 'Accepted Warm Cooling Boundary', which is not defined. Is this correct?	this is the Accepted value for the Warm Cooling Boundary
VPE	198	Commercial Offer Data	v1.2	Includes a reference to 'No Load Cost' which is not defined.	Now included in Glossary.

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VPE	198	Commission for Energy Regulation or Commission or CER	v1.2	We recommend that terminology be standardised. One defined term should be selected and used throughout to avoid confusion.	Not Required
Moyle	198	Competent Authority	v1.2	Surely DETI in Northern Ireland should be included in this list?	Added
VPE	198	Competent Authority	v1.2	Surely DETI in Northern Ireland should be included in this list?	Added
Moyle	198	Connection Agreement	v1.2	Transmission System Operator is used in this definition but does not appear to be defined. The reference to "Transmission System Owner" in Northern Ireland should presumably be to the "Transmission System Operator". The definition should be expanded to cover Interconnector Connection Agreements.	Now refers to System Operator
VPE	198	Connection Agreement	v1.2	Transmission System Operator is used in this definition but does not appear to be defined. The reference to "Transmission System Owner" in Northern Ireland should presumably be to the "Transmission System Operator". 'an' at the end of the third line should be 'and'. Apostrophe at beginning of fourth line should be deleted. Insert 'and' after semi-colon in sixth line. Insert 'or' between 'Owner' and 'Distribution' in eighth line. Capitalise 'g' in Generator in the third last line.	Now refers to System Operator
VPE	203	Disputed Event	v1.2	We query why this is specified as the "earlier of" the listed events. Presumably all of these could be Disputed Events in their own right?	The timing of the dispute is of relevence under the code, so this definition has to make clear that the event being disputed is the earliest of a potential series of events. The definition has been reworded.
VPE	203	Dwell Time	v1.2	"or" in the first line should presumably be "for".	Corrected
Moyle	204	Emergency	v1.2	It is not clear what is meant by "as defined by the Regulatory Authorities". Does this mean that the Regulatory Authorities will be defining Emergency events in advance and, if so, where will this be done. Alternatively, does this mean that the Regulatory Authorities will determine ex post whether an event constitutes an Emergency.	Removed from Glossary
VPE	204	Emergency	v1.2	It is not clear what is meant by "as defined by the Regulatory Authorities". Does this mean that the Regulatory Authorities will be defining Emergency events in advance and, if so, where will this be done. Alternatively, does this mean that the Regulatory Authorities will determine ex post whether an event constitutes an Emergency. Viridian is of the view that the Code should clearly define what constitutes an Emergency.	Removed from Glossary
VPE	207	Generator Unit Energy Statement	v1.2	It appears that the words "is defined" should be replaced by the words "detailed" for consistency with other definitions.	fixed
VPE	208	Hydro Electric Generator Unit	v1.2	Is it intended that Run of River Hydro will not constitute a Hydro Electric Generator Unit for the purposes of the Code. This appears to be the case from the definition. If so, we suggest that a different defined term be used as this is potentially misleading.	Corrected in the Glossary
Moyle	210	Interconnector	v1.2	Definition excludes the converter stations which would normally be part of a DC Interconnector. This could be corrected by deleting "or converter station" and the definition should then be correct in all foreseeable circumstances.	Definition amended.
Moyle	210	Interconnector Administrator	v1.2	The Interconnector Administrator in respect of any Interconnector should be the person registered to perform the role of Interconnector Administrator from time to time. It should not necessarily be the owner or the person registering the Interconnector.	There has been substantial redrafting of the Code in relation to Interconnectors.
Moyle	210	Interconnector Ramp Rates	v1.2	Query the relevance of this definition. The ramping constraints on a DC interconnector will always be the ramping constraints of the system to which it is connected and it is this that is relevant for determining interconnector despatch.	There has been substantial redrafting of the Code in relation to Interconnectors.
Moyle	210	Interconnector Technical Data	v1.2	The reference to "Ramp Rates" in this definition should be replaced with a reference to "dead bands"	There has been substantial redrafting of the Code in relation to Interconnectors.
VPE	210	Interconnector Technical Data	v1.2	The reference to "Ramp Rates" in this definition should be replaced with a reference to "dead bands"	There has been substantial redrafting of the Code in relation to Interconnectors.
VPE	211	Interconnector User	v1.2	This definition may be slightly problematic depending upon how interconnectors structure their access arrangements. To obtain access to the Moyle Interconnector it is now necessary to sign a Framework Agreement to pre-qualify to purchase capacity. This is a relatively recent development. Prior to this, parties simply executed a capacity contract after having successfully bid for capacity. There was no pre-existing contractual right to acquire capacity. This may well also be the case for future interconnectors.	There has been substantial redrafting of the Code in relation to Interconnectors.
Moyle	211	Ireland Grid Code	v1.2	Everything in this definition after the word "Ireland" in the second line should be deleted. This is unnecessary and potentially confusing because of historic references that don't reflect current roles and responsibilities (ie ESBNG as TSO).	Definition amended.
VPE	211	Ireland Grid Code	v1.2	Everything in this definition after the word "Ireland" in the second line should be deleted. This is unnecessary and potentially confusing because of historic references that don't reflect current roles and responsibilities (ie ESBNG as TSO).	Definition amended.
Moyle	214	Market Start Date	v1.2	It appears that the word "Authorities" is missing from the end of this definition. It is not clear what is the process for determining this or how it will be notified. It is also not clear what the relationship is with the Commencement Date (which we assume is effectively a "go-active" date, while the Market Start Date is the "go-live" date?)	Definition amended. The process for agreeing such dates is being considered by the transition workstream.
VPE	214	Market Start Date	v1.2	It appears that the word "Authorities" is missing from the end of this definition. It is not clear what is the process for determining this or how it will be notified. It is also not clear what the relationship is with the Commencement Date (which we assume is effectively a "go-active" date, while the Market Start Date is the "go-live" date?)	Definition amended. The process for agreeing such dates is being considered by the transition workstream.
Moyle	217	Nominating Participant	v1.2	It appears from the definition that an Interconnector Owner would not be able to nominate Party nominees to the Modifications Committee. This definition should be changed to "Nominating Party". "Nominating Participant" should be replaced by "Nominating Party" in Section 2 of the Code.	An Interconnector Owner is not a Supply Participant nor a Generation Participant and is therefore not able to nominate individuals to be elected to the Modifications Committee. However, Interconnector Users are Generation Participants and can so nominate. The RAs believe that this is the right arrangement and that such nomination (and voting) rights should be at the Participant Level.
VPE	219	Participation Notice	v1.2	Does this mean that a Party can register a Unit in the name of someone other than itself?	yes
VPE	219	Party	v1.2	Query whether this definition works. This appears to suggest that if a person accedes to the Framework Agreement by signing an Accession Deed they immediately become a party to the Code. Presumably such person should also have to satisfy the pre-conditions under the Code to acceding to the Framework Agreement.	no- that's all that is required
Moyle	220	Ramp Rate	v1.2	This definition does not work with the inclusion of the words "Generator Unit" to the extent that an Interconnector Unit, Error Unit and Residual Capacity Unit are Generator Units as these do not have Ramp Rates.	Definition amended.
VPE	220	Ramp Rate	v1.2	This definition does not work with the inclusion of the words "Generator Unit" to the extent that an Interconnector Unit, Error Unit and Residual Capacity Unit are Generator Units as these do not have Ramp Rates.	Definition amended.

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Moyle	223	Settlement Query	v1.2	Settlement Query "means a query raised by a Party in accordance with paragraphs 6.55". (It seems that paragraphs should be singular.) However, under Paragraph 6.55 a Participant raises a Settlemen Query and this should be reflected in this definition.	Definition amended. A Participant is a Party (who has registered a Unit).
VPE	223	Shortfall	v1.2	Shortfall is defined by reference to paragraph 6.109, but this paragraph is no longer used.	Definition amended.
VPE	229	Transmission Asset Owner	v1.2	The reference to Regulation 32 needs to be either completed to mention the relevant SI, or preferably should be deleted for consistency as amending legislation is not generally cited in the Code.	In producing the final draft of the Code, there will be a full review of consistency of statutory references throughout the document.
VPE	229	Transmission Losses	v1.2	The definition of Transmission Losses includes a reference to the Trading Boundary, which is not defined.	Trading Boundary added to the Glossary
VPE	229	Transmission System	v1.2	The word "should" should be replaced by the word "shall" in the fourth last line and the word "the" should be deleted in the third last line.	fixed
Moyle	230	Unit Load	v1.2	"Electricity Demand" is used in this definition but does not appear to be defined. Depending on how this is defined, this definition also would arguably treat interconnector exports as Unit Load.	Definition amended.
VPE	230	Unit Load	v1.2	"Electricity Demand" is used in this definition but does not appear to be defined. Depending on how this is defined, this definition also would arguably treat interconnector exports as Unit Load.	Definition amended.
Moyle	254	Appendix B	v1.2	The Data Registration Category Information in respect of Interconnectors, Interconnector Administrators, Error Units, Residual Capacity Units and Interconnector Units should all be reviewed. We refer to our revised drafting in respect of Interconnector Unit registration provided with these comments.	There has been substantial redrafting of the Code in relation to Interconnectors.
ESBCS	255	Appendix B	v1.2	Tables 2b, 3b, 4b, 6a: the valid communication channels participant and unit registration, detailed information requests, submission protocol and the submission of a commencement notice allow for Type 2 and 3 channels. In AP 1 v3.0 Manual form of communication is listed and only registration updates can be performed via Type 2 and 3. Which is correct?	Appendices are now aligned with the Code. The Code has been baselined with systems. In the event of conflict, Version 1.3 of the Code should take precedence.
Synergen	295	Applicable Law Definition	v1.2	The definition of "Applicable Law" should be amended to solely refer to the laws of NI as per the RAs' recent decision.	No. The decision on law applied only to the law under which the T&SC would be interpreted.
ESBCS	312	Appendix G	v1.2	Requires the publication of the baselined version of AP 16 to review.	noted
ESBCS	315	Appendix H	v1.2	In the appendix if generators are required to post credit cover, how are outages treated in the calculation of the required credit cover amounts?	The calculation of Required Credit Cover is set out in paragraphs 6.165-6.175.
ESBCS	317	Appendix I SRA	v1.2	Permitted number of resubmissions - unlimited - what does this mean? Is it the number of SRA submissions or the number of time that you can re-submit the same data?	both
ESBCS	318	Appendix I SRA	v1.2	Cancellation by the MO can be done at all times? Require clarification around this	Paragraph 7.38 sets out the interim arrangements for the Market Operator to cancel Settlement Reallocation Agreements.
ESBCS	324	Table 47- updated annually as required	v1.2	Data record: Fixed annual Market Operator Charges- Supplier Unit, timing has changed from 4 months to 1 month, AP 6 V3.0, timing is 4months this is inconsistent with the code, please clarify.	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	324	Table 47- updated annually as required	v1.2	Data record: Fixed annual Market Operator- Generator Units, timing has changed from 4 months to 1 month, AP 6 V3.0, timing is 4months this I is inconsistent with the code, please clarify.	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	324	Table 47- updated annually as required	v1.2	Data record: fixed capacity payment weighting factor, timing has changed from 4 months to 1 week. AP 6 V3.0 timing is 4 months this is inconsistent with the code, please clarify.	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	324	Table 47- updated annually as required	v1.2	Data record:imperfection price, timing has changed from 4 months to 2 months. AP 6 V3.0 timing is 4 months this is inconsistent with the code, please clarify.	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	324	Table 47- updated annually as required	v1.2	Data record:imperfection factor is not included in AP6 V3.0	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESB PG	325	appendix K	v1.2	Can you please confirm what will be published on generator and transmission outages	See Revised Appendix K
ESB PG	325	Appendix K	v1.2	Can you please confirm that all bids (technical and commercial offer data) will be published for all units and how this will be done	See Revised Appendix K
ESBCS	325	Table 47- advance of gate closure	v1.2	Data record:Interconnector available transfer capacity data transaction is not included in AP6 V3.0	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	325	Table 47- advance of gate closure	v1.2	Data record: aggregated wind generation forecast, original this was a 2 day forecast, in AP6 V3.0 it states 2 day forecast also, this is inconsistent with the code, please clarify	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	325	Table 47- advance of gate closure	v1.2	Data record: Classification of every generator unit is not include in AP6 V3.0, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	325	Table 47- updated monthly	v1.2	Data record: Margin is not included in AP6 V3.0	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)

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ESBCS	325	Table 47- updated monthly	v1.2	Data record:ex - ante LOLP, timing has changed from 1WD to 5WD. AP 6 V3.0 timing is 1WDthis is inconsistent with the code, please clarify.	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	325	Table 47- updated monthly	v1.2	Data record: variable capacity payments weighting factor, timing has changed from 1WD to 5WD. AP V3.0 timing is 1WDthis is inconsistent with the code, please clarify	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post gate closure	v1.2	Data record: technical offer data transaction is not include in AP6 V3.0, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post gate closure	v1.2	Data record: commercial offer data transaction is not include in AP6 V3.0, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post gate closure	v1.2	Data record: credit cover data transaction is not include in AP6 V3.0, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post gate closure	v1.2	Data record: indicative operation schedule, name change, In AP6 V3.0, the name is indicative actual schedule, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post trading day	v1.2	Data record: generator unit technical data transaction is not include in AP6 V3.0, will the code and AP be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post trading day	v1.2	Data record: system characteristics data transaction is not include in AP6 V3.0, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post trading day	v1.2	Data record: energy limited generator unit technical characteristics data transaction is not include in AP6 V3.0, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post trading day	v1.2	Data record: energy limited generator unit technical characteristics data transaction is not include in AP6 V3.0, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post trading day	v1.2	Data record: interconnector residual capacity data transaction is not include in AP6 V3.0, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post trading day	v1.2	Data record: Preliminary cross - jurisdiction power flow meter data transaction, AP 6 V3.0 contains the word indicative instead of preliminary, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post trading day	v1.2	Data record: initial cross - jurisdiction power flow meter data transaction,, AP 6 V3.0, timing is TD+4W 17.00 in the code it states day @14.00 this is inconsistent, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post trading day	v1.2	Data record: initial cross - Dispatch offer price, AP 6 V3.0, timing is inconsistent with AP6 V3.0, AP6V3.0 states 17.00, T&SC1.2 states 14.00, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post trading day	v1.2	Data record: preliminary ex post unconstrained schedule qty, In ap6 v3.0 this is ex post market schedule, however in AP 6 this is for general public and market participant, please clarify the information being received	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post trading day	v1.2	Data record: nominal system frequency is not include in AP6 V3.0, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)

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ESBCS	326	Table 47 - daily post trading day	v1.2	Data record: average system frequency is not include in AP6 V3.0, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47 - daily post trading day	v1.2	Data record: Preliminary SMP's, AP 6 V3.0 contains the word indicative instead of preliminary, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	326	Table 47- post end of billing period	v1.2	Data record: ex post energy meter data transaction is this the same as the data item in AP 6v3.0 Indicative non pricing effective meter data posted on TD+1WD14.00. In T&SC the timing Day after billing period, should read WD after settlement day, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	327	table 47 - post end capacity period	v1.2	Data record: preliminary capacity payments to each generator unit and preliminary capacity charges to each supplier unit, In AP 6 v3.0 Indicative is used instead of preliminary, please clarify timing in AP6v3.0 is Cp+1WD17.00 rather than 16.00, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	327	table 47 - post end capacity period	v1.2	Data record: initial capacity payments to each generator unit and preliminary capacity charges to each supplier unit, In ape 6 v3.0 Indicative is used instead of preliminary, please clarify timing in AP6v3.0 is Cp+5WD12.00 rather than 16.00, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	327	table 47 - post end capacity period	v1.2	Data record: preliminary ex post weighting factor. In ape 6 v3.0 Indicative is used instead of preliminary, please clarify timing in AP6v3.0 is 17.00 rather than 16.00, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	327	table 47 - post end capacity period	v1.2	Data record: initial variable weighting factor, timing in AP6v3.0 is 12.00 rather than 16.00, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	327	table 47 - post end capacity period	v1.2	Data record: initial ex post margin is not included in AP6 v3.0, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	327	table 47 - post end capacity period	v1.2	Data record: resettlement capacity payments: although the term represent supplier, the data records name does not suggest supplier resettlement capacity charges, please update to reflect suppliers resettlement	Table 47 has been extensively revised in version 1.3 of the TSC. The data records are no longer set out in this way.
ESBCS	327	Table 47- post end of billing period	v1.2	Data record: Preliminary energy payments to price taker generation units: Term SMP is incorrect; timing should read settlement day rather than billing period; timing in the AP 6V3.0 is 17.00 this is inconsistent with the code, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	327	Table 47- post end of billing period	v1.2	Data record: Preliminary energy charge to supplier units: similar issues to above point	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	327	Table 47- post end of billing period	v1.2	Data record: Settlement reallocation data transaction: billing period should read settlement day; term SMP is incorrect	Table 47 has been extensively revised in version 1.3 of the TSC and the erros identified have been corrected.
ESBCS	327	Table 47- post end of billing period	v1.2	Data record: Initial Energy payments to price taker generation units: Term SMP is incorrect; timing should read settlement day rather than billing period, timing in the AP 6V3.0 is SD+5WD, 17.00 rather than BP+4WD, 14.00 , this is inconsistent, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	327	Table 47- post end of billing period	v1.2	Data record: initial energy charges to supplier units, similar issues to the above point	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	327	Table 47- post end of billing period	v1.2	Data record: energy resettlement meter data transaction, timing in AP6v3.0 is 4/13 months after initial settlement statement, this is inconsistent, will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	327	Table 47- post end of billing period	v1.2	Data record: resettlement payments to price taker generation units: term SMP is incorrect. In AP6 v3.0 , timing is 4/ 13 months after settlement day @17.00 rather than BP +4WD @ 14.00 this is inconsistent will the code and APs be aligned	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)
ESBCS	327	Table 47- post end of billing period	v1.2	Data record: resettlement charges to supplier unit; Similar issues to above point	The Appendices have been amended to align with version 1.3 of the Code. The Agreed Procedures are in the process of being amended to align with the Code (including the Appendices)

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ESBCS	328	AP6 v3.0	v1.2	The following items are not in the trading and settlement code, but are included in the ap6 v3.0: indicative ex post loss of load probability, CP+1WD 12.00 initial ex post loss of load probability, CP+5WD, 12.00 initial non pricing effecting meter data, TD+4WD 17.00, will the code and APs be aligned	AP and Code alignment is under way.
VPE	332	Appendix N	v1.2	SEM- Appendix N of the trading and settlement code states N.1 This Appendix N of the Code contains a description of the algorithm and data inputs used to determine the values for each Trading Period h of System Marginal Price (SMPh), and the values of Market Schedule Quantity (MSQuh) for each Price Maker Generator Unit u that are included within the Indicative Market Schedule and the Ex-Post Unconstrained Schedule (EPUS). However there is no description of the optimization algorithm which takes the input data, solves the unit commitment problem and outputs the ex post schedule and prices. This algorithm is fundamenta to the market as it sets the prices and quantities for the market. The unit commitment problem belongs to a class of problem known as non polynomial hard and one of its characteristics is that it is impractical to get a unique globally optimal solution. Therefore any solution to the unit commitment problem will have a certain level of arbitrariness about it i.e. there are other prices and quantities that are equally or more valid (Madrigal and Quintana, 2 There are a multitude of possible algorithms for so	Appendix N is being extended to include everything appropriate but the workings of the algorithm are confidential and cannot be published.
ESB PG	332	Appendix N	v1.2	More detail is required in this appendix	Appendix N is being extended to include everything appropriate but the workings of the algorithm are confidential and cannot be published.
ESB PG	337	N.30	v1.2	Can you please provide a worked example of this formula. Should it be (UKSTOPuk-TPCOUNTt+1) rather than (TPCOUNTt-UKSTARTuk+1)?	See redrafted Appendix N.
ESBCS	344	Appendix O Section 2.3.1.	v1.2	Needs to add 'in line with applicable laws'	See revised Appendix O
ESBCS	344	Appendix O Section 3.2.	v1.2	It is unclear whether the draft means that the member is experienced in and familiar with alternatives dispute resolution procedures and such procedures do not include litigation, OR that the member should not be involved in litigation	See revised Appendix O
ESBCS	345	Appendix O Section 4 (second c) -	v1.2	reference should be made to AP 14 (Dispute process)	See revised Appendix O
VPE	345	Appendix O, Paragraph 5(b)	v1.2	There is a typo in this paragraph: 'the' in the second line should be deleted	See revised Appendix O
VPE	345	Appendix O, Paragraph 8.2	v1.2	There is a typo in this paragraph: the 's' in 'fails' in the first line should be deleted	See revised Appendix O
VPE	345	Appendix P	v1.2	Appendix P needs to detail all inputs to the Profiling Calculations including any required simplifications of generator TO data as submitted by the participants.	See new Appendix P
ESBCS	346	Appendix O Section 8	v1.2	The basis of charging should be on equitable basis. Also will the disputing parties share the cost of the members in equal portion?	See revised Appendix O
ESBCS	347	Appendix O Section 9	v1.2	The first sentence of section 9.2 should include the following 'or being terminated under clause 8' .	See revised Appendix O
ESB PG	352	Appendix P	v1.2	This is required ASAP to allow participants to model the SEM and determine their technical parameters	See new Appendix P
ESBCS	354	Daily, in advance of gate closure	v1.2	Commercial offer, technical offer, there is no mention of standing offer of the normal offer and their related submission timelines, will this be aligned with AP4	AP4 is to align with the Code
ESBCS	355	Each billing period, post all trading days in billing period	v1.2	Data transaction: Supplier unit invoice data transaction, this has change from 8 WD to 9 WD, will this be aligned with AP15. Please clarify that the supplier pays the invoice on BP +8WD and not BP+9WD	Paragraph 6.30.4 states that Invoices shall be issued by 12.00 on BP+5 WD in relation to Billing Periods; Paragaraph 6.32.3 states that Invoices shall be issued by 12.00 on CP+5 WD in relation to Capacity Periods and Paragraph 6.33.3 requires that Invoices shall be paid by 12.00 3 WD after the Invoice is issued.
ESBCS	409	Table 47 - daily post trading day	v1.2	Data record: ex post unconstrained schedule qty, In ap6 v3.0 this is ex post market schedule, howeve in AP 6 this is for general public and market participant, please clarify the information been received	The Ras would welcome further clarity as to the meaning of this comment.
VPE	AP11	3.1.2	v1.2	The SMO should introduce a web-based reporting, ticketing and monitoring solutions - this would save Market participant and SMO time in logging, responding and tracking progress on market participant queries, disputes etc.	Agreed Procedures are being substantially review to ensure alignment with version 1.3 of the TSC. This process is still under way and these comments will be included in that process. Revised versions of all the APs will be published in May 2007.
VPE	AP11	3.2.2	v1.2	Release management for changes affecting the interface must include the update of the documentation that describes interfaces - MPUD, User Interfaces Guide, report definitions and any others developed.	Agreed Procedures are being substantially review to ensure alignment with version 1.3 of the TSC. This process is still under way and these comments will be included in that process. Revised versions of all the APs will be published in May 2007.
VPE	AP11	3.5.3	v1.2	"Annually, in January of each year, the Market Operator shall issue to each Party the Authorised Persons register for the Party. This will be sent to the one of the Category A Authorised Persons for the Party." Should this mean that the Authorised Persons Register will be sent ot one of the Categor A Authorised Persons for the Party? If so which one?	Agreed Procedures are being substantially review to ensure alignment with version 1.3 of the TSC. This process is still under way and these comments will be included in that process. Revised versions of all the APs will be published in May 2007.
VPE	AP3	3.4.1	v1.2	"Adequate internet access is required per Market Participant User." Adequate should at least be qualified	Agreed Procedures are being substantially review to ensure alignment with version 1.3 of the TSC. This process is still under way and these comments will be included in that process. Revised versions of all the APs will be published in May 2007.
VPE	AP3	3.4.1	v1.2	Adequate internet access is required." Adequate should at least be qualified	Agreed Procedures are being substantially review to ensure alignment with version 1.3 of the TSC. This process is still under way and these comments will be included in that process. Revised versions of all the APs will be published in May 2007.
VPE	AP4	3.2	v1.2	"A Market Participant is also permitted to submit Settlement Reallocations to between their own Supplier and Generator Units"	AP matter, but a Market Participant may submit Settlement Reallocations beween their own Generator and Supplier Units.

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VPE	AP4		v1.2	What should we infer from the context (paragraph) in which this occurs : a) That market participants generators can submit settlement reallocations to the SMO and that they are then transmitted by the SMO to those market participants' suppliers, or, b) (as seems more likely) that market participants' generators are permitted to SHARE settlement reallocation data submitted to the SMO with their respective suppliers? Should this mean the Authorised Persons Register will be sent to ONE of the Category A Authorised Persons for the Party? If so which one?	The Agreed Procedures have been substantially review for alignment with version 1.3 of the TSC. This process is still under way and will result in the publication of aligned versions of all the APs in May 2007.
VPE	AP6	4.2.2	v1.2	"These reports can also be saved down in the following file formats: Settlement Statements – CSV; Participant Information Report (PIR) – CSV; Invoices – XML; Participant Summary Report (PSR) – CSV". All reports should be in an XML format.	Agreed Procedures are being substantially review to ensure alignment with version 1.3 of the TSC. This process is still under way and these comments will be included in that process. Revised versions of all the APs will be published in May 2007.
VPE	AP6	4.5, 4.5.1, General	v1.2	"Market participants will be notified by a message on the Market Messages window when market reports have been published and are available for download. This process only applies to market reports but not to the Settlement reports. Each message which appears in this window will be colour coded to indicate priority:"	Agreed Procedures are being substantially review to ensure alignment with version 1.3 of the TSC. This process is still under way and these comments will be included in that process. Revised versions of all the APs will be published in May 2007.
VPE	AP6	4.5, 4.5.1, General	v1.2	As noted above for the T&SC Section 3.4 - Type 2 and 3 channels ought to be functionally equivalent. There is no notification mechanism for Type-3 channels equivalent to that described in this section of the Agreed Procedure for Type-2 channels.	Agreed Procedures are being substantially review to ensure alignment with version 1.3 of the TSC. This process is still under way and these comments will be included in that process. Revised versions of all the APs will be published in May 2007.
SEM Programme		General	v1.2	It will be important that the actual payment process for day-to-day settlement is captured and clearly set out, either in section 6 of the Code itself or in an AP. This is important not only for transparency but is also required for the banking provisions to work properly.	The RAs believe that the detail in the Code is sufficient for that level in the legal framework. Where further detail is required, it should be in AP15.
SEM Programme		General	v1.2	There have been a number of discussions between interested parties in relation to the interconnector provisions in the Code. We believe that the sensible approach now is to arrange to have an interconnector workshop with all interested parties so that the provisions can be agreed and finalised.	There has been substantial redrafting of the Code in relation to Interconnectors. The Ras would be happy to participate in such a workshop, and would welcome proposals from the MO in this regard.
SEM Programme		General	v1.2	In addition to the specific points raised above, we continue to have concerns in relation to the drafting in the Code in certain areas which give rise to confusion. For example, in paragraph 3.42 the SMO is obliged to use only the most recent CMS Data Transaction that has been validated, yet in 3.42A the SMO must use the most recent CMS Data Transaction regardless of whether it has issued a validation notice. We would request that the Regulatory Authorities address these sorts of drafting points in the next version of the Code.	The two clauses mentioned are not inconsistent but such issues have been considered in the preparation of version 1.3 of the Code.
VPE			v1.2	As currently drafted, the Market Operator(s) have few explicit, enforceable functions and no meaningful liability to the extent that they do. It is easy to envisage circumstances in which individual Participants and customers could be prejudiced. Consideration must be given to the consequences of this risk allocation for an effective, functioning market that will facilitate market entry. We are of the view that the MO should be entitled to earn a profit to incentivise performance, but it must also be liable to Participants for its performance. Its liability should be limited to its profit potential plus an additional sum which would ultimately need to be covered by insurance or passed back to participants through the Market Operator Charge (whichever is the most cost effective for market participants). This basic policy question of risk allocation is one that must be properly addressed in consultation with Market Participants.	The RAs do not believe that this is truly a matter of risk allocation; more one of incentivisation of the Market Operator. The RAs take the view that the incentivistaion of the Market Operator is their responsibility to be underteken through the appropriate conditions in the Market Operator Licences.
VPE			v1.2	The proposed Billing Period begins part way through a Trading Day (i.e. 00.00) when it may be simpler to settle on the basis of complete Trading Days.	Neither Billing Period nor Capacity Period is a whole number of Trading Days, but doesn't need to be.
VPE			v1.2	The MO consultation response said that a simple per unit MO charge would need a revision to the TSC to remove the fixed charges. This change should be made. It would be a welcome simplification and would remove a potential discouragement to entry by small players.	The detailed content of the MO charges are under consideration by the RAs in the context of the licence price control arrangements
VPE			v1.2	Please explain how the MO will be incentivised to minimise its costs.	The incentivisation of the Market Operator is a matter for the RAs through the licence(s).