Final Modification Report

P370 'Allow the Panel to designate non-BSC Parties to raise Modifications'

P370 seeks to allow the BSC Panel, instead of Ofgem, to designate interested third parties to raise Modification Proposals.

The BSC Panel recommends **approval** of the P370 **Alternative** Modification and **rejection** of the P370 **Proposed** Modification

This Modification is expected to impact:

- BSC Parties
- Interested third parties
- BSC Panel
- Ofgem (the Authority)
- ELEXON

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Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

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About This Document

This is the P370 Final Modification Report, which ELEXON has submitted to the Authority on behalf of the BSC Panel. It includes a summary of the Workgroup's assessment, the Panel's full views and the responses to both the Workgroup's Assessment Consultation and the Panel's Report Phase Consultation. The Authority will consider this report and will decide whether to approve or reject P370.

There are eleven parts to this document:

- This is the main document. It provides details of the solution, impacts, costs, benefits/drawbacks and proposed implementation approach. It also summarises the Workgroup's key views on the areas set by the Panel in its Terms of Reference, and contains details of the Workgroup's membership and full Terms of Reference.
- Attachment A contains the P370 **Proposed** Solution business requirements.
- Attachment B contains the P370 **Alternative** Solution business requirements.
- Attachment C contains the approved redlined changes to the BSC for the P370 **Proposed** Modification.
- Attachment D contains the approved redlined changes to the BSC for the P370 **Alternative** Modification.
- Attachment E contains the approved redlined changes to BSCP40 'Change Management' for the P370 **Proposed** Modification.

Contact

Faysal Mahad

020 7380 4375

faysal.mahad@elexon.co.uk

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- Attachment F contains the approved redlined changes to BSCP40 for the P370 **Alternative** Modification.
- Attachment G contains the approved Issue Group Term of Reference.
- Attachment H contains the Transmission Company analysis
- Attachment I contains the responses to the P370 Assessment Procedure Consultation.
- Attachment J contains the full responses received to the P370 Report Phase Consultation.

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1 Summary

The P370 Workgroup, at its last meeting on 23 November 2018, agreed that two solution options should be progressed. The original Proposed Modification that was consulted on as part of the Assessment Consultation is now the Alternative Modification Proposal. Under the BSC arrangements the majority of the Workgroup must believe that the Alternative Proposal is better than the Proposed Proposal for it to be progressed. The majority of Workgroup believed the original solution was better, but also believed it better to present the Panel and Ofgem with two solution options. Therefore the original Proposal was changed to the Alternative Modification Proposal so as to give the Panel and Ofgem a range of possible solutions to consider.

Why Change?

The current designation process to allow non-Balancing and Settlement Code (BSC) Parties to raise Modifications is described in BSC Section F 'Modification Procedures'. Currently, Ofgem ('the Authority') can designate "such other bodies representative of interested third parties" to raise a Modification. This designation process was recently tested for the first time since the BSC was introduced and has been shown to be slow and opaque. It is also contrary to the direction of travel encouraged by Ofgem for Panels to become more Self-Governing.

Proposed Solution

The Proposed Modification proposes to move the body responsible for designating non-BSC Parties to be able to raise Modification Proposals from Ofgem to the BSC Panel. It also opens up the existing Issues process to non-BSC Parties.

Alternative Solution

The Alternative Modification is exactly the same as the Proposed, except:

- BSC Parties can appeal the BSC Panel's decision to designate a non-BSC Party a right to raise a Modification Proposal to Ofgem; and
- Interested third parties whose designation request is rejected by the BSC Panel can appeal the Panel's decision to Ofgem.

This solution was the Proposed Modification in the Assessment Procedure Consultation.

Impacts & Costs

P370 is a document only change that will directly impact the BSC Panel, Ofgem and ELEXON. They will need to implement new processes and products to operate the amended designation process. The implementation of P370 is not expected to impact Parties or non-Parties. The Alternative Modification will additionally require appeal processes to be established.

There is a risk that P370 results in an increase in the number of Modifications (and Issues) progressed under the BSC, which would result in an increased demand for engagement from Industry, Ofgem and ELEXON to participate in the BSC change process. The

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progression of designation requests by ELEXON will be funded by BSC Parties under the current funding arrangements.

ELEXON's costs to implement P370 are approximately £1,500. There are no material cost differences between the Proposed and Alternative Modifications.

Implementation

P370 is proposed for implementation on 29 March 2019, as an ad-hoc BSC Release, if an Ofgem decision is received by 22 March 2019, or five Working Days after Ofgem approval, as a standalone BSC Release, if a decision is received after 22 March 2019.

Recommendation

The Panel unanimously agree with the majority of the Workgroup that the P370 **Alternative** Modification would better facilitate the Applicable BSC Objectives (c) and (d) compared to the current baseline and the P370 Proposed Modification, and should therefore be **approved**.

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2 Why Change?

Background

In the face of an ever-changing energy sector, we continue to see an increasing, and often publically stated, view that the governance and regulatory arrangements act as a barrier to innovation; restrict the introduction of new operating models; and can also pose as a barrier to market entry. We continue to see the emergence of a range of new operating models that do not "fit" with the traditional roles around which the BSC was originally designed. Increasingly these new operating models require access to or are impacted by arrangements that are governed, either partially or wholly, under the BSC.

For example, there are growing numbers of small flexible generators, which are not licenced and therefore are not required to sign-up to the BSC. Often, the most cost-effective option for these generators is to find a Supplier to register the generators meters on its behalf. This means that they are indirectly bound by the Code but are not signatories. Consequently, this limits these non-BSC Parties' privileges towards raising changes to the Code.

Additionally, the Authorities Code Governance Review (CGR) projects have sought to improve the governance arrangements of Industry Codes and reduce fragmentation. As part of this, Code governing bodies such as the BSC Panel have been encouraged to take on greater self-governance responsibilities.

Who can raise a BSC Modification Proposal?

BSC Section F 'Modification Procedures' paragraph 2.1.1 details who can raise a BSC Modification Proposal. This includes Parties, the Panel and Ofgem under certain conditions. BSC Parties are the primary proposer of Modifications, having raised 66% of all Modifications (the Panel 19% and ESO 15%). Additionally, the BSC (F2.1.1 (c)) currently allows "such other bodies representative of interested third parties as may be designated in writing for this purpose by the Authority from time to time" to raise Modifications.

P362: Electricity Market Sandbox

P370 differs from the recently implemented P362 Modification 'Introducing BSC arrangements to facilitate an electricity market sandbox'.

The P362 Modification allows industry participants that have pre-competitive innovative products or services but are facing barriers to entry, to seek a **derogation** from relevant BSC obligations, in order to test and develop a product or service for a fixed time period, rather than seek to modify the BSC through becoming a **designated** party, as P370 seeks to do.

What is the issue?

In March 2017, Ofgem's designation process was tested (the first time since the BSC was introduced in 2001) and proved to be overly time-consuming, adding almost 12 weeks to the front-end of the Modification Procedure.

The current designation process, to allow a non-BSC Party to raise a BSC Modification, has been shown to be slow and opaque. It is contrary to the direction of travel, encouraged by

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Ofgem, which is encouraging Panels to be more self-governing. The criteria and process used to designate non-BSC Parties are unclear and as a result, could be seen to act as a barrier to innovation and change.

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3 Solution

Proposed solution

The solution has been summarised below and detailed in Attachments A to G.

P370 proposes to move the designation process from Ofgem to the BSC Panel. This will be done by:

- Amending BSC section F2.1.1 (c) as follows: "such other ~~bodies representative of interested third parties~~ Third Party Proposers as may be designated in writing for this purpose by the ~~Authority~~ Panel from time to time…".

For clarity and succinctness the term "bodies representative of interested third parties" has been replaced with the term "Third Party Proposer", which has been defined as:

- "any interested third party or any body representative of interested third parties in each case designated by the Panel as being permitted to make a proposal to modify the Code…".

Designation Criteria

In order for a designation request to be considered by the Panel, the applicant, a "Third Party Applicant," must submit:

- A valid (meets the existing requirements to submit a modification proposal in F2.1.2 of the BSC) modification proposal;
- The rationale for requesting designation as a Third Party Proposer, including information on what other steps, if any, have been taken by the Third Party Applicant to have the Code issue or defect addressed;
- The reasons why the applicant believes that they have an interest in the Code.

If the above is not completed the Modification Secretary will not submit the Designation Request and will provide the reasons for not progressing the request to the applicant.

The applicant will also be required to sign and submit a letter to ELEXON confirming that they agree to be bound by relevant and limited provisions in the BSC. This is discussed further in section six.

Non-Parties wishing to be designated to raise a Modification Proposal must have a valid Modification Proposal to request designation. The designation is for that Modification Proposal only. The applicant cannot be designated as a standing entity to raise Modifications more generally or for a specific period of time.

Designation Process

The process is detailed in BSC Procedure (BSCP) 40 and summarised in a high-level process map in Appendix 3.

At a high level, the applicant will submit its application to ELEXON for validation. Where invalid, the reasons will be provided to the applicant. Where valid, ELEXON will prepare a paper for the next available Panel meeting. ELEXON will also inform Industry via email (as they do when a new Modification Proposal is raised) that a non-BSC Party is seeking designation at the next Panel meeting. This will allow Parties to submit any concerns to

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the Panel before the meeting. The Panel will hear from the applicant at the Panel meeting and will decide whether to designate the non-Party or not.

Where the non-Party is designated, its modification proposal will be raised and progressed in accordance with the normal Modification Procedures. Similarly to a modification proposal raised by the Panel, a non-Party's modification proposal shall be raised on the day of the designation, and the paper and presentation of the modification proposal at the Panel meeting, where the designation request was heard, shall be treated as the Initial Written Assessment. Following the raising of the Modification Proposal, ELEXON will notify Industry, providing details of the Modification and the designation.

Where the Panel refuses the designation request, ELEXON will notify Industry, including the applicant, of the decision and the reasons for the Panel's refusal.

Appeals

There is no route of appeal under the Proposed Modification. Section six provides rationale for this proposal.

The role of the Panel

The Panel will decide whether to designate a non-Party's designation request, based on the information provided in the request, which includes the designation criteria described above as well as any Industry feedback received before the Panel meeting. The criteria include the submission of a valid modification proposal. However, it is important to note that the Panel is not making an assessment of the merits of the modification proposal at this stage, only the extent to which the non-Party should be designated for the purpose of raising that modification proposal.

Consultations and representations

When a valid designation request is submitted to the Panel (five Working Days before the Panel meeting), ELEXON will notify the Industry, as it does for new modification proposals. This notification will explain that representations on the designation request can be made to the Panel for them to consider. These representations must be made in advance of the Panel meeting. The Panel may consult with Industry if it considers it necessary, before making its designation decision. However, it is expected that this will be the exception and not the norm.

Monitoring and remedies

The Panel shall keep under review:

- The volume of Modification Proposals being proposed by Third Party Proposers;
- The costs incurred by BSCCo in the administration of such Modification Procedures; and
- The costs incurred by BSCCo in supporting Workgroups involved in the consideration of issues.

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Any findings that there has been a material increase in volume and cost shall be published on the BSC Website. The Panel has been given a new right to raise a modification proposal to address any published findings.

Issues

The existing Issues process has been opened up to non-Parties, including ELEXON. A new Issue Group Terms of Reference, based on the Modification Workgroup Terms of Reference, is proposed. An issues process has been defined and a number of minor clarifications made in BSCP40.

Alternative solution

The P370 Workgroup developed an alternative solution which is identical to the proposed solution except that it will additionally provide a route for Parties and non-Parties to appeal the Panel's decisions to Ofgem.

Appeals

Appeals by non-Parties

Where the Panel rejects a non-Party's request to be designated to raise a modification proposal they can appeal to Ofgem. Where Ofgem uphold the appeal, the non-Party will be designated and their Modification raised. Where the appeal is rejected, the same or a comparable Modification can be raised in future[1].

Appeals by BSC Parties

Where the Panel designates a non-Party to raise a modification proposal, existing BSC Parties may appeal the Panel decision to Ofgem. Parties must appeal to Ofgem within 15 Working Days after ELEXON notifies the Industry that the Panel designated the non-Party. ELEXON will notify Industry of a Parties objection to a designation, and the subsequent Ofgem decision.

The Modification will continue to progress in accordance with it progression timetable until such time as Ofgem upholds the appeal. Where Ofgem do uphold the appeal, the Modification will be nullified, and not open for adoption by other Parties, as is the case for withdrawn Modification Proposals.

However, Parties would be able to raise a subsequent Modification which has substantially the same defect as the nullified Modification. The Panel can take on board any assessment, analysis and consultations already undertaken in respect of the nullified Modification Proposal when determining which procedure or phase the subsequent modification proposal should be submitted to and the timetable to be followed in progressing such proposal.

[1] F2.1.4(b) allow the Panel to refuse to accept a Modification Proposal that is comparable to a Rejected Modification Proposal within the last two months. This provision does not apply to a proposal to modify the code under a rejected designation request, as the proposal was not raised and therefore not a Rejected Modification Proposal.

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Legal text

The redlined changes to the BSC to deliver the P370 **Proposed** Modification can be found in Attachment C and the redlined changes to the BSC to deliver the P370 **Alternative** Modification can be found in Attachment D.

Assessment Procedure Consultation responses

Do you agree with the Workgroup that the draft legal text in Attachment B delivers the intention of P370?			
Yes	No	Neutral/No Comment	Other
11	0	0	0

The full set of responses can be found in Attachment I.

All respondents agreed that the draft legal text for the Alternative Modification (formerly the Proposed Modification) delivers the intention of P370.

Other redlined documents

The proposed changes to BSCP40 for the P370 **Proposed** Modification can be found in Attachment E. The proposed changes to BSCP40 for the P370 **Alternative** Modification can be found in Attachment F.

The proposed Issue Group Terms of Reference can be found in Attachment G and are the same for the **Proposed and Alternative** Modifications.

Assessment Procedure Consultation responses

Do you agree with the Workgroup that the draft redlining in Attachment C and D delivers the intention of P370?			
Yes	No	Neutral/No Comment	Other
11	0	0	0

All respondents agreed that the draft redlining (BSCP40 and Issue Group Terms of Reference) for the Alternative Modification (formerly the Proposed Modification) delivers the intention of P370.

Self-Governance

The Workgroup unanimously believes that P370 does not meet the Self-Governance Criteria. P370 proposes to amend the Modification Procedures to change the decision body for designation requests to raise Modifications. The majority of Members also believed it would have a material impact on competition for the reasons given against the Applicable BSC Objectives. It, therefore, has a material impact on the Code's governance and modification procedures (Self-Governance criteria (iv)) and the competition in the generation, distribution, or supply of electricity (Self-Governance criteria (ii)).

What are the Self-Governance criteria?

A proposal that, if implemented:

a) is unlikely to have a material effect on:
   i. existing or future electricity consumers; and
   ii. competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
   iii. the operation of the national electricity transmission system; and
   iv. matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
   v. the Code's governance procedures or modification procedures, and
b) is unlikely to discriminate between different classes of Parties

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Assessment Procedure Consultation responses

Do you agree that P370 does not meet the Self-Governance Criteria and so should not be progressed as a Self-Governance Modification?			
Yes	No	Neutral/No Comment	Other
10	0	1	0

All respondents agreed that P370 should not be treated as a Self-Governance Modification for the reasons given by the Workgroup.

Are there any (other) alternative solutions?

The Workgroup discussed a number of variations of the proposed solution. These discussions are detailed in section six below. All respondents agreed with the Workgroup that there are no other potential Alternative Modifications within the scope of P370 which would better facilitate the Applicable BSC Objectives.

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4 Impacts & Costs

Estimated central implementation costs of P370

ELEXON's costs to implement P370 are approximately £1,500. These costs are primarily driven by the need to amend internal processes and documents.

- 5 day's effort to implement new internal processes and documents; and
- 1 day's effort to implement document changes to the BSC and Code Subsidiary Documents (CSDs).

Indicative industry costs of P370

No implementation costs have been identified. Parties will be required to fund the designation process, as they do the Modification Procedures.

P370 impacts

Impact on BSC Parties and Party Agents	
Party/Party Agent	Impact
Parties and Agents	No implementation impacts identified. Any increases in BSC changes, as a result of non-Parties raising changes, will increase demand on Parties and interested third parties to respond to consultations, participate in Workgroups and implement approved changes.

Impact on Transmission Company
No impacts identified – see Attachment H.

Impact on BSCCo	
Area of ELEXON	Impact
ELEXON	Implement the P370 legal text and subsidiary documents. Update internal procedural documents. Update BSC Website. Update Change Register. Update guidance document, which is published on the BSC Website.

Impact on BSC Systems and process	
BSC System/Process	Impact
All	No impacts identified.

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Impact on BSC Agent/service provider contractual arrangements	
BSC Agent/service provider contract	Impact
All	No impact identified.

Impact on Code	
Code Section	Impact
BSC Section F	Updated to move designation process from Ofgem to the Panel. The Alternative legal text includes provisions to appeal to Ofgem.
Section H	Updated to detail the rights of non-parties under the BSC in relation to designation.
BSC Section Annex X-1	Updated to include newly defined terms.

Impact on Code Subsidiary Documents	
CSD	Impact
BSCP40	Updated with designation request form, Pro-forma letter for non-Party's rights under the BSC, designation process and Issues process. The Alternative BSCP40 redlining additionally includes provisions for appeals. Following the approval of CP1511 on 13 December 2018, a minor presentational change will be needed to BSCP40 section 1.1 as further detailed in Attachment E.

Impact on other Configurable Items	
Configurable Item	Impact
BSC Change Process Guidance Document	Updated to reflect changes to designation and issues processes.

Impact on Core Industry Documents and other documents	
Document	Impact
All	None.

Impact on a Significant Code Review (SCR) or other significant industry change projects
Ofgem classed P370 as an SCR exempt Modification at the Panel meeting on 12 July 2018.

Impact on Consumers
No material or direct impacts on consumers were identified.

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Impact on the Environment
No material or direct impacts on the environment were identified.

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5 Implementation

Recommended Implementation Date

The Workgroup recommends an Implementation Date for both the P370 Proposed and Alternative Modification of:

- 29 March 2019 if the Authority's decision is received on or before 22 March 2019; or
- Five Working Days after the Authority's decision if the Authority's decision is received after 22 March 2019.

Assessment Consultation Responses

Do you agree with the Workgroup's recommended Implementation Date?			
Yes	**No**	**Neutral/No Comment**	**Other**
10	1	0	0

Ten respondents agreed with the recommend implementation approach. One respondent disagreed on the basis that Brexit may require a large number of changes to be raised between the February 2019 Release and the end of March 2019. The respondent recommended the February 2019 Release instead. ELEXON believe that delivering P370 on 29 March, or if a decision is received after 22 March 2019, five Working Days after Ofgem approval, has less risks than delivering on 28 February 2019, as part of the February 20198 Release. Further, the P370 Final Modification Report is now scheduled, subject to Panel approval, to be sent to Ofgem on 21 February 2019, which is unlikely to give Ofgem sufficient time to make a decision by 28 February 2019.

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6 Workgroup's Discussions

General Workgroup Views

Requesting designation for the purpose of being able to raise a Modification is an existing right for non-Parties. P370 is not about deciding whether non-Parties should or should not be able to progress Modifications. P370 is about deciding who should decide whether to designate a non-Party to raise a Modification. There are good reasons why a non-Party should be able to raise Modification Proposals. For example, where a non-Party wants to correct a defect in the BSC arrangements that impacts that non-Party.

Any Modification raised by a non-Party will still be subject to the normal change process of Workgroup assessment, industry consultation, Panel views and Ofgem decision (for not Self-Governance Modifications). These existing checks and balances will assess the merits of the Modification. A designation request is not an assessment of the Modification, rather it is an assessment of whether the non-Party has valid reasons for wanting to progress a Modification Proposal.

Arguments for P370

Allowing the Panel to make designations is likely to make the process faster and more accessible to non-BSC parties. This will facilitate wider market access for smaller players and help facilitate industry self-governance. Given that many non-BSC Parties are affected by issues that fall under the BSC arrangements, it is crucial that the process for designation to raise a Modification be speedy and accessible.

The Panel is better placed to make decisions on designation than Ofgem, as the Panel are experts on the BSC arrangements. Further, the P370 solution is more transparent than the current baseline, as Industry will be notified of designation requests, designation decisions and designation appeals (where aware). This may improve the independence and neutrality of the designation process. The process has been clearly defined and will make use of clearly defined criteria. This means the P370 solution is more efficient than the current baseline.

P370 allows greater flexibility and broadens the source of potential problems and improvements than currently exists. This will facilitate innovation and remove perceived barriers to addressing industry issues.

The opening of the Issues process to non-Parties will enable non-Parties to fine-tune changes before they seek designation to raise the Modification and to validate that the issue is a genuine industry issue that needs to be addressed. This will also give Parties an opportunity to take forward the proposals on behalf of non-Parties.

Arguments against P370

It is not appropriate for non-Parties to get the benefit of being able to raise a Modification without taking on the risks and costs that Parties are exposed to by being bound to the BSC. BSC Parties have a right to raise a Modification because they take on the risks and liabilities from acceding to the BSC and funding those arrangements. Parties accept that they are funding changes for all other Parties, even though they may not benefit from any changes, as they maintain a right to raise and engage with changes (a quid pro quo arrangement).

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Non-Parties should not have a right to modify the BSC, a multi-party contract when they are not a Party it to. There is a perception that P370 will reduce the burden for non-Parties to request designation. This risks increasing the costs for Parties to fund the new designation process and the progression of additional Modifications, which is not fair for Parties.

Recognising that designation is an existing process, it is not appropriate to move the decision as to whether to designate from Ofgem to the Panel, as Ofgem are better placed to make the decision as they have a wider remit in making decisions than the Panel, for example in considering consumer benefits.

The Panel will default to approving designation requests, as they will not want to be seen to be discriminating. Part of the argument for approving P370 is it will lead to a faster designation. There is nothing about the new process that suggests it will be quicker.

If non-Parties not being able to easily raise Modifications is limiting innovation then this is likely to be a wider issue than just the BSC and so a more holistic cross-code solution should be sought.

Who should be able to request designation?

The Workgroup considered who should be able to request designation to raise a BSC Modification Proposal with the aim of assessing whether it should or could be restricted. The Workgroup was mindful that the term used could widen or narrow the scope of potential persons who can apply. The Workgroup had the following thoughts;

Consumers: The Workgroup could not envisage a reason why a consumer would want to raise a Modification Proposal (which is the reason to seek designation), as it requires significant commitment and is unlikely to have any direct benefits for them. A Workgroup Member suggested that constraints on who can request designation should not be introduced unless there are valid reasons to do so. As he could not identify any reasons to introduce constraints, he believed anyone, including consumers, should be able to request designation.

Trade bodies: They saw a problem with the membership of trade bodies being that persons wanting to request designation may not be a member of a trade body. The rules for establishing trade bodies and indeed the definition of a trade body are not clearly defined. Anyone could establish a trade body if they wanted. The Workgroup considered creating a list of trade bodies but rejected the idea as it would be difficult to maintain and would add further complexity. It would also require a trade body to be defined and a validation process to be established. The benefits of allowing trade bodies is that it could help with frivolous or spurious changes, as credible trade bodies should only be willing to request designation if they have a genuine issue for its members and would not want to risk reputational damage.

Class of system user e.g. embedded generator: There was concern that with an evolving industry the roles may change and any list could become outdated. This option was not seen as future proof.

Person vs. legal entity: the Workgroup discussed the difference between persons and legal entities. ELEXON legal confirmed that from a legal perspective they could be interpreted as one of the same, to mean any human or non-human (company, trade body, government agency) entity that is recognised as having privileges and obligations, such as being able to enter into contracts.

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Interested third party: the Workgroup agreed that this term was broad and could incorporate all of the other terms considered.

The Workgroup also considered the terms used in other Industry Codes. The majority of other codes have a designation process comparable to the existing BSC arrangements (request made to Ofgem with no right of appeal). Other codes used comparable terms such as 'any person or body' or '…who is representative of interested third parties' or 'any person or class of persons'. See appendix 4 for further details.

The Connection and Use of System Code (CUSC) uses 'materially affected party.' The Workgroup discussed the use of the term 'materially' and agreed this introduced a constraint /criteria into the definition of who can request designation. The Workgroups preference was to separate out the 'who can raise' from the criteria they would need to meet, as far as was possible. 'Interested' was seen to be broader than 'materially.'

It was noted by a Workgroup Member that although the other Codes have the same route for Designation as the BSC, changing this for the BSC shouldn't be seen as a negative, as this is the direction of travel for the industry in giving Panels more responsibility so if this Modification is implemented other Codes should consider following suit.

One Workgroup Member strongly believed that the Panel and Ofgem may take a different view of who is an interested third party due to the respective difference in remits and objectives. Ofgem has wider statutory duties (detailed mainly in the Electricity Act 1989) than the Panel, for example in considering consumer benefits.

If a person was willing to commit time and effort in requesting designation (and subsequently progressing a Modification), it is unlikely they would do so unless they believed there were benefits to them. It was suggested that a University may have the funding to progress changes on a theoretical basis and are not necessarily driven by the same factors as profit-seeking companies.

The right to apply for designation should not be limited based on who you are, but rather on the merits of the designation request. The Workgroup believed other remedies, other than limiting who can apply, were more appropriate to address the risk of a significant increase in Modifications, including frivolous or spurious Modifications as a result of P370.

Who is most likely to request designation?

The Workgroup noted that there were two key groups of users most likely to want to seek changes to the BSC, who are not BSC Parties – Virtual Lead Parties and Supplier Agents. It was noted that following P344 'Project TERRE' implementation on 28 February 2019, Virtual Lead Parties will be BSC Parties and therefore able to raise BSC changes (Modifications, CPs and Issues). These Parties will be smaller embedded generators or aggregators e.g. for Demand Side Response. This will likely reduce the need for designations. Supplier Agents are less likely to want to raise Modifications and more likely to want to raise Change Proposals (CPs), as most of their requirements sit in the Code Subsidiary Documents. P370 opens up the Issues process to non-Parties and was therefore seen as a way for Supplier Agents to get buy in from industry on particular issues requiring a CP. If an Issue Group recommended raising a CP to address an issue and a Party was unwilling to raise it, ELEXON confirmed it would raise the CP.

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Conclusion

The Workgroup concluded that the Panel should have broad discretion, as Ofgem currently do, to decide whether to designate a non-Party to raise a Modification. The Workgroup agreed that "interested third party" best met this view.

The Workgroup agreed that a new term 'Third Party proposer' should be defined to make it clear that interested third parties included bodies' representative of third parties (i.e. trade bodies). This would also make the legal text easier to read and would remain consistent with terms used in other Industry Codes. The Workgroup noted that it would be preferable for a consistent process and term to be used in all codes.

Third Party Proposer has been defined in the BSC as:

> *"means any interested third party or any body representative of interested third parties in each case designated by the Panel as being permitted to make a proposal to modify the Code pursuant to Section F2.1.1(c);"*

Should a designation request be for a specific Modification Proposal?

The Workgroup considered whether non-Parties should be required to be designated for the purpose of raising a specific Modification Proposal or to raise Modifications more generally. For example, a standing list of designated parties could be established.

The Workgroup agreed that one of the designation criteria should be to provide a valid (as per the existing Section F2.1.2 requirements) Modification Proposal form along with its designation application.

Without a Modification Proposal, there is no need to seek designation. If a non-Party believes there is a case to be designated to raise Modifications more generally there is likely to be a strong case for becoming a BSC Party. The Workgroup believed allowing a non-Party to have the same rights as a Party to raise Modifications indefinitely was not proportionate to address the P370 issue and tipped the balance in favour of non-Parties over Parties.

When should the proposal form be submitted?

The Workgroup considered whether the Modification Proposal form should be submitted at the same time as the designation application, or whether it could follow within a given time period e.g. six months.

Whether designation is sought first and then a Modification Proposal drafted, or whether these two tasks are done in parallel, still requires that both tasks are completed before a Modification can be progressed. The amount of effort is, therefore, the same, but the overall timeline is likely to be quicker if done in parallel.

Further, the Workgroup determined that there are benefits to doing them in parallel as:

It reduces the risk that designations are granted and never used i.e. it is more efficient to do them together;

It provides some assurance to Parties that the non-Party does have legitimate reasons to seek designation.

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Circumstances may change, for example, industry change, where the non-Party is no longer an interested party. This risk increases the longer the gap between designation request and raising the associated Modification.

Other Parties may seek to raise a Modification with the same defect. This may create governance issues for the Modification Secretary if there is a long gap between designation and raising a Modification.

There is a risk that ELEXON spends time working with a non-Party on a Modification Proposal as part of a designation application, that subsequently gets rejected. However, this should be the exception as ELEXON's critical friend role is well respected in advising and supporting parties to develop valid Modification Proposals. The Workgroup therefore agreed that the proposal form must be submitted at the same time as the designation request.

Designation Criteria

The Workgroup believed it was important to establish designation criteria. The Panel would need to be satisfied that the criteria had been met in order to grant designation. Establishing designation criteria was seen as an important control to ensure only legitimate, credible and worthwhile requests came forward.

Ofgem shared with the Workgroup a list of items that they consider when deciding whether to designate. This formed the basis for the Workgroup assessing which criteria to use. The Workgroup agreed that aligning to the Ofgem list would help to keep some consistency across the codes. The items that Ofgem consider are:

1. Name of the person or organisation requesting designation and contact details.
2. If the person/organisation is acting for another party/parties (for example, a trade association acting for its members) this should be explained.
3. Reason for requesting the designation. This may include explaining why a party to the code will not raise or 'sponsor' this modification proposal, and/or any previous efforts to effect change (e.g. by raising the issue at appropriate forums).
4. An overview of the issue ('problem') and the solution to be proposed. If a proposal form has already been drafted, please provide this.
5. How the person or organisation requesting designation is an interested party or materially affected by the code/issue.
6. Any relevant details of industry discussions or previous forum discussions of this issue.

The Workgroup asked Ofgem to confirm what information they consider mandatory. Ofgem confirmed that they want to have all relevant information. For example, if the applicant had been to an industry forum to discuss the issue, Ofgem would want to know about it.

The Workgroup incorporated all of Ofgem's criteria and separated it into mandatory and non-mandatory items. Applicants must provide:

The reasons for the requesting designation;

The reasons why they have an interest in the Code;

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A valid Modification Proposal form - this was seen as the most efficient option, rather than granting the designation for a specific defect and then returning with a proposal.

The Workgroup agreed that applicants should provide details of the following, where available, but that this information should not be mandatory:

Information on what other steps, if any, have been taken to have the issue or defect addressed. For example:

- Why a Party has not / will not raise or sponsor the change;
- Previous efforts to progress the change, such as raising the issue at appropriate forums; and
- Relevant details of industry discussions or previous forum discussions of this issue.

This was on the basis that requiring a non-Party to raise their issue with an industry forum, whilst prudent, was creating an unnecessary barrier. Similarly, a non-Party should not be required to demonstrate that they have tried to get a Party to raise a change, as the non-Party may want to maintain control of the change, especially if it impacts them more than existing Parties.

The Workgroup believed the Panel should be able to reject frivolous or spurious requests, but that this could only be done in relation to the designation criteria. One Member believed it would be very difficult for the Panel to reject requests.

The Workgroup considered whether the non-Party should have to demonstrate that they are materially affected. One Member thought that this suggested they would have to demonstrate that it impacts their finances, and so should be left out. Overall, the Workgroup did not believe it added anything and theefore did not include it as a criterion.

Where should the designation criteria be published?

One Member felt strongly that any criteria should be published in the Code as it was important that Parties and non-Parties are clear on what their rights and obligations are. The alternative suggested was to put them in BSCP40 with a 'hook' from the BSC.

The Workgroup agreed that the criteria should be included in the Code as they form a critical part of the designation rights and privileges. BSCP40 has been updated to detail the designation process and includes a form asking to provide information to satisfy the criteria.

How can the costs and impact of dealing with additional Modification Proposals be fair and consistent to BSC Parties and non-Parties?

The Workgroup discussed the risk that by clearly defining the designation process and setting clear criteria this may lead to a significant increase in the volume of Modifications raised by non-Parties, as it could be perceived to be a lower hurdle to clear than is currently the case.

A Member highlighted that there is currently no evidence for this. The Workgroup agreed that as part of the Assessment Consultation, non-Parties should be asked if they had any changes they wanted to raise, and if so how many. A Member believed it was less about

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the total costs and more about costs associated with rejected Modifications, which may suggest frivolous or spurious proposals. It is possible that Parties will let non-Parties sort out issues impacting them both.

The Workgroup asked ELEXON to try and invite non-Parties, particularly embedded generators and aggregators (who may not already be on the ELEXON change distribution lists), to respond to the P370 Assessment Consultation by communicating in additional, relevant communication channels. ELEXON asked the Association of Decentralised Energy, the Flexible Generation Group and Power Responsive to circulate the P370 Assessment Consultation.

If you are a non-Party do you have any Modifications or Issues that you would like to raise, and if so, how many would you estimate you may raise within			
Yes	No	Neutral/No Comment	Other
2	7	2	0

Two non-Parties indicated that they did not plan to seek designation or the raising of any Issues within the first year following P370 approval. Two other non-Parties indicated they would:

One respondent (a trade association for decentralised energy) stated that there is currently one issue they would consider raising if the ability to do so were currently in place. They also stated they would estimate one to two Modifications or Issues within the first year, but noted they do not anticipate having to apply for a designation on a regular basis, but the option is likely to be extremely valuable.

One respondent (Supplier Agent) suggested he might re-visit two Issues which he has not been able to get a Party to raise and so he may revisit these.

The Workgroup noted this useful information and the majority believed this gave no cause for concern. The minority of the Workgroup believed it could not be relied upon.

A Member believed it would be reasonable to assume you would see an initial increase in Modifications and then a new steady state (as was the case after New Electricity Trading Arrangements (NETA) go-live). The Workgroup believed that the designation criteria would act as a mitigating action against frivolous or spurious designation applications. The opening up of the issue process may also mitigate frivolous applications, as non-Parties have a new route to discuss defects which are better suited to an Issue Group rather than a Modification.

Another Member felt that P370 builds the case that ELEXON is going beyond a traditional code administrator, and becoming an organisation for the greater public good. Approval of P370 will, therefore, strengthen the case for amending the BSC funding arrangements.

Who should fund the designation process?

The Workgroup discussed whether Parties should be paying for ELEXON to support non-Parties. It was highlighted that ELEXON supported the P355 Proposer (the first designated party under the BSC) before they were designated. Further, a Member believed the cost concern, if there was one, should only apply from the point the designation application is received to the point the Panel make a designation decision. Any cost transfer arises from

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the Panel designating instead of Ofgem and not from the progression of the associated Modification.

Some Members believed any costs involved would be immaterial for Parties (unless significant numbers of designations were requested), and the costs argument is, therefore, more a point of principle. It was suggested that ultimately consumers will pick up the bill, either via Parties charging its customers or via Ofgem from tax collection. However, these different routes can lead to different competition effects and so are important.

ELEXON has estimated that progressing an average designation application will take between 5 and 10 work days of effort (not duration). This is subject to the quality and complexity of the submission.

It was also highlighted that the vast majority of BSC Costs are paid by Parties with a Funding Share (i.e. they are a Trading Party), but they also tend to benefit the most from any changes. A Member believed that if P370 was approved, it could result in a Modification to amend the BSC funding arrangements for Modifications, as this is not what Parties signed up for. A user pay model would allow Parties to pay for what they use/want.

Setting a designation application fee

It was suggested there could be a fee for applicants that could be set to zero to start with. It was highlighted this was the approach taken with the Sandbox Modification (P362). However, the key difference is that Ofgem is the final decision maker for Sandbox applications.

The fee could be a nominal fee, which might help deter any frivolous or spurious applications, or the fee could be costs reflective. There was concern that this may be prohibitive for smaller non-Parties. It was also suggested that the fee could be equivalent to the ELEXON base monthly charge (£250 a month), a monthly charge that all BSC Parties must pay.

It was suggested that if a fee was to be applied it should be applied to all parties and not just non-Parties for progressing changes.

A Member remained concerned that P370 will make the designation process more mechanistic and could be perceived to reduce the burden to seek designation, resulting in an increase in Modifications, especially if it remains a free service for non-Parties, which places increased costs on Parties.

A Member pointed out that there are costs for non-Parties to raise and progress changes, and without any evidence that there would be a big increase in the volume of changes it would seem pre-emptive to create barriers by setting a fee. If there was an increase, it could be argued that this is evidence that the current arrangements are a barrier to change and innovation. Further, any barriers would create different rules for Parties and non-Parties, although it could be argued this is appropriate.

The majority of the Workgroup agreed that a fee should not be included as it would create a hurdle, when one may not be needed. The majority of the Workgroup believed a more proportionate response was to require the Panel to monitor the situation and to give the Panel powers to raise Modifications in response to any concerns (see below for detail).

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Australian Energy Market Commission

A Workgroup Member informed the Workgroup that the Australian market had opened its change process up to all participants and wondered if it would be a useful case study for P370. ELEXON subsequently contacted the Australian Energy Market Commission (AEMC) to seek further information.

AEMC is the rule maker for the National Electricity Rules, National Gas Rules and National Energy Retail Rules, which collectively would be equivalent to most of the codes in the United Kingdom energy industry. Anybody (other than the AEMC) can propose a rule change. Most rule changes go through an average six-month consultation process before the Commission makes a final determination.

In practice, the vast majority of rule changes come from a very small number of bodies – generally market participants, network businesses, other regulatory bodies or governments. Occasionally AEMC have had some proposals from private individuals, but most fall at the first hurdle: AEMC doesn't have to consider proposals that are "misconceived or lacking in substance". Generally, what happens is AEMC speak to the proposer, explain why what they've proposed wouldn't solve whatever problem or bugbear they have, and the proposer agrees to withdraw the proposal. Occasionally, if the proposer doesn't withdraw their proposal, AEMC have to write (and publish) a formal letter explaining why they are not progressing the proposal.

The Workgroup noted that the Modification Secretary can also reject Modification Proposals that do not meet the requirements in Section F of the BSC (F2.1.2). These requirements do not assess the merits of the proposal (it is more of a procedural validation rather than an assessment of the content), but rather validate that there is sufficient information to progress the proposal, for example, a description of the issue or defect in reasonable but not excessive detail. ELEXON's critical friend role plays a more significant role in the development of the content but cannot prevent a Party from progressing a Proposal. It was also noted that the Panel can only reject a Modification where there is an equivalent Modification pending Ofgem decision or has been rejected by Ofgem within the last two months.

AEMC have had a few proposals made by private individuals go to consultation and, perhaps one or two have succeeded – but very small numbers. The numbers have increased over time – energy is a hot political issue in Australia at the moment, and there is intense interest in some of AEMC's work – but they're still not significant enough to cause AEMC concern.

There is provision made in the laws that govern AEMC for them to charge proponents, but in practice, AEMC don't – and there is currently no discussion of doing so. AEMC rules are not codes – essentially they are a delegated form of lawmaking. As such they are jointly funded by the state governments – although they generally recoup those costs through licence fees levied on network businesses (and therefore, ultimately, consumers). This was considered a crucial point by a Workgroup Member in relation to previous points about who funds change as it was seen to provide evidence that that the ELEXON funding arrangements should be examined.

The Workgroup concluded that the AEMC process gives some comfort that the number of designation applications under the BSC will be manageable, but is not a predictor of BSC designation applications. Further, the AEMC funding arrangements support the concerns that the BSC funding arrangements need to be considered outside of P370. ELEXON noted this can be considered in an upcoming Issue.

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Conclusion

The Workgroup agreed that there was a risk of additional Modifications being raised by non-Parties as a result of P370. In the absence of any evidence to suggest otherwise, the majority of the Workgroup agreed that the impact of this risk was low. Responses to the Assessment Procedure Consultation suggested there would be 2 to 4 changes a year. The Workgroup, therefore, agreed to require the Panel to keep under review:

- The volume of Modification Proposals being proposed by Third Party Proposers;
- The costs incurred by BSCCo in the administration of such Modification Procedures; and
- The costs incurred by BSCCo in supporting Workgroups involved in the consideration of Issues (see Issues section below).

The Workgroup also agreed the Panel should have powers to raise Modifications in order to address any concerns form a material increase in the volume and costs. The Workgroup agreed not to set a fee for designation applications for the reasons given above.

This approach was felt to be proportionate. Without knowing the scales of the risk the solution should not be designed to assume worse case. If there's not a problem to fix, time and money should not be spent trying to fix it. This approach allows for any surge in changes to be assessed before working out the best course of action. It was noted that in the worst case the Panel already has powers to prioritise change if needed. The Workgroup also agreed this should be avoided where at all possible and pointed to recent criticism of the CUSC Panel in prioritising changes.

Appeals

The Workgroup discussed the reasons why a Party or non-Party may want to appeal a Panel decision. It was suggested that an appeals process may not be needed, because if you didn't like a particular proposal you could join the Workgroup and participate in the Modifications process. However, the majority of the Workgroup agreed that having an appeals process was an improvement to the current process, which had no route of appeal.

ELEXON explained how the current appeals process works for Modifications, in an attempt to understand how appeals could work for designations. There are two forms of potential legal challenge to a BSC Modification decision:

an appeal under the Energy Act 2004 where an Ofgem Modification decision does not align with the majority recommendation of the Panel. This right allows substantive appeals to the Competition and Markets Authority (CMA) on the grounds that the Authority has failed to have proper regard to the applicable code objectives, or to its statutory obligations, or failed to give the proper weight to one or more of those; that the decision was based on an error of fact and/or that the decision was wrong in law.

A judicial review. This is a judicial process that can be used to challenge the lawfulness or fairness of a decision made by a public authority. The scope of this review is narrower as it will be focussed on whether the decision was unlawful, irrational or procedurally unfair.

In both cases, the legal challenge must relate to a decision of a public authority. The CMA appeal process relates only to Modification decisions by the Authority. A judicial review

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would most likely also relate to a decision of the Authority, though it arguably applies to Panel decisions where the Panel acts as a public authority. A decision by a Party to adopt a Modification would not be reviewable in itself so any legal challenge would have to be in respect of a final Modification decision by the Panel or Ofgem.

Who should hear appeals?

The Workgroup agreed that Ofgem and not the Panel should hear appeals. This approach is more pluralistic and is believed to better facilitate good governance practice.

Third Party Proposer rights to appeal

Where the Panel decides not to designate a non-Party, that non-Party should have the right to appeal. This was seen to add a benefit over the current process, where there is no appeals process. Given the wider statutory duties that Ofgem has, the right of appeal was seen as important as there may be occasions where the Panel would reject a designation request, but Ofgem having wider considerations would not.

A Workgroup Member believed this approach was less efficient than the current process. Given that Ofgem has a wider remit than the Panel, it would be more efficient to keep Ofgem as the decision body.

BSC Party rights to appeal

The Workgroup discussed whether, as a point of principle, if a non-Party has a right to appeal, a Party should also have the right to appeal a designation decision. The majority of the Workgroup agreed that this 'moral equivalence' argument meant both Parties and non-Parties should have a right to appeal, or neither should.

It was suggested that Parties do not need a right to appeal if they have an opportunity to provide any concerns or comments to the Panel, in advance of the Panel designation decision.

The Workgroup discussed whether the Panel should be required to consult in advance of making a decision. The Workgroup agreed that the Panel should not be required to consult, but should have the right to consult. This approach would give the Panel flexibility, and where a consultation was not needed (which is expected to be the majority of cases) it would result in a faster designation process.

ELEXON should notify Industry once a designation application has been submitted to the Panel (usually five Working Days before the Panel meeting). This notification would give Parties an opportunity to make representations to the Panel for the Panel to consider in its designation decision. This would include informing the panel whether a formal consultation is needed.

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What are the risks from allowing the adoption of Modifications that have been withdrawn due to an upheld appeal of a designated interested third party?

The argument is that where:

- a Modification Proposal raised by a third party is designated as an interested third party by the Panel; and
- that designation is subsequently overruled by the Authority

then the effect is that the Modification is nullified and is therefore incapable of being adopted by a BSC Party. Consequently, if the BSC were to include provisions allowing BSC Parties to adopt a nullified Modification Proposal there could be a risk of challenge to that Modification.

It is arguable that there is a very low risk of a successful challenge on the basis that:

- The process for adopting a 'nullified' modification would be expressly set out in the Code; and
- Ofgem's decision would need to be lawful and procedurally fair but by the time the decision reached the regulator:
    - (i) Ofgem's decision would still be focussed on the substantive arguments regarding the applicable BSC objectives and Ofgem's wider statutory duties;
    - (ii) the Proposer, by that stage, would be one of the persons listed in F2.1.1 as entitled to raise a modification;
    - (iii) Industry would have had an opportunity to be involved in the modification process through workgroup membership and the consultation process;
    - (iv) the process followed by the Workgroup and Panel in making their recommendations would be the same.

Consequently, an application for a Judicial Review would be asking the Court to quash a decision by Ofgem that complied with the procedure set out in the Code as regards the adoption of nullified modifications and which in all other respects complied with the Code (so, to that extent at least, was lawful) and was procedurally fair.

The counter-argument would be that the Court may determine that the provision of the Code allowing Parties to adopt a nullified Modification is in itself contrary to Statute or European law. ELEXON legal is not aware of any laws that would be relevant to this point.

The P370 Workgroup has currently adopted a solution whereby a nullified modification cannot be adopted. However, if, following nullification, another Party subsequently raises a modification on the same subject matter the Panel may allow the output of the nullified modification to be re-used. In practice, albeit via a lengthier process, this gets you to the same place of adopting a Modification. Whilst the nullification route will take longer, it is more flexible around timescales in so far as a Modification open to adoption must be adopted within five working Days. Whereas, the nullification route imposes no such time limit on Parties to raise new equivalent Modifications.

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Do other codes allow designation decisions to be appealed?

Where other codes have an existing designation process that allows Ofgem to designate third parties to raise changes, there is not an appeals route. See Appendix 4 for details.

The Workgroup noted that the Master Registration Agreement (MRA) does not allow non-Parties to be designated. Instead, it allows Interested Industry Participants to raise a change where sponsored by a Party and the MRA Executive Committee (MEC – is responsible for key functions under the MRA) believe the non-Party has an interest in the Industry. Under this process, the non-Party can appeal decisions to the MRA Development Board (MDB – is responsible for the management of technical and commercial changes to the MRA and associated products).

How long should the appeals window be?

The Workgroup noted that non-Parties could not be bound to lodge an appeal within a certain time period, as they are not a Party to the Code. Whereas, BSC Parties can be required to lodge an appeal within a given timeframe as they are bound by the Code.

The Workgroup agreed that the proposed 15 Working Day appeal window struck the right balance between not enough time and too much time. It also aligned with the standard Assessment Procedure Consultation time period and the length of the appeal window for Panel's determination of Modifications as Self-Governance Modifications.

Similarly, the Workgroup noted that the BSC cannot bind Ofgem to specific timescales to respond to appeals. The Workgroup agreed that where ELEXON becomes aware of appeals or where Ofgem notifies ELEXON of its appeals decision, ELEXON must notify Industry. The Workgroup noted that it would expect Ofgem to inform the Panel, at the Panel meetings where an appeal had been raised, and ELEXON should also ask Ofgem at the Panel meeting whether any appeals had been raised. The Workgroup believed these notifications would lead to a more transparent designation process than the current baseline.

Workgroup consideration of appeals

Prior to the Assessment Consultation, the Workgroup considered raising an Alternative solution that would either remove the right of appeal for both Parties and non-Parties or only allowing non-Parties the right of appeal. Ofgem in particular wondered why Parties would need a right to appeal, as they could make their representations and views known to the Panel in advance of the Panel deciding whether to designate. However, it was highlighted that, although very unlikely, the Panel may not properly consider the representations submitted and Ofgem has a wider remit and so there may be legitimate reasons for the Panel approving the designation, but Ofgem coming to a different view. The Workgroup therefore consulted on the appeals process.

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Do you agree with the Workgroup that Parties should be able to appeal a Panel decision to designate a Third Party Proposer and a Third Party Applicant			
Yes	No	Neutral/No Comment	Other
9	2	0	0

The majority of respondents agreed that both Parties and non-Parties should have the right to appeal. This symmetrical approach was believed to be the fairest and would leave a route open to Ofgem, as there currently is. The Workgroup voted on whether both Parties and non-Parties should have a right to appeal or only non-Parties. The majority believed it should be both for the reasons previously given.

Other Alternatives considered

A Member suggested the Panel could recommend designation to Ofgem, which would avoid the need for an appeals process. The Workgroup rejected this as they did not believe this was the intent of P370 and would be a less efficient process than the current baseline.

The Workgroup also considered giving Ofgem a right to veto a designation decision, instead of being the appeals body. This would require Ofgem to consider the designation throughout. The Workgroup rejected this proposal as the appeals route was seen to be more efficient as it only requires Ofgem to consider the designation if appealed.

Conclusion

The Workgroup agreed it would be better to present Ofgem with two options:

1. No appeal routes – seen to best support efficiency; and
2. Appeals routes available.

The majority of the Workgroup believed that both Parties and non-Parties should have rights to appeal a designation decision, or neither should, as this was seen to be fair and equivalent. The Workgroup therefore, by majority decision, decided not to progress a solution that only gave appeal rights to Parties or non-Parties. The Workgroup noted that they did not expect appeals to be used often, especially by Parties.

Swapping the Alternative Modification with the Original Modification

The Workgroup Terms of Reference require the majority of the Workgroup to believe that the Alternative Modification better facilitates the Applicable BSC Objectives as compared with the Proposed Modification in order for it to be progressed. Consequently, as the majority believed having a route of appeal was better than not having a route of appeal, as it better facilitated Objective (d), the Workgroup made the original Proposed Modification the Alterative Modification and made the new Proposed Modification the same but without any rights of appeal. In summary:

The Workgroup decided the P370 Proposed Modification should not allow any appeals, as this would be equal on both sides, whilst the P370 Alternative Modification should allow:

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- A non-Party to appeal the Panel's rejection of its designation request; and
- Parties to appeal the Panel's decision to approve a designation request.

Appeals should be made on the basis that the Panel has not applied the designation criteria properly, rather than judging the merits of the associated Modification Proposal. This applies equally to both Parties and non-Parties.

Pre-Assessment of Changes via an Issue Group

It was suggested that allowing non-Parties to raise Issues may reduce the number of Modifications / designation requests as it would allow non-Parties to discuss and validate defects in advance and may result in a BSC Party raising a consequential modification. This pre-assessment could help rule out or better shape any changes before they are raised.

The Workgroup believed that allowing non-Parties to socialise their issues with Industry would help inform any designation requests and associated Modification Proposals. Where an issue group agreed there was indeed an issue to resolve under the BSC it would help build a stronger case for designation. It would show that it is not just a problem faced by one company, but a genuine issue faced by Industry and that should be fixed. If issues are not opened up to non-Parties, it may lead to lower quality or unnecessary Modifications being requested for designation. A key current criteria as stated by Ofgem and within the proposed criteria under the Modification is to give evidence of;

- previous efforts to progress the change, such as raising the issue at appropriate forums; and
- by not allowing non-parties to raise issues this will make it more difficult to evidence the above criteria.

Standing Groups

The Workgroup considered whether a regular or interim forum could be established to consider potential changes.

ELEXON explained the BSC already allows the Panel to establish standing groups to consider issues. The BSC has a wide scope and most changes only interest certain roles or certain teams within Parties organisations. Instead, ELEXON establishes Issue Groups to consider changes on a case by case basis, rather than creating forums that would either have lots of business or very little business to discuss on a meeting by meeting basis. There is also a risk that these standing forums become a 'talking shop'.

Use of Existing Panel Committees

BSCP40 currently invites Parties to present their issues to the Panel Committees in order to seek guidance. The Panel Committees would then advise on any possible solution to the concern and how best to resolve the problem. It was noted that this is limited to BSC Parties, but in practice, ELEXON would take any issues to the Panel Committees where it believed there was a valid BSC issue.

Using the Panel Committees as a control gate to filter potential changes was seen to have some benefits, such as ensuring only changes that have value and are genuine issues worth progressing are taken forward. The Workgroup believed Panel Committees are

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better placed to make this assessment than ELEXON. However, there is a cost to use Panel Committees.

Party Sponsorship

The Workgroup discussed the reasons why Parties do not always raise changes on behalf of non-Parties. Parties may agree in principle, but may not be willing to commit resource to progress a change where it has no impact or adds little value to a Party.

The Workgroup noted that there are occasions where Parties will sponsor and raise a change on behalf of a non-Party. There are also occasions, where ELEXON progresses Change Proposals on behalf of non-Parties, for example, changes that come from Unmetered Supplies User Group (UMSUG).

Conclusion

The Workgroup believed the raising and consideration of Issues should be widened to non-Parties and not restricted to Parties. Discussions and recommendations from issue groups could help inform non-Parties designation requests, providing evidence that the issue is genuine and needs to be resolved.

Where non-Parties are not able to progress an issue, ELEXON can progress the issue on their behalf.

If ELEXON believes an issue should not be progressed, for example, if the issue is misconceived or lacking in substance, and the non-Party disagrees, the relevant (the Committee who owns the impacted documents) Panel Committee will decide whether the Issue should be progressed.

The Workgroup agreed an Issue Group Terms of Reference should be established. This should be based on the Modification Workgroup Terms of Reference, which are robust and well established. This will provide clarity to the governance and operation of Issues, including the role of an Issue Group in making recommendations and how any voting should work. Attachment G contains the Issue Group Terms of Reference.

If ELEXON was unable to get the quorate (five) number of Issue Group Members, the Workgroup believed this could be seen to be a barometer of interest from Industry. It was noted that availability is different to interest, and so any request for Issue Group Members should be considered carefully.

Opening up the Issues process will allow Supplier Agents to bring forward potential issues and improvements to the BSC for discussion. Where the majority of an Issue Group recommend that a Change Proposal should be raised to address an issue and no Party comes forward to raise it, ELEXON agreed it would raise and progress the Change Proposal.

BSCP40 currently allows "such other bodies representative of interested third parties as may be designated by the Authority from time to time" to raise Change Proposals (and Draft Change Proposals – although this process is not used in practice as the Issues process is used instead). The Workgroup were not aware this was an option and believed it unlikely to be used for changes to subsidiary documents, given the effort required. Moreover, allowing third parties to raise Issues removed the need to seek designation, as

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the Issue would be progressed by a Party or ELEXON where the majority of the Issue Group believed a Change Proposal should be raised.

Opening up the Issues process would also align with the Code Administrators Code of Practice principle 5 "Code Administrators shall support processes which enable users to access a 'pre-Modification' process to discuss and develop Modifications". Members who were against P370, felt more comfortable with opening the issues process up, as it does not result in any changes to the BSC or systems. Further, the costs associated with progressing Issues is lower than with Modifications. Issues typically have one meeting and submit one report to the Panel, whereas Modifications typically hold 3-5 meetings and produce 6 reports.

Alternative approaches

The Workgroup discussed alternative ways of progressing Issues, which could reduce the costs of progressing Issues. For example, the proposer of an Issue could be responsible for chairing the meeting and doing the secretariat role. However, this could lead to an inconsistent service and whilst would reduce costs slightly, the wider industry costs of attending the meeting and reviewing documents would remain.

Process considerations

In practice, it is expected, that the designation request and the Modification Proposal will be presented at the same Panel meeting by ELEXON and the Proposer. Where the Panel designates the non-Party, the Modification will then be raised at the same Panel meeting and the paper presenting the Modification Proposal will be considered the Initial Written Assessment (IWA), as is currently done for Panel raised Modifications.

A Member asked how 'non-standard' Modifications such as Urgent or Fast Track Modifications should work under the designation process. The Workgroup agreed they would work the same way they currently do. Once a non-Party is designated they would be eligible to submit a Proposal in accordance with Section F, where all of the existing rights processes would apply.

Rights of Third Party Proposer's under the BSC

A Workgroup Member asked ELEXON to confirm what rights a Third Party Proposer would have under the BSC. ELEXON legal confirmed that this should be made clear in the P370 legal text and that there was probably an existing gap in the rights of Citizens Advice and Citizens Advice Scotland, who can raise Modifications but are not Parties to the Code.

Section H (added H9.4.4) of the BSC has therefore been updated to make it clear that anyone who is not a Party but who is permitted to propose a Modification Proposal pursuant to Section F shall have the rights, benefits, entitlements and privileges of a Proposer under Section F from the date when that Modification Proposal is accepted until the earlier of that Modification Proposal being nullified, withdrawn, rejected or approved.

Third Party Proposers will also be required to sign and return, as part of their designation request, a letter (which has been included in BSCP40) to:

- Ensure that the third party is legally bound by the procedural rules in Section F and BSCP40;

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- Ensure they are similarly bound by the general provisions in Section H; and
- Ensure they accept that their only remedies are as set out in the BSC e.g. a right of appeal to Ofgem if the designation request is rejected.

European Balancing Guidelines (EBGL) Impact

ELEXON confirmed to the Workgroup that it was not aware of any EBGL provisions that would impact P370. A Workgroup Member was curious whether EBGL limited who could raise Modifications. ELEXON confirmed that EBGL did not go into this detail.

Prioritising Changes

The Workgroup noted that there may be a need to prioritise changes if there is a significant increase in the number of Modifications and Issues raised by non-Parties. The Workgroup touched on how this could be done but decided the monitoring requirements and the Panel's ability to raise a remedial Modification was sufficient at this time. Moreover, it would be for the Panel to agree on any prioritisation.

They noted that first come, first served, was probably not the best approach. A 'popularity vote' was another option. The example given was progressing European changes over storage changes has prioritised European law over storage, which could be seen to be a bigger and more popular priority. The Workgroup concluded that if prioritisation was needed, a set of criteria should be developed and there was a strong preference for the the Industry to have a say over the priority.

Smaller Party Engagement

The Workgroup considered what changes are needed to encourage engagement from smaller participant in the change process, given that P370 will most likely appeal to smaller participants.

ELEXON talked through two recent changes to the Workgroup Terms of Reference:

- Reduce the attendance threshold to 50%, in line with the CUSC, in order to maintain voting rights; and
- Allow Members to send an alternate, who will contribute and count towards the 50% threshold.

The Workgroup agreed this was a sensible change and could always be changed again if it did not work as intended.

Often, large Modifications will require changes to CSDs that impact Supplier Agents. This may only form a small part of the overall Modification. The Workgroup agreed that ELEXON should ensure that Supplier Agents are made aware of relevant Workgroup meetings which could impact Supplier Agents.

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7 Workgroup's Conclusions

P370 was raised by the Panel (in accordance with Section F2.1.1(d)(i)), who appointed a BSCCo representative as the Proposer's representative. In this circumstance, the Proposer's representative is not allowed to vote (see Section F2.4.5C). The views of the Proposer are therefore not represented below, but can be found in the IWA. The Proposer views in the IWA align with the majority views of the Workgroup.

Normally, the Proposer or their representative can amend the Proposed Modification. However, as the Proposer is the BSC Panel, and the Proposer's representative is an ELEXON employee, the Proposed Modification can only be amended where the majority of the Workgroup agree (see Section F2.4.5C).

At its final Workgroup meeting on 23 November 2018, having taken into account the responses received to the Assessment Procedure Consultation the Workgroup amended the Proposed Modification so that there would be no right of appeal for Parties or non-Parties. The majority of the Workgroup agreed that an Alternative Modification should be raised, which include a right of appeal for Parties and non-Parties and was the same as the solution consulted on in the Assessment Consultation. This was done so that Ofgem could be presented with two solution options, increasing the chances of approval. The Workgroup's final recommendations in relation to the revised Proposed Modification and Alternative Modification are detailed in this section.

Workgroup's final recommendations

The majority of the Workgroup believes that both the Proposed and Alternative Modifications better facilitate the Applicable BSC Objectives compared against the baseline.

However, the **majority** of the Workgroup believes that the P370 **Alternative** Modification **would overall better facilitate** the Applicable BSC Objectives compared with the Proposed Modification and so **should be approved**. This is largely in relation to Applicable BSC Objective (d) as the majority of the Workgroup believes that having an escalation route to Ofgem, whilst adding a layer of complexity, is important for good governance and quality outcomes. Currently non-Parties have a route to Ofgem to seek designation. Having an appeals route to Ofgem would maintain a path to Ofgem, for the rare occurrences where their wider statuary duties may be important and can therefore be considered as a 'security blanket'.

However, the minority of the Workgroup believes that having an appeals option is less efficient as it adds a layer of complexity. Further, the Panel are BSC experts and therefore best placed to make designation decisions. The appeals route is therefore unnecessary and less efficient. The **minority** of the Workgroup therefore believes that the **Proposed** Modification **better facilitates** Applicable BSC Objective (d) compared with the Alternative Modification.

Members' views against each of the Applicable BSC Objectives are summarised below.

Applicable BSC Objective (c)

The **majority** of the Workgroup agree that P370 **would better facilitate** Applicable BSC Objective (c) as it will make it easier for non-BSC Parties to raise and progress BSC Modifications, resulting in a greater number of organisations offering an increased variety of solutions in serving customers within the electricity Industry and therefore increasing competition.

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By making the designation process more transparent and better defined for non-Parties it will reduce the perceived hurdle for becoming a designated party. This coupled with the fact that the majority of Panel Members are made up of experts on the BSC, should result in a more efficient process that better enables more innovation and therefore better facilities competition by reducing the perceived barrier to seek designation. One Workgroup Member noted that the competition argument only holds if more designations (and therefore modification proposals) are brought forward.

The **minority** of the Workgroup believed that P370 would be marginally **detrimental** to Applicable BSC objective (c), as it will place additional costs on BSC Parties to fund the designation process. Holders of generation and supply Licences are required to be BSC Parties. Non-Parties can choose to sign up to the BSC, but many choose not to. This means that the majority of BSC Parties are required by their Licence to bear the [BSC] costs to progress Modifications for non-Parties.

Further, Ofgem is better placed to decide whether to designate a non-Party as it has wider statutory duties (detailed mainly in the Electricity Action 1989) than the Panel. The existing designation process is, therefore, more appropriate and P370 is consequentially worse than the current baseline.

Applicable BSC Objective (d)

The **majority** of the Workgroup agree that P370 **would better facilitate** Applicable BSC Objective (d) as it will improve the accessibility of the Modification Procedures to non-BSC Parties, would remove perceived barriers to innovation and change. Additionally, this would remove the perception that the BSC is a "closed shop" that is only accessible to BSC Parties and therefore improve the operation of the BSC.

By moving the designation responsibility from the Authority to the Panel, designation timescales are likely to be improved due to the reduced fragmentation of the process and the expertise that the Panel will bring to making designation decisions. This will also help to achieve the Authorities aim outlined in CGR of the governing code bodies taking on greater Self-Governance responsibilities.

The development and publication of the criteria to be used by the Panel to determine whether to designate non-BSC Parties, coupled with the publishing of the designation requests and associated Panel papers and minutes, will improve the transparency of the designation process. This would allow non-BSC Parties to make more relevant and effective applications for designation. In turn, this will improve the efficiency of both the designation process and the quality through which non-BSC parties make applications to raise changes to the BSC.

The **minority** of the Workgroup believed that P370 would be **detrimental** against Applicable BSC Objective (d) as it is introducing new and additional obligations for the Panel and ELEXON, which must be funded by Parties. Further, by introducing an appeals route the arrangements are becoming more complex and less efficient.

The **minority** of the Workgroup was neutral against Applicable BSC Objective (d). They believed that any efficiencies gained from a more open and defined process were balanced out by the extra layers of complexity the new process was introducing over the existing one.

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Applicable BSC Objectives (a), (b), (e), (f) and (g)

All Workgroup Members believe that P370 is neutral against Applicable BSC Objectives (a), (b), (e), (f) and (g).

Does P370 better facilitate the Applicable BSC Objectives?		
Obj	Proposed Modification	Alternative Modification[2]
(a)	• Neutral	• Neutral
(b)	• Neutral	• Neutral
(c)	• Majority Positive – more efficient designation process and more modification proposals from a wider audience will facilitate competition. • Minority detrimental – new process less efficient and increases costs for Parties	• Majority Positive – same as Proposed • Minority detrimental – same as Proposed
(d)	• Majority Positive – clearly defined process, where the Panel, made up of BSC experts, will decide whether to designate will be more efficient • Minority detrimental – the new process is more complex and Panel has a narrower remit than Ofgem which will limit its ability to designate efficiently and effectively • Minority neutral – efficiency gains balanced out by the additional complexity	• Majority Positive – same as Proposed • Minority detrimental – same as Proposed • Minority neutral – same as Proposed
(e)	• Neutral	• Neutral
(f)	• Neutral	• Neutral
(g)	• Neutral	• Neutral

[2] Shows the different views expressed by the other Workgroup members – not all members necessarily agree with all of these views.

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Assessment Consultation respondents' views against the Applicable BSC Objectives

Do you agree with the Workgroup's initial majority view that P370 does better facilitate the Applicable BSC Objectives than the current baseline and so should be			
Yes	No	Neutral/No Comment	Other
9	2	0	0

11 responses to the P370 Assessment Procedure Consultation were received. The Workgroup noted the wide variety of roles represented by respondents:

- Five Suppliers;
- Two Generators;
- Five Supplier Agents;
- One trade associated;
- One Distribution System Operator; and
- One Supplier going through the Market Entry processes.

Proposed Modification

The Proposed Modification was changed by the Workgroup after the Assessment Consultation and so there are no industry views on the revised Proposed Modification. The Alternative Modification is the solution consulted on in the Assessment Consultation.

Alternative Modification (previously Proposed Modification)

The majority of respondents (nine of the 11 respondents) agreed with the Workgroup that the Proposed Modification (now the Alternative Modification) does better facilitate the Applicable BSC Objectives than the current baseline and so should be approved. Not all respondents expressed a clear view on specific Objectives, but of those who did:

- 4 believed that P370 better facilitates Applicable BSC Objective (c); and
- 2 believed that P370 better facilitates Applicable BSC Objective (d).

The views given broadly aligned with those of the Workgroup:

- P370 will make the designation process more transparent and better defined for non-Parties, thereby reducing the barriers to becoming a designated party;
- Expertise present on the BSC Panel means that P370 is likely to result in a more efficient process that better enables innovation and competition;
- The ability to appeal designation rejections to Ofgem is also valuable, giving the appeal process independence and legitimacy;
- The existing process for non-BSC parties to raise modifications is inefficiently time consuming and detrimental to competition between BSC and non-BSC parties; and
- P370 allows greater flexibility and broadens the source of issues / solutions.

What are the Applicable BSC Objectives?

(a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence

(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System

(c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity

(d) Promoting efficiency in the implementation of the balancing and settlement arrangements

(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]

(f) Implementing and administrating the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation

(g) Compliance with the Transmission Losses Principle

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The minority of respondents (two of 11) believed that P370 was detrimental against the Objectives and so should be rejected. Not all respondents expressed a clear view on specific Objectives, but of those who did:

- 1 believes that P370 is detrimental against Applicable BSC Objective (c)
- 1 believes that P370 is detrimental against Applicable BSC Objective (d)

Views expressed against were comparable to the minority views of the Workgroup:

- P370 allows non-Parties not impacted by the BSC to affect Parties;
- Improves transparency but adds a layer of complexity;
- No evidence that the Panel process will be quicker or that there is a systemic issue with the existing process;
- Not appropriate to shift responsibility from Authority to Panel as the Authority has wider remit and therefore better placed to decide;
- Confers same right to non-parties as Parties but without cost implications; and
- Not appropriate for designation process to be funded by Parties instead of Licence holders.

Two respondents believed P370 was neutral against Applicable BSC Objective (d) as they believed the perceived inefficiencies in the current process could be better addressed by the Authority improving its designation process. They also noted that the Authority process has not had a chance to develop and mature yet. They also believed that whilst P370 will make the process more transparent, it will also add a level of complexity to the BSC.

Transmission Company Analysis

The Transmission Company (TC - soon to become the National Electricity Transmission System Operator) provided their views against the Applicable BSC Objectives via the TC Analysis (see Attachment H).

The TC believed P370 may be more positive against Objective (c) as although it allows parties to raise changes who do not contribute to the costs of the BSC, potentially increasing costs on those who do, allowing a broader set of parties to raise changes to the code may encourage competition. On balance, the TC considered it to be negative against (d) as the scope for additional steps in the process (such as appeals) and the potential for increased amounts of change overall outweigh the potential minor improvement of moving the process to the BSC Panel.

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A Panel Member believed the Alternative Modification was better suited for non-Parties as it provided a route of appeal to the Authority, who has a wider remit than just the Applicable BSC Objectives, unlike the BSC Panel.

A Panel Member queried what role the Panel would have in Change Proposals, raised as a result of an Issue Group recommendation. ELEXON confirmed that it would raise CPs on behalf of non-BSC Parties where the majority of the Issue Group agree a CP should be raised and no BSC Party comes forward to raise the CP. The Panel would only approve those CPs which impact CSDs for which the Panel is responsible. The majority of CSDs are owned by the Panel Committees and not the Panel.

A Panel Member noted that if a non-BSC Party was not designated to raise a Modification from the Panel, then the likelihood of them appealing to the Authority would be very high.

A Panel Member commented that Ofgem made it clear in the Workgroup that they did not support appeals being submitted to them; Ofgem had already noted that it would like the Panel to move towards a much more Self-Governance process.

The Distribution System Operator (DSO) Representative commented that in the future, when the Panel may be able to make decisions on its own rather than recommendations to the Authority, one of the concerns from DSOs for Modifications had been that there is no vote for the DSO Representative on the Panel, but this was somewhat mitigated by the right to appeal Panel decisions to Ofgem. If there is no route for appeal to the Authority for designation decisions, then this concern would increase from DSOs.

Panel's initial views against the Applicable BSC Objectives

Ten Panel Members provided their initial views against the Applicable BSC Objectives for the P370 Proposed and Alternative Modifications.

Proposed and Alternative Modifications vs current baseline:

- Applicable BSC Objective (c): unanimous view that P370 better facilitates; and
- Applicable BSC Objective (d): unanimous view that P370 better facilitates.

The Panel agreed that both the Proposed and the Alternative Modification was better than the current baseline as they better facilitated Applicable BSC Objectives (c) and (d), for the reasons given by the Workgroup. The Panel was neutral against all other Applicable BSC Objectives.

Proposed vs Alternative

Five Panel Members were in agreement that the P370 Proposed Modification is better than the P370 Alternative Modification, while five Panel Members agreed with the Workgroup's majority view that the P370 Alternative Modification is better than the P370 Proposed Modification.

Under BSC Section B4.4.4, "the Panel Chairman shall not cast a vote as a Panel Member but shall have a casting vote on any matter where votes are otherwise cast equally in

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favour of and against the relevant motion; provided that where any person other than the Panel Chairman is chairman of a Panel meeting he shall not have a casting vote".

As the Panel had cast equal votes in favour of both the P370 Proposed and Alternative Modifications, the Chairman had to exercise the casting vote. The Chairman voted in favour of the Workgroup's majority view that the P370 Alternative Modification is better than the P370 Proposed Modification.

Consequently, the majority of the Panel initially believes that the P370 Alternative Modification is better than the P370 Proposed Modification and should therefore be approved and that the P370 Proposed Modification should be rejected.

Panel's views on draft legal text and redlining

The Panel **unanimously** agreed that the draft redlined changes to the BSC for the P370 Proposed and Alternative Modifications delivered the intention of P370.

The Panel **unanimously** agreed that the draft redlining to BSCP40 and the draft Issue Group Terms of Reference for the P370 Proposed and Alternative Modifications delivered the intention of P370.

Panel's views on the proposed Implementation Date

The Panel **unanimously** agreed with the Workgroup's recommended Implementation Date for the P370 Proposed and Alternative Modifications as detailed in Section 5.

Panel's views on Self-Governance

The Panel **unanimously agreed** with the Workgroup that P370 **does not** meet the Self-Governance Criteria, as there is a material impact on competition and the Code's governance and Modification Procedures, and so should not be progressed as a Self-Governance Modification.

The Panel also agreed with the P370 Workgroup that the P370 Report Phase Consultation should not be conducted over the Christmas period as many participants will be unable to respond during this time. The Panel agreed with the Workgroup that the consultation is issued on 7 January 2019, for 15 Working Days. This means that the P370 Draft Modification Report was presented to the Panel on 14 February 2019 and the Final Modification Report was presented to Ofgem by 21 February 2019.

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9 Report Phase Consultation Responses

This section summarises the responses to the Panel's Report Phase Consultation on its initial recommendations. You can find the full responses in Attachment J.

Ten organisations, representing a broad spectrum of the industry, responded to the Report Phase Consultation:

- Four BSC Parties (representing Suppliers, generators and one Distributor);
- Three Supplier Agents; and
- Three trade associations (representing small flexible generators and Meter Operator Agents).

Five responded to the Assessment Consultation, and their views remained unchanged.

Summary of P370 Report Phase Consultation Responses

Question	Yes	No	Neutral/ No Comment	Other
Do you agree with the Panel's initial unanimous view that the P370 Proposed Modification better facilitates the Applicable BSC Objectives than the current baseline?	8	1	1	0
Do you agree with the Panel's initial unanimous view that the P370 Alternative Modification better facilitates the Applicable BSC Objectives than the current baseline?	9	1	0	0
Do you agree with the Panel's initial majority view that the P370 Alternative Modification better facilitates the Applicable BSC Objectives than the P70 Proposed Modification and should therefore be approved?	9	0	1	0
Do you agree with the Panel that the redlined changes to the BSC deliver the intention of the P370 Proposed and Alternative solutions?	10	0	0	0
Do you agree with the Panel that the redlined changes to BSCP40 deliver the intention of the P370 Proposed and Alternative solutions?	10	0	0	0
Do you agree with the Panel that the draft Issue Group Terms of Reference deliver the intention of the P370 Proposed and Alternative solutions?	10	0	0	0
Do you agree with the Panel's recommended Implementation Date?	10	0	0	0
Do you agree with the Panel's initial view that P370 should not treated as a Self-Governance Modification?	10	0	0	0
Do you have any further comments on P370?	3	7	0	0

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Consultation respondents' views on Proposed Modification

Eight out of the ten respondents indicated that they agreed with the Panel's initial unanimous view that the P370 Proposed Modification better facilitates the Applicable BSC Objectives than the current baseline. One respondent disagreed and one did not provide a response to the question. The views provided were broadly in line with those provided in the Workgroup and Assessment Phase Consultation. Not all of the respondents expressed a clear view on specific Objectives, but of those who did:

- Six believed that P370 better facilitates Applicable BSC Objective (c);
- Five believed that P370 better facilitates Applicable BSC Objective (d);
- One believed P370 had a marginal detrimental impact against Applicable BSC Objectives (c) and (d).
- One was neutral against Applicable BSC Objective (d); stating they did not believe there is sufficient evidence that the Proposed or Alternative Modification will improve the implementation of BSC Objective (d), There has only been one request for designation to the Authority to date, and therefore it is not clear that there is a systemic issue with the current process, and if there is an issue, this could not be addressed by an improved process within the Authority rather than P370.

Consultation respondents' views on Alternative Modification

Nine out of the ten respondents agreed with the Panel's initial unanimous view that the P370 Alternative Modification better facilitates the Applicable BSC Objectives than the current baseline. One respondent believed P370 had a marginal detrimental impact against Applicable BSC Objectives (c) and (d). The rationale respondents gave for supporting the Panel's initial unanimous view that the P370 Alternative Modification better facilitates the Applicable BSC Objectives than the current baseline was the same as rationale they gave for supporting the Panels initial unanimous view on the P370 Proposed Modification. After stating both the alternate and the original better facilitate the relevant objectives, one respondent added that there is no need to have an appeal to Ofgem as they would expect the Panel to operate in a reasonable manner. The other rationales given by the respondents were in line with those of the Panel and the Workgroup

Consultation respondents' views that the Alternative Modification is better than the Proposed Modification

Nine out of the ten respondents agreed with the Panel's initial majority view that the P370 Alternative Modification better facilitates the Applicable BSC Objectives than the P370 Proposed Modification and should therefore be approved, whilst one did not. The views of respondents were in line with those of the Panel and the Workgroup. No new arguments were put forward.

Remaining consultation respondents' views

Consultation respondents unanimously agreed with the Panel that the redlined changes to the BSC and BSCP40 deliver the intention of the P370 Proposed and Alternative solutions. Further, they also unanimously agreed with the Panel's initial views:

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- That the draft Issue Group Terms of Reference deliver the intention of the P370 Proposed and Alternative solutions;
- On the recommended Implementation Date; and
- That P370 should not treated as a Self-Governance Modification.

Four respondents provided further comments on P370. The majority of respondents voiced their support for the Modification. One respondent was concerned over the volume of Modification and Change Proposals that could potentially be raised by Third Party Proposers if this Modification was approved and implemented; however, they noted that provision has been made to monitor this by the Panel and the Panel will be able to take steps if the volume increases significantly.

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A Panel Member highlighted the importance of reading the rationale given by respondents instead of just noting their yes or no response. They highlighted that the response from the Flexible Generation Group (FGG) had been included in the consultation responses as a collective one response when the FGG consists of a number of companies (many of which are non-Parties) and are not just generators. Similarly, the Association of Decentralised Energy (ADE) had been listed as a Trade Association and queried why there is this distinction between the two. The Panel Member emphasised that for both, a number of non-BSC Parties had taken the time and effort to respond. Please note that as a result of these comments ELEXON, following the Panel meeting, updated the consolidated responses to clearly show that FGG responded representing generators, of which two are BSC Parties and seven are non-BSC Parties. This revised version can be found in Attachment J.

The Chairman commented that ELEXON should be mindful of the way it presents minority views from the consultation responses. There may be a majority view from the consultation responses but then ELEXON appears to focus on the minority opinion; this sometimes creates an imbalance in the way the responses are presented.

A Panel Member queried whether at the point a non-BSC Party was designated to raise a Modification, whether they would be able to raise multiple Modifications to the BSC. ELEXON advised each designation is for a specific Modification Proposal. Each designation request must have a Modification Proposal and cannot be for multiple Modifications or left open for future proposals. If a non-BSC Party wishes to raise another Modification, they would require another designation.

As a non-Voting Panel Member, the DSO reiterated his support for the Alternative Modification as he was of the view that the Applicable BSC Objectives do not take into account the views of Distributors. Therefore, offering a route of appeal to the Authority would enable these views to be heard.

The Panel approved the Issue Group Terms of reference subject to correcting an error with paragraphs 4.17 and 4.18, where a carriage return had been incorrectly inserted and the words "secretary" deleted. This has been corrected and the corrected version can be found in Attachment G.

Panel's final views

The Panel unanimously:

a) **AGREED** that the P370 Proposed Modification:
   - DOES better facilitate Applicable BSC Objective (c);
   - DOES better facilitate Applicable BSC Objective (d); and

b) **AGREED** that the P370 Alternative Modification:
   - DOES better facilitate Applicable BSC Objective (c);
   - DOES better facilitate Applicable BSC Objective (d); and

c) **AGREED** that the P370 Alternative Modification is better than the P370 Proposed Modification;

d) **AGREED** that the P370 Alternative Modification should be approved and that the P370 Proposed Modification should be rejected;

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e) **APPROVED** an Implementation Date for the Proposed and Alternative Modification of:

- 29 March 2019, if an Authority decision is received on or before 22 March 2019, as an ad-hoc BSC Release; or
- five Working Days after an Authority decision, as a standalone BSC Release, if a decision is received after 22 March 2019.

f) **AGREED** that P370 should not be treated as a Self-Governance Modification;

g) **APPROVED** the draft legal text for the Proposed and Alternative Modification;

h) **APPROVED** the draft redlining for BSCP40 for the Proposed and Alternative Modification;

i) **APPROVED** the draft Issue Group Terms of Reference; subject to the removal of 4.1.7.

j) **APPROVED** the P370 Modification Report.

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11 Recommendations

The BSC Panel recommends to the Authority:

- That the P370 Proposed Modification should be **rejected** and that the P370 Alternative Modification should be **approved**;
- An Implementation Date for the P370 Proposed and Alternative Modification of:
  - 29 March 2019, if an Authority decision is received on or before 22 March 2019, as an ad-hoc BSC Release; or
  - five Working Days after an Authority decision, as a standalone BSC Release, if a decision is received after 22 March 2019.
- The BSC legal text and BSCP40 redlining for the P370 Proposed Modification and Alternative Solution.

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Appendix 1: Workgroup Details

Workgroup's Terms of Reference

Specific areas set by the BSC Panel in the P370 Terms of Reference
a) How should "bodies representative of interested third parties" be interpreted and should this term be amended?
b) Should the Panel be able to nominate individual market participants, representative bodies, or either to represent the "interested third parties"?
c) Should the Panel nominate the representative to raise Modifications in general or just a specific Modification they've requested to raise?
d) Should non-BSC Parties be able to raise Change Proposals and Issues?
e) What criteria (if any) should be established to ensure the efficiency and quality of the designation process? i. How can transparency in the designation process be achieved? ii. How can the costs and impact of dealing with additional Modification Proposals be fair and consistent to BSC Parties and non-Parties?
f) Should these criteria be captured within the Code itself, in a subsidiary document or elsewhere?
g) How should any criteria be publicised, e.g. published on the BSC Website or otherwise made available?
h) What process, if any, should non-Parties go through prior to submitting a request to the Panel and how should ELEXON and the Panel run its designation process?
i) How long should any appeals window be?
j) Should Parties be able to appeal to Ofgem if they believe the Panel has designated an inappropriate representative?
k) What changes are needed to BSC documents, systems and processes to support this proposed Modification and what are the related costs and lead times?
l) Are there any Alternative Modifications?
m) Should this proposed Modification be progressed as a Self-Governance Modification?
n) Does this proposed Modification better facilitate the Applicable BSC Objectives than the current baseline?

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Assessment Procedure timetable

P370 Assessment Timetable	
Event	Date
Panel submits P370 to Assessment Procedure	12 Jul 18
Workgroup Meeting 1	3 Aug 18
Workgroup Meeting 2	28 Aug 18
Workgroup Meeting 3	4 Oct 18
Assessment Procedure Consultation & Industry Impact Assessment	23 Oct to 12 Nov 18 (15 WDs)
Workgroup Meeting 4	23 Nov 18
Panel considers Workgroup's Assessment Report	13 Dec 18

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Workgroup membership and attendance

Name	Release Letter	Organisation	03/08/18	28/08/18	04/10/18	23/11/18
Non-voting members						
Lawrence Jones	n/a	ELEXON *(Chair, Proposer Representative & Lead Analyst)*	✓	✓	✓	✓
Cal Lynn	n/a	ELEXON *(Lead Analyst)*	✗	✓	✗	✗
Voting members						
Andy Colley	n/a	SSE	☎	☎	☎	☎
Clare Hanna		IMServ	✓	✓	✓	☎
David Barret		Lowri Beck	☎	✗	✓	☎
James Anderson		Scottish Power	✓	✓	✓	✓
James Murphy		Stark Energy	✓	✓	✗	✓
Jon Wisdom		National Grid *(ESO representative)*	✓	☎	✗	☎
Adelle Wainwright		National Grid *(ESO representative)*	✗	✗	✓	✗
Lisa Waters		Waters Wye	✗	✓	☎	☎
Matthew Tucker		Welsh Power	✗	✗	☎	✗
Rick Parfett		Association of Decentralised Energy	✓	✗	✗	✗
Tom Chevalier		Association of Meter Operators	✓	☎	✗	☎
Caroline Bragg		Association of Decentralised Energy	✗	✓	✓	☎
Non-voting participants						
Damian Clough	n/a	ELEXON *(Design Authority)*	✓	✓	✓	✓
Nicholas Brown	n/a	ELEXON *(Lead Lawyer)*	✓	✓	✓	✓
Nadir Hafeez	n/a	Ofgem	☎	✓	✓	☎

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Appendix 2: Glossary & References

Acronyms

Acronyms used in this document are listed in the table below.

Acronyms	
Acronym	Definition
AEMC	Australian Energy Market Commission
BSC	Balancing and Settlement Code
BSCCo	Balancing and Settlement Code Company
BSCP	Balancing and Settlement Code Procedure
CGR	Code Governance Review
CMA	Competition and Markets Authority
CPs	Change Proposal
CSD	Code Subsidiary Document
CUSC	Connection and Use of System Code
DCUSA	Distribution Connection and Use of System Agreement
DSO	Distribution System Operator
EBGL	Electricity Balancing Guideline
ESO	Electricity System Operator
IWA	Initial Written Assessment
MDB	MRA Development Board
MEC	MRA Executive Committee
MRA	Master Registration Agreement
NETA	New Electricity Trading Arrangements
SCR	Significant Code Review
SEC	Smart Energy Code
UK	United Kingdom
UMSUG	Unmetered Supplies User Group
WD	Working Day

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External links

A summary of all hyperlinks used in this document are listed in the table below.

All external documents and URL links listed are correct as of the date of this document.

External Links		
Page(s)	Description	URL
6	Authorities Code Governance Review (CGR) projects	https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-code-governance/code-governance-review
6	BSC Section F 'Modification Procedures'	https://www.elexon.co.uk/bsc-and-codes/balancing-settlement-code/bsc-sections/
6	P362 'BSC Sandbox'	https://www.elexon.co.uk/mod-proposal/p362/
8	BSC Procedure (BSCP) 40	https://www.elexon.co.uk/bsc-and-codes/bsc-related-documents/bscps/?show=all
12	Ofgem's Target Charging Review	https://www.ofgem.gov.uk/electricity/transmission-networks/charging/targeted-charging-review-significant-code-review
15	CP1511 'Clarification of BSCP40 definitions and processes'	https://www.elexon.co.uk/change-proposal/cp1511/
20	P344 'Project TERRE'	https://www.elexon.co.uk/mod-proposal/p344/
23	Association of Decentralised Energy	https://www.theade.co.uk/
24	Flexible Generation Group	https://www.flexgengroup.com/
24	Power Responsive	http://powerresponsive.com/
25	P362 'BSC Sandbox'	https://www.elexon.co.uk/mod-proposal/p362/
26	BSCCo charging considered in an upcoming Issue	https://www.elexon.co.uk/documents/groups/panel/2018-meetings/283-october/283-10-terms-of-reference-for-a-full-review-of-elexon-charges/
32	UMSUG	https://www.elexon.co.uk/group/unmetered-supplies-user-group-umsug/
36	P370 IWA	https://www.elexon.co.uk/mod-proposal/p370/

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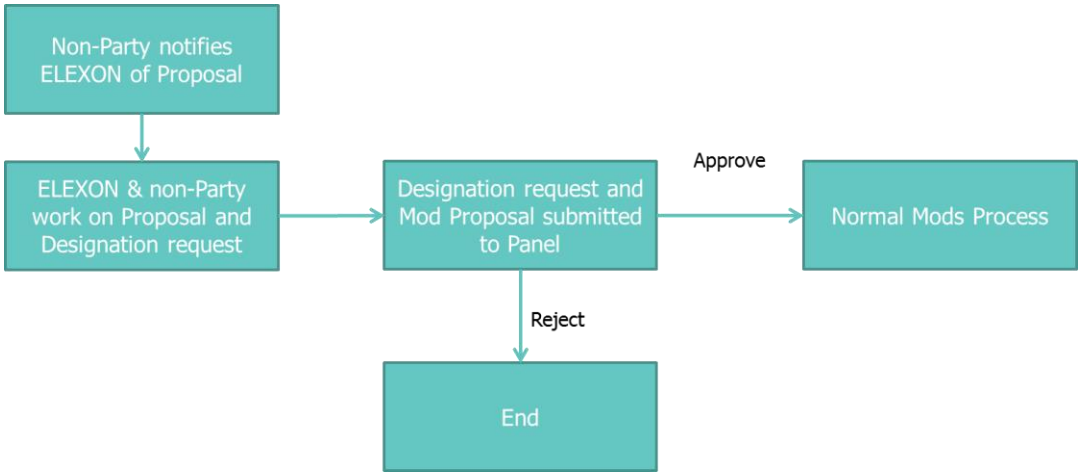
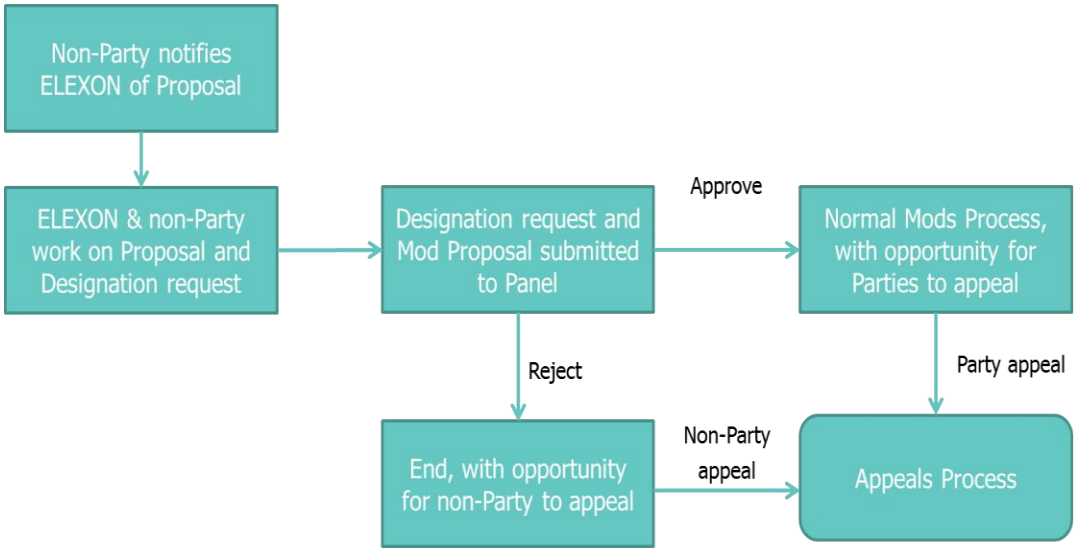
Appendix 3: High-level Designation Process Map

Proposed Modification Proposal



Alternative Modification Proposal



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Appendix 4: Designation Processes in other industry codes

Designation process in other key industry codes			
Code	Designation Process	Term Used	Designation Appeals Process
Distribution Connection and Use of System Agreement (DCUSA)	Yes	any person or body that may from time to time be designated in writing by the Authority	No
Smart Energy Code (SEC)	Yes	any person or body that may from time to time be designated in writing by the Authority	No
Joint Office of Gas Transporters	Yes	any person or body who is not a User but who is representative of interested third parties, as may be designated in writing for this purpose by the Authority, from time to time, and maintained on a register held by the Authority	No
MRA	No	an Interested Industry Participant may raise a change where sponsored by a Party and MEC believe they have an interest in the industry	No. Parties can appeal MEC decision to MDB
CUSC	Yes (limited)	by a Materially Affected Party, unless otherwise permitted by the Authority "Materially Affected Party" any person or class of persons designated by the Authority as such, in relation to the Charging Methodologies	No

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Designation process in other key industry codes			
Code	Designation Process	Term Used	Designation Appeals Process
Grid Code	No	any Authorised Electricity Operator liable to be materially affected by such a proposal "authorised electricity operator" means any person (other than the licensee in its capacity as operator of the licensee's transmission system or the national electricity transmission system) who is authorised to generate, participate in the transmission of, distribute, or supply electricity or participate in the operation of an interconnector and for the purposes of standard conditions C7 (Prohibition on discriminating between users) to C9 (Functions of the Authority) inclusive shall include any person who has made an application to be so authorised which application has not been refused and any person transferring electricity to or from the national electricity transmission system across any interconnector (or who has made an application for use of an interconnector which has not been refused).	No

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