Initial Written Assessment

‘Introducing Data Controller and Processor Obligations in the BSC for Market-wide Half Hourly Settlement Testing’

The purpose of this Modification is to address the need for personal information sharing in the Balancing and Settlement Code (BSC), specifically in the context of the Market-wide Half Hourly Settlement (MHHS) testing. The current BSC General Data Protection Regulation (GDPR) and data protection provisions were not designed to allow the sharing of personal information, which has now become necessary for the planned MHHS testing.

Elexon recommends the Panel raises the attached Modification Proposal in accordance with the provisions of Section F - Modification Procedures F2.1.1 (d)(i)

Elexon recommends that this Modification is progressed directly to the Report Phase with an initial recommendation to approve

Elexon does not consider that this Modification impacts the European Electricity Balancing Guideline (EBGL) Article 18 terms and conditions held within the BSC

This Modification is expected to impact:

- Any BSC Party that will be a part of MHHS testing

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Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

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Contents

1 Summary 3
2 Why Change? 4
3 Solution 6
4 Proposed Progression 8
5 Impacts and costs 9
6 Recommendations 11

About This Document

You can find the definitions of the terms and acronyms used in this document in the BSC Glossary[1].

This document is a recommendation to the BSC Panel to raise a Modification Proposal (Attachment A) in accordance with BSC Section F2.1.1(d)(i). Elexon will present this paper to the BSC Panel at its meeting on 13 July 2023. If the BSC Panel agrees to raise the Modification Proposal, this document will form its Initial Written Assessment (IWA), and the Proposal Form will be updated and published on the Elexon website accordingly.

There are 3 parts to this document:

- This is the main document. It provides details of the Modification Proposal, the solution, impacts, costs, benefits/drawbacks, proposed implementation approach, and a recommendation of how the Modification should progress.
- Attachment A contains the Proposal Form.
- Attachment B contains the draft redlined changes to the BSC for this Modification.

[1] https://www.elexon.co.uk/glossary/?show=all

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Not sure where to start?

We suggest reading the following sections:

- Have 5 minutes? Read section 1
- Have 15 minutes? Read sections 1, 4, 5 and 6
- Have 30 minutes? Read all sections
- Have longer? Read all sections and the annexes and attachments.

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1 Summary

Why change?

The upcoming MHHS systems integration testing requires the sharing of persona data. Consequently, more robust provisions in the BSC for sharing personal data, so as to enable all testing participants to share personal data within a consistent legal framework that complies with UK data protection laws, is required.

Currently, data processed under the BSC is not personal data as it is aggregated. Therefore, the BSC's GDPR and data protection provisions are high level and lack the comprehensive guidelines required for handling and sharing personal data, including meter-level data. Failure to address this gap could lead to legal complications, delays in testing, potential penalties, and an inefficient and potentially impracticable process requiring individual data sharing agreements between MHHS and its participants. Thus, a Modification to the BSC is essential to ensure a smooth MHHS testing process and maintain legal compliance.

Solution

This Modification suggests amending BSC Section C 'BSCCo and its Subsidiaries'[2] to add data processor and controller obligations to the BSC to provide a framework for handling, protecting, and sharing personal data, ensuring that the BSC aligns with current data handling practices. This includes maintaining and securing data records, reporting data breaches, and guaranteeing GDPR compliance, along with safeguarding data subjects' rights.

Elexon believes the Modification Proposal would better facilitate Applicable BSC Objective (d) as it would provide clarity and protection for BSC Parties and Elexon to comply with legal obligations and avoid the need for MHHS to agree data sharing agreements individually with all relevant MHHS Participants.

Impacts and costs

We expect costs to implement this Modification to be low (<£1k) as a document only change. There will be no direct impact on any BSC Party. Under this Modification, Parties will be able to share data as part of MHHS testing.

Implementation

Elexon recommends this Modification be implemented at an appropriate time to facilitate the testing of MHHS. We understand the MHHS testing is due to start in quarter 4 2023.a We therefore propose implementation should be facilitated in a special release, five Working Days after the final Authority decision is made (+5WDs).

Recommendation

Elexon recommends that the BSC Panel raise this Modification and submit it direct to the Report Phase for a 10 Working Day (WD) Report Phase Consultation. We have not identified any EBGL impacts.

GDPR

The UK data protection regime is comprised of the UK General Data Protection Regulation (GDPR) (the retained UK version of the EU GDPR) and the Data Protection Act 2018. The regime ensures the privacy and control of individuals over their personal data. In this context, the proposed Balancing and Settlement Code (BSC) Modification seeks to ensure data sharing under the BSC complies with UK GDPR, introducing responsibilities for data processors and controllers to safeguard individuals' data rights, maintain GDPR compliance, and uphold the trust of BSC parties

[2] https://bscdocs.elexon.co.uk/bsc/bsc-section-c-bscco-and-its-subsidiaries

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2 Why Change?

What is the issue?

Currently, data processed under the BSC is aggregated and is therefore not personal data. The GDPR and data protection provisions of the BSC were not designed to facilitate the transfer of consumer level personal information for BSC purposes.

However, with the advent of the Market Wide Half Hourly Settlement (MHHS) testing, personal information sharing, specifically meter-level data, is now needed. This necessitates changes to the BSC in order to allow the required data sharing for MHHS testing. For completeness, the current modification is intended to cover the Systems Integration Testing, Qualification and Migration/Transition. Further changes to the BSC, which will be developed as part of the MHHS Code Workstream[3], will be needed in due course in order to implement the MHHS Target Operating Model.

BSC Section H 'General'[4] of the BSC outlines the data privacy, confidentiality, and sharing requirements among BSC Parties. However, as it stands, it does not provide comprehensive guidelines on the handling and sharing of personal data, particularly in line with the MHHS testing requirements.

Since this change will relate specifically to MHHS testing, and are therefore interim provisions, they will be included in paragraph 12 within BSC Section C 'BSCCo and its Subsidiaries'[5]. Ultimately, the data privacy provisions in Section H will need to be updated.

The UK GDPR imposes a legal obligation on controllers and processors to formalise their working relationship. In order to facilitate MHHS testing, which requires sharing of meter level personal data for BSC purposes, new data controller and data processor obligations need to be included in the BSC.

Without this Modification, BSC Parties and Elexon could face legal challenges related to GDPR and data protection, leading to delays in testing and potential penalties. Additionally, the absence of such a Modification could necessitate individual data sharing agreements between MHHS and its participants, an impractical and resource-intensive process.

Background

The need for a more flexible and comprehensive approach to data handling in the BSC has been highlighted by the upcoming MHHS testing, and was noted by the BSC Panel at their meeting on 8 June 2023[6] (see slide 24). The testing approach, rather than using only dummy data, will also use real data, which includes personal information.

This Modification would allow for this necessary data sharing and bring the BSC in line with modern data handling practices. The proposed Modification would involve introducing specific data processor and controller obligations that are similar to those found in the Retail Energy Code (REC). This change would provide clearer guidelines and better protections for the parties involved in the BSC and Elexon, making it easier for them to comply with their legal obligations related to data handling and sharing.

[3] https://www.mhhsprogramme.co.uk/code/code-governance
[4] https://bscdocs.elexon.co.uk/bsc/bsc-section-h-general
[5] https://bscdocs.elexon.co.uk/bsc/bsc-section-c-bscco-and-its-subsidiaries
[6] https://www.elexon.co.uk/documents/groups/panel/2023-meetings-panel/339-june/bsc-panel-339-public-slides/

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Market-Wide Half Hourly Settlement (MHHS)

MHHS is a reform initiative in the Great Britain (GB) electricity sector that aims to make the process of electricity Settlement more precise by leveraging the capabilities of smart meters. Unlike the current system for retail consumers, where energy usage is estimated based on consumer profiles, smart meters record exact energy usage or export every Half Hour, enabling a more accurate and timely Settlement process. This accuracy is expected to lead to the development of new products and services and deliver significant benefits to consumers, ranging from £1.6bn to £4.5bn between 2021 and 2045. The MHHS programme is overseen by the Office of Gas and Electricity Markets (Ofgem) and managed by Elexon.

Desired outcomes

1. **Data Sharing Accommodation**: The key goal is to revise the BSC to allow for the necessary sharing of personal data. This is primarily for the MHHS testing, which will involve transferring and storing meter-level data.
2. **Clearer Guidelines and Protections**: The Modification aims to introduce data processor and controller obligations. This will provide clearer guidelines, allowing BSC Parties and Elexon to comply with legal obligations surrounding data handling and sharing more effectively.
3. **Streamlined Processes**: By implementing these changes, the need for MHHS to agree on separate data sharing agreements with all relevant participants would be eliminated. This streamlining makes the process more practical and efficient, saving resources and reducing complexity.
4. **Legal Compliance**: With these changes, the BSC will be better aligned with GDPR and data protection requirements, thereby minimising the risk of legal issues, penalties, and reputational damage.

Overall, this Modification would enhance the BSC's effectiveness and compliance in the context of data sharing and handling, ensuring it can serve the needs of its parties efficiently and legally.

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3 Solution

Proposed solution

This Modification proposes the introduction of data processor and data controller obligations. These obligations are crucial as they would establish a framework for how personal data is to be handled, protected, and shared among the parties involved in MHHS testing. A Modification is necessary to ensure a multilateral framework for data protection compliance and effective operation.

BSC Section C will need to be updated to include the additions of data controller and data processor obligations.

The responsibilities of a data processor include maintaining records of personal data and processing activities, implementing security measures, and notifying the controller of any data breaches. A data controller is responsible for ensuring that data processing is compliant with the GDPR, providing information to data subjects about their processing activities, and implementing measures to protect the rights of data subjects.

Benefits

One of the main advantages of this Modification is the clarity and compliance it promotes. The addition of data processor and controller obligations offers a robust framework for handling and sharing data. This clarity allows participants in MHHS Systems Integration Testing to better undertake their responsibilities in relation to GDPR and data protection regulations.

In addition, the proposed Modification introduces a higher degree of efficiency to the data sharing process. Without this change, individual data sharing agreements would have to be agreed between MHHS and its participants, a process that would be not only time-consuming but also resource-intensive and likely impractical. By providing a uniform set of rules for data sharing, the Modification streamlines this process, saving both time and resources for all involved parties. In addition, this approach is consistent with that taken under other industry codes, such as the REC.

Risk mitigation is another benefit. Non-compliance with legal obligations can lead to penalties, legal challenges, and reputational damage. The Modification ensures that all parties are able to adhere to the law, thereby reducing these risks significantly.

From a broader perspective, this Modification also facilitates the smooth execution of the MHHS testing, which requires the transfer and storage of meter-level data. By updating the BSC to accommodate these needs, the Modification ensures that this crucial testing can take place without data-related legal issues.

Importantly, the Modification also serves to protect consumers' personal data. By enforcing robust data handling practices, consumers can be reassured that their personal information is being managed and protected appropriately, in line with GDPR requirements.

Applicable BSC Objectives

Elexon believes the Modification Proposal will better facilitate the achievement of Applicable BSC Objectives (d):

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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Applicable Objective (d)

This Modification will promote efficiency in balancing and settlement arrangements by standardising data sharing, minimising legal risks, and streamlining data management, thereby reducing complexity and time requirements.

Legal Text

The redlined changes to the BSC can be found in Attachment B. Changes will be made to BSC Section C 'BSCCo and its Subsidiaries'[7] and BSC Section X-1 'General Glossary'[8].

Additionally, Elexon have taken this opportunity to apply some housekeeping to BSC Section X-1. The term "Monthly NETA Recovery Amount" has been removed as it was defined within a part of the BSC which no longer exists as it was removed as part of P394 'Removal of Unused BSC Provisions'[9]. The term is also not present anywhere else within the BSC.

Implementation approach

This Modification has been progressed in order to allow the testing of MHHS, which is due to begin towards the latter part of 2023. In order for impacted participants to prepare for this, this Modification should be implemented as soon as possible. We propose implementation should be facilitated in a special release, +5WD after the final Authority decision is made.

This approach is to ensure the solution from the Modification is implemented at the earliest opportunity.

[7] https://bscdocs.elexon.co.uk/bsc/bsc-section-c-bscco-and-its-subsidiaries
[8] https://bscdocs.elexon.co.uk/bsc/bsc-section-x-1-general-glossary
[9] https://www.elexon.co.uk/mod-proposal/p394-removal-of-unused-bsc-provisions/

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4 Proposed Progression

In this section, we detail Elexon's recommendations to the proposed Modification's progression.

Next steps

The Panel are invited to raise this Modification Proposal in accordance with BSC Section F 'Modification Procedures'[10] paragraph 2.1.1(d)(i) – as we believe it better facilitates Applicable BSC Objective (d) – 'efficiency in the implementation and operation of the BSC'.

This Initial Written Assessment (IWA) will be presented to the BSC Panel at its meeting on 13 July 2023. We recommend that this Modification proceeds directly to the Report Phase for a 10 WD consultation from 17 July 2023 to 28 July 2023. Based on the rationale that data controller and data processor provisions are needed in order for MHHS testing to comply with data protection laws. Therefore there shouldn't be a need for a Workgroup to assess whether this Modification better facilitates the applicable objectives, or whether there is any alternative solution, nor would it be a good use of industries time. Interested parties can provide their comments on the Proposal via the Report Phase Consultation.

We do not believe this Modification should be treated as Self-Governance, due to the fact that it does materially impact the Self-Governance criteria, specifically the Code's governance procedures. Introducing new data sharing rules for Parties is a material change to the governance arrangements.

Based on this rationale this will be a material change to the MHHS provisions in Section C that were introduced by Ofgem through its SCR powers. Therefore it is appropriate that Ofgem approval is sought for this change.

Timetable

Proposed Progression Timetable for this Modification	
Event	Date
Present Initial Written Assessment to Panel	13 July 2023
Report Phase Consultation (10WDs)	17 July 2023 – 28 July 2023
Present Draft Modification Report to Panel	10 August 2023
Issue Final Modification Report to Authority	16 August 2024

[10] https://bscdocs.elexon.co.uk/bsc/bsc-section-f-modification-procedures

What are the Self-Governance Criteria?

A Modification that, if implemented:
(a) does not involve any amendments whether in whole or in part to the EBGL Article 18 terms and conditions; except to the extent required to correct an error in the EBGL Article 18 terms and conditions or as a result of a factual change, including but not limited to:
(i) correcting minor typographical errors;
(ii) correcting formatting and consistency errors, such as paragraph numbering; or
(iii) updating out of date references to other documents or paragraphs;
(b) 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

(c) is unlikely to discriminate between different classes of Parties.

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5 Impacts and costs

The costs to implement this Modification will be low (around £1k). These costs are associated with the development of the legal drafting in BSC Section C. This Modification is expected to be an enabling, document-only, change that is not expected to have any direct impact on the operation of BSC, its Parties or Systems.

However, the Modification is expected to facilitate future work as a first order effect that would impact on the MHHS. It is anticipated that there will be no on-going costs associated with this Modification.

This Modification's Impacts & Costs

Impact on BSC Parties and Party Agents		
Party/Party Agent	Potential Impact	Potential cost
All Parties	Parties are only impacted in that this Modification will enable data sharing as part of MHHS. No direct impacts are expected as a result of this Modification.	N/A

Impact on the NETSO	
Potential Impact	Potential cost
No Impact	N/A

Impact on BSCCo		
Area of Elexon	Potential Impact	Potential cost
Elexon	Elexon is only impacted in that this Modification will allow data sharing as part of MHHS, which Elexon facilitates.	N/A

Impact on BSC Settlement Risks
None anticipated, this is an enabling change which is not expected to impact Settlement in any way.

Impact on MHHS
Elexon we does not believe this impacts the code drafting or MHHS design. Rather it should be noted that this Modification is an interim solution for the eventual enduring MHHS code drafting.

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Impact on EBGL Article 18 terms and conditions
Elexon does not believe that this Modification impacts on the EBGL Article 18 Terms and Conditions held with the BSC. The documents that this Modification seeks to update does not form part of the EBGL Article 18 Terms and Conditions, nor does it extend them.

Impact of the Modification on the environment and consumer benefit areas:	
Consumer benefit area	Identified impact
1) Improved safety and reliability No impact expected	Neutral
2) Lower bills than would otherwise be the case [No impact expected	Neutral
3) Reduced environmental damage No impact expected	Neutral
4) Improved quality of service This Modification will improve service quality by enhancing data handling and sharing practices in line with modern standards and regulations. The introduction of clear data processor and controller obligations ensures more robust data management, thereby promoting confidence and trust among BSC Parties and consumers. Furthermore, by streamlining the data sharing process, it minimises disruptions and delays, leading to a smoother, more efficient service. Overall, these changes will bolster the integrity and reliability of the Balancing and Settlement arrangements.	**Positive**
5) Benefits for society as a whole No impact expected	Neutral

What are the consumer benefit areas?

1) Will this change mean that the energy system can operate more safely and reliably now and in the future in a way that benefits end consumers?

2) Will this change lower consumers' bills by controlling, reducing, and optimising spend, for example on balancing and operating the system?

3) Will this proposal support:
i)new providers and technologies?
ii) a move to hydrogen or lower greenhouse gases?
iii) the journey toward statutory net-zero targets?
iv) decarbonisation?

4) Will this change improve the quality of service for some or all end consumers. Improved service quality ultimately benefits the end consumer due to interactions in the value chains across the industry being more seamless, efficient and effective.

5) Are there any other identified changes to society, such as jobs or the economy.

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6 Recommendations

We invite the Panel to:

- **RAISE** this Modification Proposal in accordance with Section F2.1.1(d)(i);
- **AGREE** that this Modification progresses directly to the Report Phase;
- **AGREE** that this Modification:
    - **DOES** better facilitate Applicable BSC Objective (d);
- **AGREE** an initial view that this Modification **should not** be treated as a Self-Governance Modification;
- **AGREE** that this Modification **DOES NOT** impact the EBGL Article 18 terms and conditions held within the BSC;
- **AGREE** an initial recommendation to the Authority that this Modification should be **approved**;
- **AGREE** an initial Implementation Date of:
    - **5 WDs** after Authority decision
- **AGREE** the draft Legal Text;
- **NOTE** that Elexon will issue this Modification's Draft Modification Report (including the draft Legal Text) for a 10 Working Day consultation and will present the results to the Panel at its meeting on 10 August 2023.

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