

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

This Modification seeks to allow the Panel to designate bodies representative of interested third parties to raise BSC Modifications and for the Authority to be the appeals body.



ELEXON recommends the Panel to raise the attached Modification Proposal in accordance with the provisions of Section F2.1.1(d)(i);



ELEXON recommends Modification Proposal is progressed to the Assessment Procedure for an assessment by a Workgroup

This Modification is expected to impact:

- BSC Panel
- Ofgem
- ELEXON

Contents

1	Why Change?	3
2	Solution	4
3	Areas to Consider	6
4	Proposed Progression	8
5	Likely Impacts	9
6	Recommendations	12
	Appendix 1: Glossary & References	13

About This Document

This document is a recommendation to the Panel to raise a Modification Proposal (Attachment A) in accordance with Section [F2.1.1\(d\)\(i\)](#). If the Panel agree 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.

ELEXON will present the Modification Proposal to the Panel on 12 July 2018 and ask the Panel to consider its recommendations and decide whether to raise the Modification Proposal and how to progress it.

There are two parts to this document:

- This is the main document. It provides details of the draft Modification Proposal, an assessment of the potential impacts and a recommendation of how the Modification should progress, including the Workgroup's proposed membership and Terms of Reference.
- Attachment A contains the Proposal Form.



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280/05

IWA

Initial Written Assessment

5 July 2018

Version 1.0

Page 2 of 13

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1 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 so have their meters registered to Suppliers. 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. As well as the BSC Parties (who have raised 66% of all Modifications) that may raise Modifications, Section F2.1.1 (c) states that a Modification Proposal may be made by “such other bodies representative of interested third parties as may be designated in writing for this purpose by the Authority from time to time”.

In March 2017, the Authority’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.

What is the issue?

The current designation process to allow a representative of a non-BSC Party to raise a BSC Modification, as described in Section F2.1.1(c), has been shown to be slow and opaque. It is contrary to the direction of travel, encouraged by Ofgem, which is encouraging Panels to be more self-governing. The criteria used to designate non-BSC Parties is unclear and as a result could be seen to act as a barrier to innovation and change.



Who are “interested third parties”?

It is ELEXON’s current view that interested third parties can be considered as non-BSC Parties who are impacted by arrangements partially or wholly governed by the BSC. However, this view shall be explored by the Workgroup.

Proposed solution

This Modification proposes to move the designation process (as provided for in F2.1.1(c)) from the Authority to the BSC Panel; and for the Authority to become the body to which appeals may be made. This will be done by:

- Amending BSC section F2.1.1 (c) as follows: “such other bodies representative of interested third parties as may be designated in writing for this purpose by the **Authority Panel** from time to time”.
- Inserting a new statement (plain English) in BSC section F2.1.1 to the following effect: where the Panel determines not to designate a body as representative of interested third parties, for the purposes of raising a proposal to modify the Code, the party may appeal such decision to the Authority. Such appeal shall be submitted to the Authority within [15] working days of receipt of the Panel’s written determination, setting out the reasons for such appeal.

Criterion (if any) for which the Panel may base their designation decision should be worked up by a Workgroup as they have not been included within the proposed solution of this Modification. Consideration should be given as to whether the Panel’s decision should be based on the existing BSC objectives or if additional criterion should be developed as part of the solution of this Modification.

Applicable BSC Objectives

We believe this proposed Modification would better facilitate Applicable BSC Objectives (c) and (d) compared with the existing baseline for the reasons set out below:

Proposer views against Objective (c)

This proposed Modification would have a positive impact on competition in the generation and supply of electricity. By enabling non-BSC Parties to raise and progress BSC Modifications you are allowing a greater number of organisations to offer an increased variety of solutions in serving customers within the electricity industry and therefore increasing competition.

This Modification will also be complementary to other proposed changes, particularly [P362: ‘Introducing BSC arrangements to facilitate an electricity market sandbox’](#) to the extent that it facilitates increased engagement with non-BSC Parties.

Proposer views against Objective (d)

This proposed Modification would have a positive impact on efficiency in the implementation of the Balancing and Settlement arrangements. The improved 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. This



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 administering 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

280/05

IWA

Initial Written Assessment

5 July 2018

Version 1.0

Page 4 of 13

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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, would 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.

Implementation approach

As the proposed Modification is a “document only” change, it is proposed that this Modification, if approved, is implemented 5 Working Days following Authority decision.

280/05

IWA
Initial Written Assessment

5 July 2018

Version 1.0

Page 5 of 13

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3 Areas to Consider

In this section we highlight areas which we believe the Panel should consider when making its decision on how to progress this proposed Modification Proposal, and which a Workgroup should consider as part of its assessment. We recommend that the areas below form the basis of a Workgroup's Terms of Reference, supplemented with any further areas specified by the Panel.

Criteria

The Workgroup should consider what criteria, if any, the Panel should use to determine which representative of a non-BSC Party may be designated to raise Modification Proposals. For example, should the non-BSC Party have to demonstrate that the issue impacts them and that it would bring benefits to the industry? This could alleviate concerns that the Panel may have to hear large volumes of potentially frivolous or vexatious proposals from non-BSC Parties. It may be that use of the existing Applicable BSC Objectives is sufficient.

The criteria, if considered necessary, should focus on achieving efficiency and transparency in the designation process. In order to achieve this, the Workgroup should consider:

- whether these criteria should be captured within the Code itself, in a subsidiary document or elsewhere;
- how such criteria will be publicised, e.g. published on the BSC Website or otherwise made available; and
- the process and timescales for the review and amendment of the criteria.

The Workgroup should also consider whether the [Workgroup Standard Terms of Reference](#) that have been set by the Panel are still fit for purpose, particularly to enable participation, perhaps on a flexible basis, for smaller non-BSC Parties who may lack BSC knowledge and resource.

Process

Section F2.1.1 (c) refers to designating "other bodies representative of interested third parties". In the recent testing of this process, Ofgem assigned the designated representative to be one organisation, PeakGen, for one specific Modification ([P355 'Introduction of a BM Lite Balancing Mechanism'](#)). However, the intent of this text could be interpreted to designate a representative organisation (such as a trade body) for Modifications in general. Therefore, the Workgroup should consider who the Panel should be able to nominate in order to represent non-BSC Parties and whether this should be individual market participants, representative bodies or either.

The Proposal allows for non-BSC Parties who have their designation request rejected by the Panel to appeal the decision to the Authority. However, the Workgroup should also consider the right of appeal when the Panel do decide to designate a representative body, for example by an existing BSC Party who is unhappy with the designation.

In the circumstance where an appeal is made to the Authority the Workgroup should consider what actions the Authority could take, such as:

280/05

IWA
Initial Written Assessment

5 July 2018

Version 1.0

Page 6 of 13

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- determine itself whether the appellant should be designated as a body representative of third parties, for the purposes of raising a proposal to modify the Code, in which case the Panel is required to take no further action, other than to await the submission of a Modification Proposal; or
- refer the determination back to the Panel for reconsideration.

Areas to consider

The table below summarises the areas we believe a Modification Workgroup should consider as part of its assessment:

Areas to Consider
How should “bodies representative of interested third parties” be interpreted and should this term be amended?
What criteria (if any) should be established to ensure the efficiency and quality of the designation process?
Should these criteria be captured within the Code itself, in a subsidiary document or elsewhere?
How should any criteria be publicised, e.g. published on the BSC Website or otherwise made available?
Should the Panel be able to nominate individual market participants, representative bodies, or either to represent the “interested third parties”
Should the Panel nominate the representative to raise Modifications in general, or just a specific Modification they’ve requested to raise?
Should Parties be able to appeal to Ofgem if they believe the Panel has designated an inappropriate representative?
Should non-BSC Parties be able to raise Change Proposals and Issues?
What changes are needed to BSC documents, systems and processes to support this proposed Modification and what are the related costs and lead times?
Are there any Alternative Modifications?
Should this proposed Modification be progressed as a Self-Governance Modification?
Does this proposed Modification better facilitate the Applicable BSC Objectives than the current baseline?

4 Proposed Progression

Next steps

We recommend that this proposed Modification is progressed to a four month Assessment Procedure for consideration by a Workgroup. For rationale behind this recommendation, please see the timetable section below.

Self-Governance

We recommend that this Modification should **not** be considered to be suitable for Self-Governance on the basis it is likely to have a material impact on the Code's governance procedures. This proposed Modification, if implemented, will amend the Modification Procedure itself and the decision making capacity of the Authority and will therefore materially impact criterion (a)(v).

Workgroup membership

We recommend that the Workgroup comprise of participants who have expertise or experience in the following areas:

- BSC governance; and
- BSC Modification Procedures.

Timetable

Proposed Progression Timetable of the proposed Modification	
Event	Date
Present Initial Written Assessment to Panel	12 July 2018
Workgroup Meeting	W/B 30 July 2018
Assessment Procedure Consultation	28 August 2018 – 17 September 2018
Workgroup Meeting	W/B 24 September 2018
Present Assessment Report to Panel	8 November 2018
Report Phase Consultation	14 November 2018 – 29 November 2018 (12 Working Day)
Present Draft Modification Report to Panel	13 December 2018
Issue Final Modification Report to Authority	19 December 2018



What is the Self-Governance Criteria?

A Modification 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.

280/05

IWA
Initial Written Assessment

5 July 2018

Version 1.0

Page 8 of 13

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5 Likely Impacts

This is our initial view of the probable impacts of this Modification. The detailed impact of the proposed Modification will be fully assessed as part of the Assessment Procedure.

Impact on BSC Parties and Party Agents

Party/Party Agent	Potential Impact
BSC Parties and Party Agents	No implementation impacts anticipated.

Impact on Transmission Company

No implementation impacts anticipated.

Impact on BSCCo

Area of ELEXON	Potential Impact
ELEXON	Implement this proposed Modification. This may include the development of a new guidance document or webpage. Update internal processes to help facilitate amended Panel Governance procedure.

Impact on BSC Systems and processes

BSC System/Process	Potential Impact
All	No implementation impacts anticipated.

Impact on BSC Agent/service provider contractual arrangements

BSC Agent/service provider contract	Potential Impact
All	No implementation impacts anticipated.

Impact on Code

Code Section	Potential Impact
Section F	The BSC Modification Procedures will need to be amended.

Impact on Code Subsidiary Documents

CSD	Potential Impact
BSCP40 'Change Management'	Consequential changes may be required to BSCP40.

280/05

IWA
Initial Written Assessment

5 July 2018

Version 1.0

Page 9 of 13

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Impact on other Configurable Items	
Configurable Item	Potential Impact
All	None identified.

Impact on Core Industry Documents and other documents	
Document	Potential Impact
Ancillary Services Agreements	None identified.
Connection and Use of System Code	
Data Transfer Services Agreement	
Distribution Code	
Distribution Connection and Use of System Agreement	
Grid Code	
Master Registration Agreement	
Supplemental Agreements	
System Operator-Transmission Owner Code	
Transmission Licence	
Use of Interconnector Agreement	

Impact on a Significant Code Review (SCR) or other significant industry change projects

We do not believe this Modification will impact any open SCRs. ELEXON requested that this Modification be exempt from the Significant Code Review process on 27 June 2018.

Impact on Consumers

Day to day operation of balancing and Settlement will be unaffected, so there will be no direct impact on consumers.

Impact on the Environment

No direct impacts on the environment have been identified.

280/05

IWA
Initial Written Assessment

5 July 2018

Version 1.0

Page 10 of 13

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Other Impacts	
Item impacted	Potential Impact
Non-BSC Parties	No implementation impacts anticipated. However, non-BSC Parties will be able to raise Modification Proposals more easily and therefore have better opportunity to make changes to the BSC if this Modification is approved.

280/05

IWA
Initial Written Assessment

5 July 2018

Version 1.0

Page 11 of 13

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6 Recommendations

We invite the Panel to:

- **RAISE** the Modification Proposal in Attachment A (in accordance with F2.1.1(d)(i));
- **AGREE** that this proposed Modification progresses to the Assessment Procedure;
- **AGREE** the proposed Assessment Procedure timetable;
- **AGREE** the proposed membership for the Workgroup; and
- **AGREE** the Workgroup's Terms of Reference.

Appendix 1: Glossary & References

Acronyms

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

Acronym	
Acronym	Definition
BSC	Balancing and Settlement Code
BSCCo	BSC Company
CGR	Code Governance Review
CSD	Code Subsidiary Document
IWA	Initial Written Assessment
SCR	Significant Code Review

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
2	BSC Sections webpage of ELEXON website	https://www.elexon.co.uk/bsc-and-codes/balancing-settlement-code/bsc-sections/
2	Code Governance Review page of Ofgem website	https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-code-governance/code-governance-review
4	P362 Modification webpage of ELEXON website	https://www.elexon.co.uk/mod-proposal/p362/