

**Phase**

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

## P392 'Amending the BSC change process to incorporate the delegation of NGESO's powers and obligations under the EBGL to change EBGL Article 18 terms and conditions.'

P392 will ensure the process for amending Balancing and Settlement Code (BSC) provisions that constitute Electricity Balancing Guideline (EBGL) Article 18 terms and conditions reflects delegations made by National Grid Electricity System Operator (ESO) to the Balancing and Settlement Code Company (BSCCo) and the BSC Panel.

The delegations and this corresponding Modification will create an efficient and clear market change process, by ensuring the legally separate BSC Change and EBGL change processes can be fulfilled by a single Code Manager as a single process.



The BSC Panel initially recommends **approval** of P392

This Modification is expected to impact:

- ELEXON as the BSCCo;
- The National Electricity Transmission System Operator (NETSO);
- BSC Parties engaging in the BSC Modifications process; and
- Interested third parties engaging in the BSC Modifications process.

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## About This Document

This is the P392 Draft Modification Report, which ELEXON will present to the Panel at its meeting on 14 May 2020. It includes the responses received to the Report Phase Consultation on the Panel's initial recommendations. The Panel will consider all responses, and will agree a final recommendation to the Authority on whether the change should be made.

There are five 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 draft redlined changes to the BSC for P392.
- Attachment B contains the full responses received to the Report Phase Consultation
- Attachment C contains the P392 Business Process Mapping of the P392 Proposed solution
- Attachment D contains the Proposal Form for P392.



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## Issue

National Grid Electricity System Operator (NGESO) in its role as the GB NETSO has delegated some of its tasks under EBGL Articles 4, 6 and 10 to ELEXON as the BSCCo, and the BSC Panel. Therefore, the BSC requires amendment to reflect the delegated tasks, and to ensure the EBGL change process is fulfilled within the existing BSC Modifications process.

## Solution

P392 proposes to update the BSC Modifications process to reflect the tasks delegated to the BSCCo and the BSC Panel. It outlines the process that shall apply to any BSC Modification proposal that either wholly or partly seeks to amend BSC provisions that also constitute EBGL Article 18 terms and conditions. Primarily, these Modifications shall undergo a one-month Report Phase Consultation, fulfilling EBGL Article 10(1) consultation requirements. Further detail can be found in the solution section (Section 3) of this document.

The delegations and this corresponding Modification will create an efficient and clear market change process, by ensuring the legally separate BSC and EBGL change processes can be fulfilled by a single Code Manager. Without the delegations and this Modification, market participants would need to engage in two separate change processes administered by two separate central bodies.

## Impacts & Costs

ELEXON, the BSC Panel and the NETSO are impacted by the amended Modifications process proposed by this change.

Market participants engaging in the Modifications process may be impacted by the amended process, as Modifications that wholly or partly impact BSC legal text that constitutes EBGL Article 18 terms and conditions will be submitted for a one month long consultation at the Report Phase.

The central implementation costs are expected to be around £2640.

## Implementation Date

The Panel initially unanimously recommend that P392 is implemented on 25 June 2020 as part of the June 2020 BSC Release.

## Recommendation

The Panel initially agreed unanimously that P392 better facilitates BSC Applicable Objectives (a), (d), and (e) and so therefore should be approved.

## 2 Why Change?

### What is the issue?

National Grid Electricity System Operator (ESO) in its role as the GB NETSO has delegated some of its tasks under EBGL Articles 4, 6 and 10 to ELEXON as the BSCCo, and the BSC Panel. Therefore, the BSC requires amendment to reflect the delegated tasks, and to ensure the EBGL change process is fulfilled within the existing BSC Modifications process.

### What is the issue in more detail?

Although some of the EBGL Article 18 terms and conditions are constituted of BSC provisions, the BSC itself is not referred to in the EBGL. As such, the change process applicable to BSC Modifications does not by itself comply with the change process required for the amendment of the EBGL Article 18 terms and conditions, which sit within the BSC, under Article 6 of the EBGL. More specifically, the power to amend (and in the case of Ofgem, amend and approve) EBGL Article 18 terms and conditions sits only with National Grid ESO as the GB NETSO, or Ofgem.

National Grid ESO has delegated (under EBGL Article 13) some of its tasks related to the EBGL Article 18 terms and conditions amendment process under EBGL Articles 4, 6 and 10 to the BSCCo and BSC Panel. ELEXON as the BSCCo will undertake administrative tasks and decision-making tasks will be performed by the BSC Panel. The BSC therefore needs to be amended to reflect the BSCCo's and BSC Panel's revised obligations under the delegation to facilitate the EBGL change process within existing BSC change processes.

Without the delegation of NGESO's tasks and this P392, BSC Modifications that wholly or partly impact EBGL Article 18 terms and conditions held in the BSC would also need to progress through an EBGL change process separately administered by the NETSO. This would be inefficient and unclear for all market participants, as there would be two central bodies progressing separate changes to one set of BSC legal text.

### EBGL change process consultation requirements

Article 10 of the EBGL explicitly requires a one month consultation to be completed for all proposals to amend Article 18 terms and conditions. However, there is no BSC provision to provide for this one-month consultation in the BSC Modifications process at the Report Phase, prior to submission of the proposal to Ofgem. Similarly, the BSC doesn't explicitly require feedback be provided, or justification published in respect of amendments made following the one month consultation process, which is specifically required under EBGL Article 10.

### Send-back process

The EBGL provides Ofgem (as the decision body on proposed EBGL amendments) the power under Article 6(3) to send-back a proposal that seeks to amend EBGL Article 18 terms and conditions for significant amendment. However, the BSC does not currently provide for a scenario whereby Ofgem can send-back a BSC Modification in order to amend the solution.

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## Background

The legally-binding [European Electricity Balancing Guideline \(EBGL\)](#) came into force on 18 December 2017. The EBGL was published as Commission (EU) Regulation 2017/2195, establishing a guideline on electricity balancing. The EBGL is one of eight European Network Codes (ENCs) and Guidelines. The EBGL is the main ENC impacting the BSC, as much of its scope covers balancing. The European Network of Transmission System Operators (ENTSO-E), was responsible for developing the ENCs.

Although the UK has now left the European Union, we continue to be bound by EU energy laws, including the EBGL, for at least the year 2020, and until the full detail of the future trade agreement is confirmed.

### Relevant EBGL Provisions for P392

#### Article 18 terms and conditions

Article 18 of the EBGL sets obligations on the Transmission System Operators (TSOs) of each Member State to develop the terms and conditions for Balancing Service Providers (BSPs) and Balancing Responsible Parties (BRPs)

Article 18 of EBGL also describes at a high level what these balancing and imbalance terms and conditions must cover.

#### Article 4 'Terms and conditions or methodologies of TSOs'

Article 4 requires that TSOs submit the above terms and conditions to the National Regulation Authority for approval. In the case of GB, National Grid ESO as the NETSO is the TSO, and the Authority (Ofgem) is the relevant National Regulation Authority (NRA).

#### Article 5 'Approval of terms and conditions or methodologies of TSOs'

Article 5 sets out the approval process to be followed by NRAs in accordance with Article 37 of Directive 2009/72/EC in relation to the terms and conditions or methodologies developed by TSOs.

#### Article 6 'Amendments to terms and conditions or methodologies of TSOs'

Article 6 gives powers to Ofgem to amend the proposed terms and conditions, where it believes this is needed to allow it to approve the terms and conditions. Meaning the NETSO as GB's TSO would be required to submit a proposal for amended terms and conditions for approval within two months of the direction from Ofgem. Ofgem would then have two months following the submission of the amended proposal to make its determination.

Article 6 also states that TSOs and Ofgem may develop proposals for amendments to the EBGL Article 18 terms and conditions, in which case the proposals for amendments shall be subject to consultation in accordance with Article 10 and approved in accordance with Articles 4 and 5.

## **Article 10 'Public Consultation'**

Article 10 states a consultation period for draft proposals should last no less than one month.

Article 10 also requires the TSO to 'duly consider the views of stakeholders resulting from the consultations' prior to submitting the proposal for regulatory approval. Further, '...in all cases, a sound justification for including or not including the views resulting from the consultation shall be provided together with the submission and published in a timely manner before or simultaneously with the publication of the proposal for terms and conditions or methodologies.'

## **Article 12 'Publication of information'**

Article 12(g) requires the initial terms and conditions related to balancing referred to in Article 18 to be published at least one month before the application and any amendments to the terms and conditions must be published immediately following approval by Ofgem.

## **Article 13 'Delegation and assignment of tasks'**

Article 13 allows the TSO to delegate all or part of any tasks with which it is entrusted under the EBGL to one or more third parties. This is subject to the third party being able to carry out the respective function at least as effectively as the delegating TSO, and can demonstrate its ability to meet the tasks to be delegated.

Where the TSO delegates any tasks to a third party, it is required to ensure that suitable confidentiality agreements in accordance with the confidentiality obligations of the delegating TSO have been put in place prior to the delegation. After the tasks have been delegated, the TSO is required to inform Ofgem and publish the decision on the internet.

## **National Grid ESO's Proposal for EBGL Article 18 terms and conditions**

In accordance with EBGL Article 18, the TSO(s) of a member state are required to propose terms and conditions relating to balancing.

### **What was in National Grid ESO's Proposal?**

National Grid ESO proposed that the terms and conditions related to balancing as described under Article 18 currently exist in provisions contained within the BSC, Grid Code, Connection and Use of System Code (CUSC), Standard Contract Terms and Statements and Methodologies under Standard Condition C16 of the [Transmission Licence](#).

Within its Article 18 proposal to Ofgem, National Grid ESO provided indicative mapping to the relevant provisions in the aforementioned documents that, according to the ESO, constitute the terms and conditions related to balancing for GB.

## **Ofgem's conditional approval of the Article 18 terms and conditions**

Ofgem conditionally approved National Grid ESO's third proposal on 8 October 2019. They approved the proposal subject to certain conditions being met. To ensure alignment with the amendment process in EBGL they asked for a number of BSC, Connection and Use of System Code (CUSC) and Grid Code Modifications to be completed by 4 April 2020.

The BSC Modifications the Authority asked to be completed by 4 April 2020 included:

- [P374 "Aligning the BSC with the EBGL change process and derogation approach"](#),
- [P371 "Inclusion of non-BM Fast Reserve actions into the Imbalance Price calculation"](#); and
- This Modification [P392 "Amending the BSC change process to incorporate the delegation of NGESO's powers and obligations under the EBGL to change EBGL Article 18 terms and conditions"](#).

P374 was implemented on 21 November 2019. Subsequent to Ofgem's 8 October letter, it approved P371 on 16 December 2019, for implementation on 25 June 2020. The Authority confirmed [in a letter to the BSC Panel](#) that its expected completion date for the conditions therefore moved to 25 June 2020.

The history of the approval process for the Article 18 terms and conditions can be found in the table below:

Summary Timeline for EBGL Article 18 Proposal		
Who	What	When
National Grid ESO	<a href="#">Submitted First Proposal for EBGL Article 18 terms and conditions</a>	18 June 2018
Ofgem	<a href="#">Published First Request for Amendment</a>	4 February 2019
National Grid ESO	<a href="#">Submitted Second Proposal for EBGL Article 18 terms and conditions</a>	4 April 2019
Ofgem	<a href="#">Published Second Request for Amendment</a>	4 June 2019
National Grid ESO	<a href="#">Submitted Third Proposal for EBGL Article 18 terms and conditions</a>	4 August 2019
Ofgem	<a href="#">Conditionally approved Article 18 terms and conditions in existing GB framework</a>	8 October 2019

## Delegations

To ensure the legally separate BSC and EBGL change processes are fulfilled by a single Code Manager, NGESO wrote to us delegating some of its EBGL change process tasks to ELEXON as the Balancing and Settlement Code Company (BSCCo) and BSC Panel. This delegation letter was received on 20 February 2020 and subsequently accepted on 24 February 2020.

The delegated tasks relate to the process of amending BSC provisions that also constitute Article 18 terms and conditions per [Ofgem's conditional Article 18 approval letter dated 8 October 2019](#).

The delegations and the solution developed under this Modification will create an efficient and clear change process for market participants, and will preserve the BSC Change process as the single mechanism to amend BSC provisions

The delegation letter containing the specific provisions delegated, and our subsequent acceptance can be found on both the [European](#), and [P392](#) webpages.

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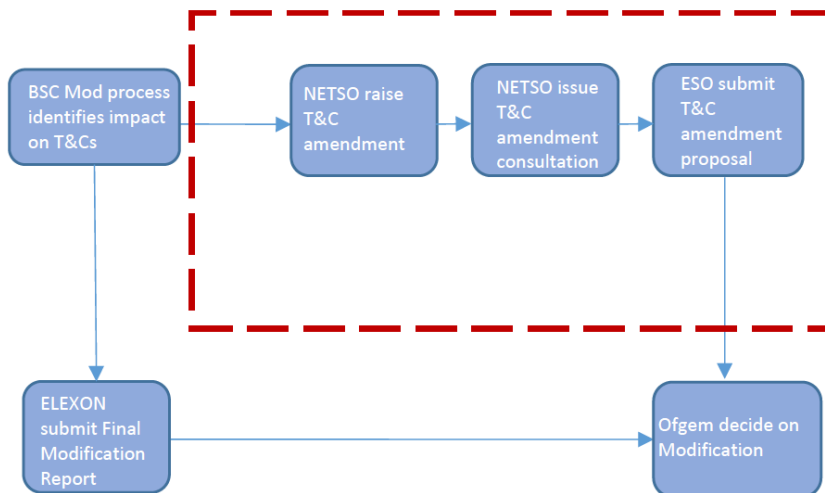
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## Legally separate BSC and EBGL change processes

The existing BSC Change arrangements need to be amended to incorporate the aforementioned delegations, so an aligned and efficient market change process can run, ensuring Modifications are progressed in compliance with EBGL requirements.

The EBGL (Article 6(3)) and BSC Change processes are two distinct legal frameworks, as outlined in the diagram below<sup>1</sup>:



Therefore, any BSC Modification seeking to change the BSC Sections constituting EBGL Article 18 terms and conditions will be ineffective unless a corresponding change is raised under the EBGL process, in compliance with EBGL Article 6, and approved by the Authority in accordance with EBGL Article 5.

P392 will create efficiencies, by ensuring the BSC Modification Process satisfies both the EBGL change process set out in Article 4, 5, 6 and 10, and the BSC change process as outlined in [BSC Section F 'Modification Procedures'](#)

<sup>1</sup> When referencing T&C in the diagram its referring to the EBGL Article 18 terms and conditions contained in the BSC



### Proposed solution

This Modification seeks to update the relevant BSC processes to capture the specific powers and obligations delegated to ELEXON as the BSCCo and the BSC Panel from NGESO. It will outline the change process that shall apply to any BSC Modification proposal seeking to amend the BSC legal text that (wholly or partially) constitutes EBGL Article 18 terms and conditions.

This Modification is required to ensure a compliant process to change BSC provisions once the delegations from NGESO to the BSCCo and BSC Panel become effective.

Further, P392 shall ensure a clear and efficient process for all market participants and Ofgem when amending BSC legal text that constitutes EBGL Article 18 terms and conditions.

This includes:

- Incorporating provisions in the BSC which recognise that a BSC Modification which impacts the Article 18 terms and conditions will be treated as a “draft proposal” for the purposes of Articles 6(3) and 10(1) of the EBGL (“Article 18 Modification proposal”) even if not raised by NETSO;
- A one month industry consultation on the “draft proposal” under Article 10 of the EBGL, which will be achieved by extending the timescales of the BSC Modification Report Phase Consultation, prior to submission of the proposal to the Authority for approval under Article 4;
- The publication of the justifications for including or not including the consultation respondents views in the solution, resulting from the consultation under Article 10(6) of the EBGL. This will be achieved by reconvening a Workgroup/the Proposer (in a straight to Report Phase Modification) in order to ensure Proposer ownership;
- the submission of the Article 18 proposal to the Authority for decision under Article 4; and
- A process to allow the Authority to request amendments to an Article 18 proposal (in accordance with Article 6(1) of the EBGL.

### What is the solution in more detail?

The Workgroup developed the P392 solution based on there being one process that satisfies two legal frameworks, the BSC Change Process as derived from, and designed to meet the requirements of C3 of the Transmission Licence, and the EBGL Change Process.

From a market participant perspective, when a Modification is issued for consultation, that single consultation document will include the standard BSC Modification sections, and a further section that identifies the impacts on the EBGL provisions. ELEXON and the Workgroup felt it important that the two legal frameworks should be completed under one process to ensure clarity and efficiency for market participants.

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## Key changes to BSC Section F

BSC Section F 2.7.4(d) notes the Report Phase Consultation period (whereby the BSCCo consults on the Panel's initial recommendations) shall be for a period no longer than 15 business days. This enables Modifications to be presented to the following month's Panel meeting to where the Modification was submitted to the Report Phase, and subsequently submitted to the Authority within 7 Business Days of the Panel's final decision, as required under F 2.7.6.

However, Article 10 of the EBGL states that a consultation period for EBGL draft proposals shall last not less than one month. Therefore, the BSC will need to be amended to accommodate this longer EBGL consultation period as part of the Report Phase, where BSC Modifications impact BSC provisions that constitute Article 18 terms and conditions.

The Report Phase was chosen for the EBGL consultation period, as it is by this Phase that the legal text has been finalised by the Workgroup, and as such can definitively be deemed as impacting Article 18 terms and conditions enshrined in the BSC.

Whilst this could elongate the progression timescales of BSC Modifications that seek to amend BSC text that constitutes Article 18 terms and conditions related to balancing, it is essential the aligned process is compliant with both the BSC and EBGL change processes. It is important to note that aligning the EBGL and BSC change processes is more efficient, and clearer for market participants, than if the process were to be run by two separate Code Managers.

## The BSC and EBGL Modification Process

### Article 18 terms and conditions mapping

We will publish the EBGL Article 18 mapping on the ELEXON website which will detail the parts of the BSC that also constitute Article 18 terms and conditions, in order to create clarity for market participants.

The BSC Article 18 mapping will be incorporated into the Code (through a new Annex to Section F 'Modification Procedures', as Annex F-2), and will be updated as applicable following Authority approval of any BSC Modifications which amend the mapping of the Article 18 terms and conditions in the BSC.

### Modification Raised

The process of raising a BSC Modification will remain the same, including who can raise a BSC Modification. In the Proposal Form there will be a section asking the Proposer to indicatively identify whether they believe there will be any Article 18 impact. We will continue to proactively support Modification proposers through this process.

The BSCCo will write and prepare the Initial Written Assessment (IWA) to be presented to the BSC Panel. In the IWA there will be a section for EBGL Article 18 terms and conditions, which will include the Proposer's initial view on EBGL impacts.

### Assessment Procedure

Where the Panel sends a Modification to the Assessment Procedure for solution development, the Workgroup shall consider any impact on EBGL Article 18 terms and

conditions, and the EBGL objectives as part of its Workgroup's standard Terms of Reference.

The Workgroup's recommendation on whether there are any Article 18 impacts will be included in the Assessment Procedure Consultation that is issued to industry, along with additional question(s) asking market participants whether they agree with the Workgroup's assessment against the EBGL objectives. Whilst the Assessment Procedure consultation does not constitute the formal Article 18 consultation (as it isn't the final consultation in the process), ensuring the same EBGL assessment at this stage will reduce the possibility of significant comments on EBGL Article 18 aspects requiring solution amendment at the Report Phase.

Akin to the existing process, following Assessment Procedure Consultation we will publish consultation responses on the BSC website and reconvene the Workgroup to address comments received.

We will prepare the Assessment Report to be presented to the BSC Panel in line with the Assessment Procedure timetable. The Assessment Report will include a new section detailing EBGL Article 18 terms and conditions impacts. The Report will also include National Grid ESO's comments regarding Article 18 impacts.

If the Workgroup recommend to the Panel that the Modification impacts Article 18 terms and conditions, and the Panel agrees, it shall automatically be considered a Draft Proposal for the purposes of Article 6(3) and be subject to the one month Report Phase Consultation. The Workgroup's recommendation would be based on its own expertise, responses received from industry consultation, and views from National Grid ESO. Ensuring the Modification automatically constitutes a Draft Proposal ensures there is no decision power to any entity on whether a BSC Modification shall progress. In essence, it prevents any veto rights<sup>2</sup>.

If the Workgroup recommends that the Modification does not impact Article 18 Terms and Conditions then the Modification will progress using the existing BSC Modifications Process.

## Report Phase

The Report Phase begins after either:

- a) the Panel has considered the IWA and determined that a Modification can progress straight to the Report Phase (see below); or
- b) the Assessment Report has been presented to the BSC Panel.

If the Modification does not impact Article 18 terms and conditions, it will in line with the existing Modifications process. However, If the Modification does impact Article 18 terms and conditions it will also be considered a Draft Proposal for the purposes of the EBGL.

In this scenario both the BSC Modification and Alternative Modification (if applicable) will constitute both a BSC Modification Proposal and EBGL draft proposal, thus fulfilling both the BSC and EBGL legal change processes.

As the EBGL change process requires a minimum one month consultation, where a Modification wholly or partly impacts Article 18 terms and conditions, it will be issued for a

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<sup>2</sup> Veto rights: this is shorthand for the concept that if a proposal for amendment of the Article 18 terms and conditions contained within the BSC is not made to the Authority along with the corresponding BSC Modification proposal, then the BSC Modification must be automatically rejected by the Authority no matter the merits of the BSC Modification or the recommendation of the BSC Panel. Effectively this gives the person responsible for submitting the Article 18 proposal veto rights over the BSC Modification.

one month Report Phase consultation under EBGL Article 10(1). The Consultation will include the same questions relating to Article 18 EBGL that were included in the Assessment Procedure Consultation.

All non-confidential responses received will be published on the ELEXON website in line with existing process. If responses are received from the consultation that may require the Modification Proposal to be amended, the Workgroup will be reconvened for further analysis. The Workgroup must ensure the Modification continues to address the same issue or defect originally identified by the Proposer and facilitates the EBGL objectives in consideration of consultation responses received.

The Workgroup must provide sound justifications for including/not including the views resulting from the consultation. Where no responses have been received that require further consideration of the solution, the Draft Modification Report will be presented to the BSC Panel at its next meeting.

If the Workgroup make substantial amendments to the Modification Proposal, it may be submitted for further industry consultation before the Panel makes its final recommendation to Ofgem. This further consultations is not an Article 10(1) consultation and so does not need to meet the one month timescale. Whilst this further consultation is not required under the EBGL regulation, the Workgroup were in agreement that industry should be allowed the further opportunity to comment if the solution significantly changes at this stage of the process.

Upon considering the Draft Modification Report, the BSC Panel will make a recommendation to approve or reject the Proposed and Alternative Modifications (if applicable) to the Authority. BSC Modifications that wholly or partly impact Article 18 terms and conditions are not applicable for decision under Self-Governance as implemented by [P374 'Aligning the BSC with the EBGL change process and derogation approach'](#).

The BSCCo will submit both the Proposed Modification and the Alternate Modification (if applicable) to the Authority. When BSCCo submit the Modification to the Authority this document will satisfy the BSC and EBGL legal framework as the Modification will be considered an Article 4 Proposal. If the Panel are recommending rejection the Modification Proposal will still be sent to the Authority to ensure the Authority remains the overall decision making entity.

## **Authority decision**

Upon receipt of the Final Modification Report, which constitutes a BSC Modification and an EBGL Proposal, the Authority can decide to approve, reject or send back the Modification and Alternative Modification (if applicable).

## **Straight to Report Phase Modifications**

The formal Article 18 change process does not commence until the Report Phase. Therefore, where a BSC Modification is submitted directly to the Report Phase, it will follow the same one month consultation process as Modifications that run through Workgroup assessment.

Under the P392 process, the Workgroup will convene if there are comments received relating to the solution from the one month consultation. However, as there was no Workgroup, if comments are received after the one month Article 10(1) consultation, the Proposer will have the opportunity to amend the Modification as a result of the Article

10(1) consultation and will provide justification for the amendments in the Draft Modification Report.

### **Fast Track Self Governance Modifications**

A Modification can be deemed Fast Track Self-Governance if it is proposing to amend a minor or inconsequential change to the legal text, for example correcting a spelling/manifest. Fast Track Self-Governance Modifications are not considered to materially amend the Article 18 terms and conditions enshrined within the BSC, and therefore are not required to follow the EBGL change process.

### **Urgent Modifications**

If the issue highlighted by the Modification needs to be resolved urgently, the Proposer, ELEXON or NETSO can request the Modification be an Urgent Modification. An Urgent Modification can be progressed by a different process and with an accelerated timetable in comparison to a standard Modification.

In the case of an Urgent Modification the timetable is determined and approved on a case-by-case basis. This means that the approved timetable will have to take into consideration that if the Modification impacts Article 18 terms and conditions, it will have to be issued for an Article 10(1) consultation.

### **Authority Directed Modifications**

The Authority can direct National Grid ESO as the NETSO to raise a Significant Code Review (SCR) Modification Proposal to progress the outcomes of the SCR. Alternatively, the Authority can submit an Authority led SCR Modification directly to the BSC Panel. Where these Modifications impacts EBGL Article 18 terms and conditions in the BSC, they will be subject to the EBGL change process, including one month consultation.

### **The Send Back Process**

Under the existing BSC Send Back process, if the Authority is unable to make a decision on a Modification, it may issue a Send Back Direction specifying any additional steps it requires to form an opinion. This could include drafting or amending the proposed legal text, revising the proposed Implementation Date or providing additional analysis and/or information. The existing BSC Send Back process does not provide for materially amending the BSC Modification solution.

The EBGL includes a process (under Article 6(1)) that allows the Authority to require amendments to be made to proposals in order for it to approve them. However, unlike the BSC process, the EBGL process does also allow the material amendment of the solution. The amended proposal must be re-submitted to Ofgem within two months.

Therefore, the BSC process needs to change to account for material amendments to the solution as part of a Send Back, for Modifications that wholly or partly impact Article 18 terms and conditions.

Under a Send Back direction for Modifications that wholly or partly impact EBGL Article 18 terms and conditions, the Panel will consider the next appropriate steps to take. This may include reconvening the workgroup to make amendments to the Modification in

consideration of Ofgem's Send Back. It may also include further consultation if it considers necessary (provided that any such steps must be completed within two months). If a second consultation is needed this does not need to be an Article 10(1) consultation of one month duration.

However, the two month timeframe mandated under EBGL to submit a revised proposal to Ofgem may prove challenging if a Workgroup were to be reconvened and a further consultation held. In this circumstance, a report may be resubmitted to Ofgem, with a recommendation that a further Workgroup and/or consultation be held. In this circumstance, Ofgem may issue a further Send Back direction.

Whilst we appreciate this may not appear efficient, it would allow the process to function and provide industry assurance that good governance processes have been undertaken. We are in continued discussion with Ofgem around the Send Back process, to ensure the process can operate efficiently, and ensure sufficient time for Workgroup evaluation of the solution and subsequent consultation where appropriate.

### Estimated central implementation costs of P392

ELEXON's cost to implement P392 are approximately £2640 to implement the document only changes.

### Industry costs of P392

Though two respondents to the Assessment Procedure Consultation noted P392 would impact their organisation, none believed it would incur any costs on them directly. One respondent noted that it would impact the governance of changes to EBGL Article 18 terms and conditions. NGESO noted that P392 will have an impact as it has delegated some of the relevant tasks related to the EBGL to ELEXON to ensure the BSC change process is aligned with EBGL with minimal disruption for stakeholders.

### P392 impacts

#### Impact on BSC Parties and Party Agents

Party/Party Agent	Impact
BSC Parties/Party Agents/interested third parties engaging in the BSC Modifications process	BSC Parties, Party Agents and interested third parties may be indirectly impacted by the solution to this Modification Proposal due to the amended Modification process where Modifications impact BSC text constituting EBGL Article 18 terms and conditions.

#### Impact on the National Electricity System operator (NETSO)

The NETSO will be impacted by P392 as it will have an amended role to play in the BSC Modifications process, where BSC Modifications impact BSC text that constitutes EBGL Article 18 terms and conditions. This will include attending all Modification workgroup meetings where such Modifications wholly or partly impact Article 18 terms and conditions, as well as providing an explicit assessment of a Modification's impact on article 18 terms and conditions.

#### Impact on BSCCo

Area of ELEXON	Impact
The BSC Modification process	Changes will be required to local working procedures and guidance notes to ensure the process devised under P392 is implemented within the operational BSC Change process.

#### Impact on BSC Settlement Risks

We do not anticipate there to be any impact on BSC Settlement Risks.

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Impact on BSC Systems and process	
BSC System/Process	Impact
No impacts on BSC Central Systems are anticipated.	

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

Impact on Code	
Code Section	Impact
BSC Section F 'Modification Procedures'	BSC Section F will be amended to implement the solution to P392.
BSC Section X-1 'General Glossary'	BSC Section X-1 will need updated with the terms used in EBGL

Impact on Code Subsidiary Documents	
CSD	Impact
None	

Impact on other Configurable Items	
Configurable Item	Impact
None	

Impact on Core Industry Documents and other documents	
Document	Impact
Ancillary Services Agreements	None (to note, NETSO will separately be progressing changes to the Grid Code ( <a href="#">GC0132</a> ) and CUSC ( <a href="#">CMP323</a> ) in order to comply with the requirements of the EBGL. However, P392 itself will not directly impact on these documents)
Connection and Use of System Code	
Data Transfer Services Agreement	
Distribution Code	
Distribution Connection and Use of System Agreement	
Grid Code	
Master Registration Agreement	

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#### Impact on Core Industry Documents and other documents

Document	Impact
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

P392 will not impact any Significant Code Reviews, as confirmed by Ofgem on 8 October 2019.

#### Impact on Consumers and the Environment

No direct impacts on consumers or the environment have been identified, which will be confirmed through the Assessment Procedure.

#### Other Impacts

Item impacted	Impact
None	

### Recommended Implementation Date

The Panel initially unanimously recommend an Implementation Date for P392 of:

- 25 June 2020 as part of the June 2020 BSC Release.

In order to achieve the 25 June 2020 Implementation Date, the Authority must make a decision on P392 by 18 June 2020 to allow 5WDs to implement.

The Implementation Date of 25 June 2020 aligns to the expected completion date of P392 as outlined by Ofgem in its letter to the [BSC Panel dated 6 February 2020](#).

All respondents to the Report Phase Consultation agreed with the Panel's recommended Implementation Date as it aligns with the date required by Ofgem and allows the necessary BSC modification processes to be completed.

### Delegations

The terms 'tasks' and 'obligations' are not defined in the EBGL and they are used loosely and interchangeably within other parts of the EBGL. Prior to the first P392 Workgroup ELEXON and NETSO had discussed both terms, as 'tasks' can be delegated to a third party whereas 'obligations' cannot.

ELEXON and NETSO jointly decided to complete due diligence by seeking external legal advice from Counsel, as the question of tasks and obligations was also highlighted by the P392 Workgroup at its first meeting. In addition to this question ELEXON and NETSO also sought clarification on whether the BSC Panel satisfied the requirement of being a 'third party' for the purposes of Article 13 and whether the one-month consultation period stipulated under Article 10(1) of the EBGL is aligned with the 'Report Phase' consultation process carried out pursuant to the existing BSC change process.

In summary, Counsel confirmed the following:

1. The delegated rights identified in the Draft Delegation are all 'tasks' for EBGL purposes.
2. The BSC Panel satisfies the requirement of being a 'third party' for the purposes of Article 13 of the EBGL.
3. The consultation scenarios set out in the Report Phase would need to be for one-month minimum and mandatory in order to be assigned with Article 10(1) of the EBGL.

### EBGL Objectives

The Workgroup considered that by combining the BSC Process and the EBGL process then the BSC Panel and the Workgroup when providing its justifications for including/not including responses from the consultation would have to more widely consider the implications the Modification could have on EBGL. The Workgroup questioned if the BSC Panel and Workgroup are best placed to carry out this assessment. Currently, there is no requirement for the BSC Panel to consider the EBGL objectives. The EBGL makes a high level objectives, which are largely contained in the recitals and in Article 3.

The Workgroup considered a solution whereby the BSC Panel assess the whole Modification under the Applicable BSC Objectives and also consider the impact of any parts of the Modification that amends the Article 18 terms and conditions on the EBGL objectives (as envisaged in Article 5(5) of the EBGL). The example the Workgroup used was if a Modification was made up of 100 sections and 30 of the sections impacted Article 18 of EBGL, the BSC Panel would have to consider the 100 sections against the BSC Objectives, and would separately consider the impact of the thirty sections against the EBGL objectives. The Workgroup believed this would be the best approach as P392 is combining the BSC and EBGL into one process and are evaluating them together. The Workgroup did note that there would need to be expertise in the Workgroup and the BSC Panel to allow them to consider the wider EBGL impacts. It was suggested that the standard BSC Workgroup Terms of Reference should be amended to cater for this.

BSC Applicable Objective (e) is about compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency. The Workgroup agreed this objective alone was not enough to be compliant with the EBGL.

Instead, the BSC Panel and the Workgroup should consider the EBGL objectives (largely comprised in Article 3 of the EBGL and the 21 recitals) when providing justification for including/not including the responses to the consultation. It was agreed that the BSC legal text should mirror the language used in Article 5(5) of EBGL i.e. that a proposal to amend the Article 18 terms and conditions should include “a description of [the] expected impact on the objective [of the EBGL]”.

## Two month consultations

Article 10(2) of the EBGL requires that most proposals made under Article 5(2) shall be subject to a one-month consultation. There is only one exception in Article 10(2) to the normal one-month consultation requirement. This exception refers to proposals made by all EU TSOs and approved by all EU regulators.

As Article 10(4) points to the Article 18 terms and conditions being subject to national consultations, i.e. in GB by NETSO alone, the two-month consultations are not relevant for consideration within the scope of BSC Modification P392.

## Article 10(1) consultation in Assessment Procedure or Report Phase?

The Workgroup discussed if the Article 10(1) consultation should be held in the Assessment Phase or Report Phase of the Modification process. In the Assessment Phase of a Modification the Workgroup are still exploring the solution, as such the legal text is usually not finalised until the Modification enters the Report Phase. If the Article 10(1) consultation was moved to the Assessment Phase then a provision would need to be included in the BSC that all Modifications that impact Article 18 EBGL must have legal text finalised before it is issued for consultation. This would allow the Workgroup to respond to comments from the consultation and amend the solution before the Modification enters the Report Phase.

However, the Modification would have to be consulted on again in the Report Phase, the Workgroup questioned if this would be a second Article 10(1) consultation and if there were legal implications on consulting on EBGL sections twice. The Workgroup agreed that if the Article 10(1) consultation was held in the Report Phase the Modification would not become a Draft Proposal until the Assessment Report had been presented to the BSC Panel and the Modification had entered the Report Phase. As such, the Article 18 EBGL process would not begin until the Report Phase. This would avoid the need for two Article 10(1) consultations.

The Proposer has a right to withdraw their Modification until it enters the Report Phase, however the Workgroup were unclear in a scenario whereby a Proposer withdrew their Modification but it had already begun the EBGL Article 18 process and if there would be implications.

If the consultation was moved to the Report Phase the Workgroup were in agreement that a provision would have to be added into the BSC allowing the Workgroup to reconvene in the Report Phase after the Article 10(1) consultation to address any comments that may have been received from the consultation.

Further to this, some Modifications do not go through the Assessment Phase and instead go straight to Report Phase, by having the Article 10(1) consultation in the Report Phase this would create a more aligned solution as there wouldn't be a different processes for

different Modifications. In addition, potential alternative Modifications only become definitive once a Modification has gone through the Assessment Phase Consultation, meaning if the Article 10(1) consultation was in the Report Phase then the EBGL consultation will always also include a consultation on any alternative solutions.

In conclusion, the Workgroup were in agreement that the Article 10(1) consultation should be held in the Report Phase, but that there should be the same EBGL consultation questions included in both the Assessment Phase Consultation and the Report Phase Consultation, to help mitigate any substantial comments regarding Article 18 being identified in the Report Phase. The CUSC and Grid Code have taken the same approach, meaning that all three codes will align on this part of the process.

## Veto Right

The Workgroup discussed who could designate a Modification as an Article 18 EBGL Draft Proposal. This would happen when the Assessment Report is presented to the BSC Panel and the Modification enters the Report Phase. Members were concerned by giving the NETSO the power to designate a Modification as a Draft Proposal it could become a Veto right. For example if the NETSO did not believe a Modification was Article 18 and the Panel/Ofgem disagreed, the Modification would not have completed the A10(1) consultation process and would force the Authority to either reject or send back the Modification.

Members concluded that it would be more efficient if the Workgroup's Terms of Reference were amended to include consideration of any Article 18 impacts. Further, there should be a section within the Assessment Procedure Consultation asking industry if they agreed with the Workgroup's recommendation that a Modification should/should not be considered a Draft Proposal for the purposes of A18. Industry and the Workgroups views would become a recommendation to the BSC Panel, which would be captured within the Assessment Report. Along with the recommendation, a view would also be provided by NETSO as to whether the Modification impacts A18. If the Modification is believed to impact A18 Terms and Conditions, then it would automatically be considered a Draft Proposal.

In addition, ELEXON agreed to publish and update the EBGL mapping on the ELEXON website, this way Proposers could use the mapping to make an initial decision, and it would provide clarity to industry.

## Clarifications

During ongoing Workgroup discussions there were a number of phrases used in the EBGL legal text on which the Workgroup wished further clarification.

### Should Authority be plural?

Article 10(1) references consulting 'relevant authorities of each Member State' The Workgroup questioned if ELEXON should be issuing the Article 10(1) consultation to all European Authorities. This caused confusion as Article 10(1) also refers to "relevant" which led some members to believe the Article 10(1) should be sent to Ofgem only.

One member noted that if ELEXON does not send the Article 10(1) consultations to the other Authorities then the potential impacts on cross border trading could be missed. For

example, if there was a similar P344 'Project TERRE' Modification in France, how would the UK know about it?

ELEXON confirmed there would be a distribution list containing industry contacts for notification of Article 10(1) consultations. The Workgroup were in agreement that it would not be appropriate to send the Article 10(1) to other regulatory authorities.

### **One month consultation**

Article 10 of the EBGL references the 'one month' consultation. Workgroup members discussed what the phrase one month meant and if it was equivalent to thirty or thirty one calendar days or Working days. Members agreed that a reference to 'one month' would be appropriate as this mirrors the language in the EBGL and aligns with the legal text for related CUSC and Grid Code Modifications. The Workgroup recognised that this meant, for example, that a consultation in February would be slightly shorter than a consultation in March.

### **Duly consider consultation responses**

Article 10(6) of the EBGL asks that the TSO's responsible for the proposal for terms and conditions or methodologies to 'duly consider' the views of stakeholders. ELEXON provided some principles for interpreting the EBGL Article 10 consultation requirements, which are based on UK public law principles. ELEXON concluded that duly consider means reading all the consultation responses and considering if any of the responses justify amending the proposal. The consultation responses do not need to be taken in isolation and that the Panel should take into account all relevant evidence in making its proposal to Ofgem. One member suggested that 'duly consider' should be referenced within one of the BSC Objectives, other members agreed there may be potential scope to widen the BSC Objectives. However, the Workgroup concluded that this was not necessary as the P392 solution requires BSCCo to publish a report of responses to the consultation, which is then duly considered by the BSC Panel.

One member questioned if a Draft Proposal is raised and does not meet the standard BSC Objectives, but in a European context works then has it been duly considered? In this scenario the BSC Panel would have had to approve members who have EBGL knowledge to be part of the Workgroup, and their views are included within the Assessment Report which is presented to the BSC Panel.

### **Sound justification on consultation responses**

Based on UK public law principles ELEXON legal clarified that a 'sound justification', as referenced in Article 10, means dealing with substantial points that have been raised and setting out and explaining key aspects of the Panel's rationale in coming to its conclusion. This includes all aspects of reasoning that were material to the decision and does not mean setting out in detail all evidence and arguments referred to by the Panel in reaching its decision.

## **BSC Panel Letter to Ofgem**

ELEXON requested a two month extension to the P392 Assessment Procedure at the [January 2020 BSC Panel](#) meeting. This extension request was to allow the Workgroup to continue to develop the process and fully assess change process situational examples for compliance with the EBGL. The BSC Panel did not approve the extension as the Panel was

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not clear whether the 4 April 2020 date set out in the Authority's letter dated 8 October 2019 was a deadline by which all conditions need to be completed.

Therefore, the BSC Panel requested further clarification on the fulfilment of the conditions requested by the Authority in its letter dated 8 October 2019. The clarifications included the following:

- Clarification on whether 4 April 2020 is in itself a condition (or for example an anticipated date for completion of the conditions);
- Where, if the 4 April 2020 date does constitute a condition:
  - Whether the date itself has now moved to the Implementation date for P371 of 25 June 2020, given the Authority's subsequent approval of that Modification;
  - What are the implications of the date not being met;
  - Whether the Authority will consider an extension to the 4 April 2020 date; and
  - The Authority treats P392 as an Urgent Modification.

## Ofgem Response

Ofgem responded to the BSC Panel's clarification letter on 6 February 2020. The Authority confirmed that the 4 April 2020 was an expected completion date, rather than a condition. They further confirmed that they have now moved the expected completion date to the 25 June 2020, to align to the P371 Implementation date, (P371 was approved by Ofgem on 16 December 2019) which was also outlined as one of the Modifications that had to be completed in Ofgem's 8 October approval letter. As such, the implementation date for P392 moved from 4 April 2020 to 25 June 2020 to align with P371.

## Should the amended Modification process be applicable for all Modifications?

The Workgroup considered if the amended Modification Process should be applicable for all BSC Modifications or only those that wholly or partly impact EBGL Article 18 terms and conditions.

It was noted that one of the Grid Code alternatives is to use the amended Modification process for all Modifications, this would create one process for all Modifications and would mitigate any risk in a scenario whereby the Modification is deemed to not impact Article 18 terms and conditions, as such does not go through the EBGL change process, but then the Authority disagrees and believes it does constitute EBGL Article 18 and have to reject the Modification as it has not completed the correct process.

The Workgroup considered this possibility, however concluded that they were confident that if Industry and the Workgroup had come to the conclusion that a Modification did not impact Article 18 terms and conditions then this was the most informed view. Further to this they did not want to elongate the Modification process for Modifications that are not EBGL Article 18, as there is no obligation on those Modifications to go through the EBGL process.

All respondents to the consultation agreed with the Workgroup's recommendation. They highlighted that it would be inefficient to subject all BSC Modifications to this process as it would unnecessarily elongate their progression. One respondent highlighted that the only justification for subjecting all BSC modifications to the amended process would be if there was little confidence in BSC Workgroup's judgement as to whether a Modification would impact EBGL Article 18 terms and conditions. They went on to point out that, given the Workgroup's recommendation will be based on a wide range of sources (own expertise, industry consultation responses, views from NGESO), this is not be a concern.

## Potential Alternative solution

Under the initial proposed P392 solution, when a Draft Modification Report is presented to the BSC Panel it would contain recommendations from the Workgroup if any substantial amendments should be made as a result of the Article 10(1) consultation (Report Phase consultation lasting one month). The initial proposed solution allowed the BSC Panel to choose whether to amend the Modification solution.

However, this did not fully support proposer ownership as the Panel would be making the decision on the solution, and so the Workgroup developed an alternative solution to preserve Proposer ownership.

As discussion progressed, the P392 Proposer, supported by the Workgroup, agreed to amend the proposed solution to provide the Workgroup with the ability to amend the solution following Report Phase Consultation in line with consultation responses. The BSC Panel will be able to provide further justification for including/not including the consultation respondents' views, but will not be able to amend the solution devised by the Workgroup.

The Proposed solution does now preserve Proposer ownership. In light of this, the Workgroup agreed there were no other Modifications that are better than the Proposed Modification under P392.

All respondents to the consultation agreed with the Workgroup's recommendation that there are no potential Alternative Modifications that would better facilitate the BSC Applicable Objectives.

## Self-Governance

The Proposer, P392 Workgroup and ELEXON agree that P392 should not be treated as a Self-Governance Modification as it will have a material effect on Self-Governance criteria (a)(v) the Code's governance procedures or Modification procedures. This is by virtue that it directly impacts the Code's Modification procedures.

All respondents to the consultation agreed with the Workgroup's recommendation that P392 should not be progressed as a Self-Governance Modification. They agreed that P392 will have a material impact on BSC governance.

## Legal text

The proposed legal text changes to the BSC to deliver P392 can be found in Attachment A.

Three of the four respondents to the consultation agreed that the draft legal text delivered the intention of P392. One respondent provided comment for further consideration by the



Workgroup in that they wished for the EBGL objectives to be more explicitly noted in the legal text. They wished for this to ensure clarity for the Panel and market participants, on how Modifications are assessed against the EBGL. Following further discussion between ELEXON and the respondent, amended text was put forward that added clarity, but also retained the flexibility of the legal text given the EBGL Objectives are not as explicitly outlined in a manner similar to the Applicable BSC Objectives. As such, Section X-1 now contains a definition of EBGL Objectives, and any references to them within the text are now capitalised to indicate that it is a defined term

The Workgroup unanimously supported this amendment at its final Workgroup meeting on 24 March 2020.

### Applicable BSC Objectives

The Workgroup unanimously believe that P392 should be **approved**. In support of this, the Workgroup unanimously believe P392 better facilitates Applicable BSC Objective (e), and by majority believe it better facilitates Applicable BSC Objectives (a) and (d).

All respondents to the Assessment Procedure Consultation agreed with the Workgroup's recommendation that P392 does better facilitate the BSC Applicable BSC Objectives than the current baseline.

All respondents agreed that it better facilitates Objective (e), citing P392 will ensure GB compliance with the EBGL.

Three of the respondents agreed with the Workgroup's view that P392 better facilitates Objective (a), whilst two respondents noted it will have a positive impact on Objective (d), highlighting that it keeps changes to the BSC Modification process to a minimum and is more efficient than would otherwise be the case.

One respondent highlighted that P392 would have a marginally positive impact on Objective (c) on the basis that the BSC will need to maintain efficient processes once the delegations have been accepted.

### Applicable BSC Objective (a)

The P392 solution ensures the effective discharge of Transmission Company (Electricity System Operator) obligations through delegations.

The Workgroup noted that it would not be until the P392 implementation date that Applicable BSC Objective (a) would become more effective. As such, if National Grid ESO did not delegate the tasks it has, then the BSC Change Process would still be efficient as it is currently. However, P392 and the delegations are more efficient than the EBGL Article 18 change process applied to the BSC text without them.

The Workgroup voted by majority that P392 does better facilitate BSC Applicable Objective (a).

### Applicable BSC Objective (d)

P392 ensures the BSC Change process satisfies the requirements under EBGL Articles 6 and 10. By delegating NGENSO's responsibilities to ELEXON as the BSCCo and the BSC Panel, industry parties will have clarity on the process for BSC changes that impact Article 18 terms and conditions.

The Proposer noted that whilst EBGL Article 18 change process does not improve the efficiency of the current BSC change framework itself, implementing an aligned process whereby both BSC Change and Article 18 change processes are progressed together, is the most efficient way of progressing BSC Modifications that impact Article 18 terms and conditions.

The Workgroup agreed that the Change Process is already efficient, and the new process will not make the BSC Change process more efficient, rather the opposite. However, they agree the solution developed is the most efficient means of delivering the solution in the BSC, reflecting the delegations which have been made.

The Workgroup voted by majority that P392 does better facilitate BSC Applicable Objective (d).

### Applicable BSC Objective (e)

P392 will ensure BSC Modifications that impact Article 18 terms and conditions can be progressed in compliance with EBGL change provisions.

One Workgroup member noted the BSC is already compliant with Electricity regulation and European Commission and it is only because BSSCo and the BSC Panel have been delegated the tasks that would make ELEXON non-compliant.

The Workgroup voted unanimously that P392 does better facilitate BSC Applicable Objective (e).

Does P392 better facilitate the Applicable BSC Objectives?		
Obj	Proposer's Views	Other Workgroup Members' Views <sup>3</sup>
(a)	<ul style="list-style-type: none"><li>Positive</li></ul>	<ul style="list-style-type: none"><li>Positive (majority) – One member was neutral, citing that even though P392 introduces additional costs it is more efficient than no solution</li></ul>
(b)	<ul style="list-style-type: none"><li>Neutral</li></ul>	<ul style="list-style-type: none"><li>Neutral</li></ul>
(c)	<ul style="list-style-type: none"><li>Neutral</li></ul>	<ul style="list-style-type: none"><li>Neutral</li></ul>
(d)	<ul style="list-style-type: none"><li>Positive</li></ul>	<ul style="list-style-type: none"><li>Positive (majority) – Two members were neutral for the reasons given against Objective (a)</li></ul>
(e)	<ul style="list-style-type: none"><li>Positive</li></ul>	<ul style="list-style-type: none"><li>Positive (unanimous)</li></ul>
(f)	<ul style="list-style-type: none"><li>Neutral</li></ul>	<ul style="list-style-type: none"><li>Neutral</li></ul>
(g)	<ul style="list-style-type: none"><li>Neutral</li></ul>	<ul style="list-style-type: none"><li>Neutral</li></ul>

### Legal Text

The Workgroup voted unanimously that the draft legal text found in Attachment A delivers the intention of the P392 solution, including the amendment as outlined in section 6 of this paper.

### Implementation Date

The Workgroup voted unanimously in support of the proposed implementation date of 25 June following approval by the Authority.

### Self-Governance

The Workgroup voted unanimously that P392 should not be progressed as a Self-Governance Modification as it will have a material effect on Self-Governance criteria (a)(v).



#### 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

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<sup>3</sup> Shows the different views expressed by the other Workgroup members – not all members necessarily agree with all of these views.

## Alternative Modifications

The Workgroup voted unanimously that there were no Alternative Modifications to deliver the P392 solution.

### Should the new Modification process apply to all BSC Modifications?

The Workgroup voted unanimously that only those Modifications that impact BSC provisions constituting EBGL Article 18 Terms and Conditions should be subject to the amended Change process as this is the most efficient way forward.



#### 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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### Discussion

A Panel member queried ~~as to~~ how the new processes would be communicated to industry. ELEXON noted that it planned to hold a webinar on the subject around the time of the Article 18 terms and conditions going live, expected to be 25 June 2020, in addition to the usual channels (i.e. emails, website etc.). The member asked whether more should be done to highlight the Sections of the BSC that also constitute Article 18 terms and conditions for market participant clarity. ELEXON clarified that its Modification templates would be updated to include consideration of the Article 18 terms and conditions and would assist Proposers and Workgroups understand where a Modification may impact them.

### Conclusions

At its meeting on Thursday 9 April 2020, the BSC Panel **unanimously**:

- **AGREED** that P392:
  - **DOES** better facilitate Applicable BSC Objective (a);
  - **DOES** better facilitate Applicable BSC Objective (d); and
  - **DOES** better facilitate Applicable BSC Objective (e);
- **AGREED** an initial recommendation that P392 should be **approved**;
- **AGREED** an initial Implementation Date of:
  - 25 June 2020 if an Authority decision is received on or before 18 June 2020;
- **AGREED** the draft legal text;
- **AGREED** that P392 is submitted to the Report Phase; and
- **NOTED** that ELEXON will issue the P392 draft Modification Report (including the draft BSC legal text) for a 10 Working Day consultation and will present the results to the Panel at its meeting on 14 May 2020.

## 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 B.

Summary of P392 Report Phase Consultation Responses				
Question	Yes	No	Neutral/ No Comment	Other
Do you agree with the Panel's initial unanimous recommendation that P392 should be approved?	2	0	0	0
Do you agree with the Panel that the redlined changes to the BSC deliver the intent of P392?	2	0	0	0
Do you agree with the Panel's recommended Implementation Date?	2	0	0	0
Do you have any further comments on P392?	1	1	0	0
Do you agree with the Panel's initial view that P392 should be treated as a Self-Governance Modification?	2	0	0	0

There were a total of two responses to the Report Phase Consultation - NGESO and a trade body.

### Response Summary

#### Recommendation of Approval

Both respondents agreed with the Panel's unanimous recommendation for approval of P392. They each highlighted their agreement that the solution will better facilitate BSC Applicable Objectives (a), (d) and (e). One noted that while it does add new elements to the BSC Modification process, changes are kept to a minimum and so provides a streamlined solution to accommodate EBGL changes.

#### Legal Text

Both respondents agreed with the Panel's view that the legal text delivers the intention of P392.

#### Implementation Date

Both respondents agreed with the Panel's recommended Implementation Date, with one noting it meets the implementation date required by Ofgem.

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## Self-Governance

Both respondents agreed with the Panel's unanimous view that P392 should not be treated as Self-Governance, sharing the Panel's view that it will have a material impact on the BSC Modification process. One respondent also highlighted that it is appropriate the Authority makes the ultimate decision on Modifications that impact on the European Network Codes.

## Further Comments

One respondent commented that P392 provides a solution that allows compliance with the EBGL change process while keeping changes to the BSC Code Modification process to a minimum.

## 10 Recommendations

We invite the Panel to:

- **AGREE** that P392:
  - **DOES** better facilitate Applicable BSC Objective (a);
  - **DOES** better facilitate Applicable BSC Objective (d); and
  - **DOES** better facilitate Applicable BSC Objective (e);
- **AGREE** a recommendation that P392 should be **approved**;
- **APPROVE** an Implementation Date for P392 of:
  - **25 June 2020** as part of the June 2020 BSC Release if an Authority decision is received on or before 18 June 2020;
- **APPROVE** the draft legal text for P392; and
- **APPROVE** the P392 Modification Report.



### Delegations

The approved Article 18 terms and conditions (for BSPs and BRPs) are proposed to be implemented by NETSO for 25 June 2020. The delegations will come into effect on the same day that P392 is implemented. The delegations will maintain the integrity of the BSC Change Process.

1. NGESO delegates to the BSCCo the following of its tasks under the EBGL which are to be exercised by the BSCCo instead of NGESO in relation to any proposed amendment to Art 18 T's&C's-BSC pursuant to Article 6(3) of the EBGL:

1.1. its tasks under Article 10(1) and Article 10(2) of the EBGL to consult stakeholders, including the Authority, on the draft proposal to amend the Art 18 T's&C's-BSC, for a period of not less than one month;

1.2. its tasks under Article 10(6) of the EBGL to publish the justifications provided to it by the BSC Panel for including or not including the views resulting from the consultation in a timely manner before or simultaneously with the publication of the proposal to amend the Art 18 T's&C's-BSC; and

1.3 its task of publishing the amendments to the EBGL Art 18 T's&C's-BSC in accordance with EBGL Article 12(3)(g).

2. NGESO delegates to the BSC Panel the following of its tasks under the EBGL which are to be exercised by the BSC Panel instead of NGESO in relation to any proposed amendment to Art 18 T's&C's-BSC pursuant to Article 6(3) of the EBGL.

2.1. its tasks under Article 10(6) of the EBGL to:

a. duly consider the views of stakeholders resulting from the consultations undertaken on the draft proposal seeking to amend the Art 18 T's&C's-BSC in accordance with paragraphs 2 to 5 of Article 10 of the EBGL, prior to its submission to the Authority for regulatory approval; and

b. provide a sound justification for including or not including the views resulting from the consultation pursuant to paragraph 2.1(a) above for the purposes of publication to the BSCCo at the same time as submission of the proposal seeking to amend the Art 18 T's&C's-BSC to the Authority for approval (where the Panel has taken the decision to submit the proposal seeking amendment of Art 18 T's&C's-BSC, to the Authority for approval).

2.2. its tasks under Article 4 to submit the draft proposal amending Art 18 T's&C's-BSC to the Authority for approval in accordance with Article 37 of Directive 2009/72/EC within the respective deadlines set out in the EBGL.

2.3 its task under article 6(1) of the EBGL to submit a proposal for amended terms and conditions where required by the Authority in order for the Authority to approve the proposed amendment to Art 18 T's&C's-BSC submitted pursuant to Article 6(3) of the EBGL.

### Workgroup's Terms of Reference

Specific areas set by the BSC Panel in the P392 Terms of Reference	Conclusion
Will P392 impact BSC Settlement Risks?	We believe, as supported by the Workgroup, that there will be no impact on BSC Settlement Risks.
Changes needed to BSC documents, systems and processes?	BSC Modification Process impacted BSC Section F, BSC Section X-1, Standard Modification Proposal Form Modification Template, BSC Assessment Phase Consultation Document, BSC Assessment Report, BSC Simple Guide Section F Annex 1, BSC Draft Modification Report, BSC Final Modification Report, BSC Report Phase Consultation. No Systems impacted.
Costs and lead times	P392 will cost approximately £2640, after Authority approval will take 5WDs to implement.
When will any required changes to subsidiary documents be developed and consulted on?	There are no subsidiary documents
Any Alternative Modifications?	No
Self-Governance Modification?	The Workgroup agree that P392 should not be treated as Self-Governance as it will have a material effect on Self-Governance criteria (v)
Applicable BSC Objectives?	The majority of the Workgroup believes that P392 would better facilitate Applicable BSC Objectives (a), (d) and (e) compared to the current baseline.
Should the amended BSC Modification process be applicable for all BSC Modifications, or only those that wholly or partly amend the BSC provisions that constitute EBGL Article 18 terms and conditions?	The Workgroup agreed that the amended BSC Modification process should only be applicable for Modifications that wholly or partly amend the BSC provisions that constitute EBGL Article 18 terms and conditions, as this is more efficient than requiring all BSC Modifications to undergo a one month consultation at the Report Phase.

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## P392 timetable

P392 Timetable	
Event	Date
Panel submits P392 to Assessment Procedure	10 October 2019
Workgroup Meeting 1	8 November 2019
Workgroup Meeting 2	10 January 2020
Workgroup Meeting 3	27 January 2020
Workgroup Meeting 4	10 February 2020
Assessment Procedure Consultation	2 March 2020 – 13 March 2020
Workgroup Meeting 5	24 March 2020
Panel considers Workgroup's Assessment Report	9 April 2020
Report Phase Consultation	14-28 April 2020
Draft Modification Report to Panel	14 May 2020
Issue Final Modification Report to Authority	19 May 2020

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## Workgroup membership and attendance

P392 Workgroup Attendance						
Name	Organisation	8 November 2020	10 January 2020	27 January 2020	10 February 2020	24 March 2020
Members						
Elliott Harper	ELEXON ( <i>Chair</i> )	✓	✓	✓	✓	☎
Danielle Pettitt	ELEXON ( <i>Lead Analyst</i> )	✓	✓	✓	✓	✗
Craig Murray	ELEXON ( <i>Lead Analyst</i> )	✗	✗	✗	✗	☎
Simon Sheridan	NETSO ( <i>Proposer</i> )	✓	✗	✗	✗	✗
John Welch	NETSO ( <i>Proposer</i> )	✓	✓	✓	✓	☎
Bill Reed	RWE	✓	✓	✓	✓	☎
Andrew Colley	SSE	☎	☎	☎	☎	☎
Peter Berry	Calon Energy	✓	✓	✗	✗	☎
Rick Parfett	ADE	✓	✓	☎	✓	☎
Paul Youngman	Drax	✓	☎	✓	☎	✗
Attendees						
Mark De-Souza Wilson	ELEXON ( <i>Design Authority</i> )	✓	✓	✓	✓	☎
Aditi Tulpule	ELEXON ( <i>Lead Lawyer</i> )	✓	✓	✗	✗	✗
Nicholas Brown	ELEXON ( <i>Lead Lawyer</i> )	✗	✗	✓	✓	☎
Steve Wilkin	ELEXON	✓	✓	✓	✓	☎
Leonardo Costa	Ofgem	✓	✗	✗	✗	✗
Christopher Statham	Ofgem	✓	✓	✓	✓	☎
Angela Quinn	NETSO	✗	✗	✗	☎	✗
Philip Smith	NETSO	✓	✗	✗	✗	✗
Rob Wilson	NETSO	✗	✗	✗	✓	✗
Garth Graham	SSE	✗	☎	☎	☎	✗

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## Appendix 3: Glossary & References

### Acronyms

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

Acronyms	
Acronym	Definition
BEIS	Department for Business, Energy and Industrial Strategy
BSC	Balancing and Settlement Code
BSCCo	Balancing and Settlement Code Company
BSCP	Balancing and Settlement Code Procedure
BRP	Balancing Responsible Party
BSP	Balancing Service Providers
CSD	Code Subsidiary Documents
CUSC	Connection and Use of System Code
EBGL	European Balancing Guidelines
ENC	European Network Codes
ENTSO-E	European Network of Transmission System Operators for Electricity
ESO	Electricity System Operator
EU	European Union
GB	Great Britain
IWA	Initial Written Assessment
NETSO	National Electricity Transmission System Operator
NGESO	National Grid Electricity System Operator
NRA	National Regulatory Authority
SCR	Significant Code Review
T and C	Terms and Conditions
TSO	Transmission System Operator
W/C	Week Commencing

### 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.

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External Links		
Page(s)	Description	URL
5	European Balancing Guidelines	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2195&amp;from=EN">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2195&amp;from=EN</a>
6	Transmission License	<a href="https://www.ofgem.gov.uk/system/files/docs/2019/03/decision_to_modify_electricity_transmission_licences_to_reflect_the_latest_version_of_the_security_and_quality_of_supply_standard.pdf">https://www.ofgem.gov.uk/system/files/docs/2019/03/decision_to_modify_electricity_transmission_licences_to_reflect_the_latest_version_of_the_security_and_quality_of_supply_standard.pdf</a>
7	P371 'Levelling the playing field - Inclusion of Spin-Gen, Non-BM Fast Reserve and Non-Tendered Fast Reserve actions into the calculation of the Imbalance Price and extension of the cash-out price arrangements to Fast Reserve'	<a href="https://www.elexon.co.uk/mod-proposal/p371/">https://www.elexon.co.uk/mod-proposal/p371/</a>
7	First Proposal for EBGL Article 18	<a href="https://www.nationalgrideso.com/document/117301/download">https://www.nationalgrideso.com/document/117301/download</a>
7	First Request for Amendment	<a href="https://www.ofgem.gov.uk/publications-and-updates/decision-request-amendment-transmission-system-operators-proposal-terms-and-conditions-related-balancing">https://www.ofgem.gov.uk/publications-and-updates/decision-request-amendment-transmission-system-operators-proposal-terms-and-conditions-related-balancing</a>
7	Second Proposal for EBGL Article 18	<a href="https://www.nationalgrideso.com/codes/european-network-codes/meetings/consultation-amended-proposal-ebgl-article-18-terms-and">https://www.nationalgrideso.com/codes/european-network-codes/meetings/consultation-amended-proposal-ebgl-article-18-terms-and</a>
7	Second Request for Amendment	<a href="https://www.ofgem.gov.uk/publications-and-updates/decision-request-further-amendments-transmission-system-operators-proposal-terms-and-conditions-related-balancing-accordance-article-18-commission-regulation-eu-20172195">https://www.ofgem.gov.uk/publications-and-updates/decision-request-further-amendments-transmission-system-operators-proposal-terms-and-conditions-related-balancing-accordance-article-18-commission-regulation-eu-20172195</a>
7	Third Proposal for EBGL Article 18	<a href="https://www.ofgem.gov.uk/publications-and-updates/decision-transmission-system-operators-proposal-terms-and-conditions-related-balancing">https://www.ofgem.gov.uk/publications-and-updates/decision-transmission-system-operators-proposal-terms-and-conditions-related-balancing</a>
7	Conditionally approved Article 18 terms and conditions in existing GB framework	<a href="https://www.ofgem.gov.uk/publications-and-updates/decision-transmission-system-operators-proposal-terms-and-conditions-related-balancing">https://www.ofgem.gov.uk/publications-and-updates/decision-transmission-system-operators-proposal-terms-and-conditions-related-balancing</a>
7	Authority letter to the BSC Panel with clarifications on the Authority's decision of 8 October 2019	<a href="https://www.elexon.co.uk/wp-content/uploads/2019/10/Authority-Response-to-P392-BSC-Panel-Letter.pdf">https://www.elexon.co.uk/wp-content/uploads/2019/10/Authority-Response-to-P392-BSC-Panel-Letter.pdf</a>

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External Links		
Page(s)	Description	URL
8	BSC Section F Modification Procedures	<a href="https://www.elexon.co.uk/the-bsc/bsc-section-f-modification-procedures/">https://www.elexon.co.uk/the-bsc/bsc-section-f-modification-procedures/</a>
12	P374 'Aligning the BSC with EBGL'	<a href="https://www.elexon.co.uk/mod-proposal/p374/">https://www.elexon.co.uk/mod-proposal/p374/</a>
17	GC0132 'Updating Grid Code Governance process to ensure we capture EBGL change process for Article 18 Terms and Conditions'	<a href="https://www.nationalgrideso.com/codes/grid-code/modifications/gc0132-updating-grid-code-governance-process-ensure-we-capture-ebgl">https://www.nationalgrideso.com/codes/grid-code/modifications/gc0132-updating-grid-code-governance-process-ensure-we-capture-ebgl</a>
17	CMP323 'Updating the CUSC governance process to ensure we capture the EBGL change process for Article 18 Terms and Conditions'	<a href="https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/updating-cusc-governance-process-ensure-we">https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/updating-cusc-governance-process-ensure-we</a>
20	P392 'Amending the BSC change process to incorporate the delegation of NGESO's powers and obligations under the EBGL to change EBGL Article 18 terms and conditions.'	<a href="https://www.elexon.co.uk/mod-proposal/p392/">https://www.elexon.co.uk/mod-proposal/p392/</a>
25	BSC Panel 298	<a href="https://www.elexon.co.uk/meeting/bsc-panel-298/">https://www.elexon.co.uk/meeting/bsc-panel-298/</a>