BSC Modification Proposal Form	At what stage is this document in the process?
# Modification Title: 'Introducing Data Controller and Processor Obligations in the BSC for Market-wide Half Hourly Settlement Testing'	01 Modification 02 Workgroup Report 03 Draft Modification Report 04 Final Modification Report

Purpose of Modification:

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

Is this Modification likely to impact any of the European Electricity Balancing Guideline (EBGL) Article 18 Terms and Conditions held within the BSC?

☐ Yes ☒ No

	Elexon recommends that this Modification should: • be raised by the Panel in accordance with the provisions of Section F2.1.1(d)(i); • not be a Self-Governance Modification Proposal • be sent directly into the Report Phase This Modification will be presented to the BSC Panel on 13 July 2023. The Panel will determine how best to progress the Modification.
	High Impact: No Impact
	Medium Impact: No Impact

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Low Impact:

No direct impact. Parties will now be able to share data as part of MHHS Testing.

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Timetable

Elexon recommends the following timetable:

Present Initial Written Assessment to Panel	13 July 2023
Report Phase Consultation (10WDs)	17 July 2023 - 28 July 2023
Draft Modification Report presented to Panel	10 August 2023
Final Modification Report submitted to Authority	16 August 2023
Implementation	5 WDs after Authority Decision

Any questions?

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BSC Panel

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1 Why Change?

What is the issue?

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

However, with the advent of the Market Wide Half Hourly Settlement (MHHS) testing, personal information sharing, specifically meter-level data, is now needed. This necessitates changes to the BSC in order to allow the required data sharing for MHHS testing. For completeness, the current modification is intended to cover the Systems Integration Testing, Qualification and Migration/Transition. Further changes to the BSC, which will be developed as part of the MHHS Code Workstream[1], will be needed in due course in order to implement the MHHS Target Operating Model.

BSC Section H 'General'[2] of the BSC outlines the data privacy, confidentiality, and sharing requirements among BSC Parties. However, as it stands, it does not provide comprehensive guidelines on the handling and sharing of personal data, particularly in line with the MHHS testing requirements.

Since this change will relate specifically to MHHS testing, and are therefore interim provisions, they will be included in paragraph 12 of BSC Section C 'BSCCo and its Subsidiaries'[3]. Ultimately, the data privacy provisions in Section H will need to be updated.

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

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

Justification for examining the Issue

The need for a more flexible and comprehensive approach to data handling in the BSC has been highlighted by the upcoming MHHS testing, and was noted by the BSC Panel at their meeting on 8 June 2023[4] (see slide 24). The testing approach, rather than using only dummy data, will also use real data, which includes personal information.

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

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

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Desired outcomes

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

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

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Solution

Proposed Solution

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

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

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

Benefits

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

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

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

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

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

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3 Relevant Objectives

Impact of the Modification on the Relevant Objectives:	
Relevant Objective	Identified impact
a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence Elexon believes this Modification is neutral against this objective.	Neutral
(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System Elexon believes this Modification is neutral against this objective.	Neutral
(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 Elexon believes this Modification is neutral against this objective.	Neutral
(**d) Promoting efficiency in the implementation of the balancing and settlement arrangements** This Modification will promote efficiency in balancing and settlement arrangements by standardising data sharing, minimising legal risks, and streamlining data management, thereby reducing complexity and time requirements.	**Positive**
(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] Elexon believes this Modification is neutral against this objective.	Neutral
(f) Implementing and administrating the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation Elexon believes this Modification is neutral against this objective.	Neutral
(g) Compliance with the Transmission Losses Principle Elexon believes this Modification is neutral against this objective.	Neutral

This Modification will promote efficiency in the implementation of the Balancing and Settlement arrangements by streamlining the data sharing process. By introducing uniform data processor and

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controller obligations, it will eliminate the need for individual data sharing agreements between MHHS and its participants. This uniformity saves time, reduces complexity, and aligns all parties on their roles and responsibilities. Furthermore, by ensuring compliance with GDPR and data protection regulations, the Modification reduces the risk of legal issues that could delay or disrupt settlement procedures. Overall, it creates a more practical and efficient framework for the management and sharing of personal data in the Balancing and Settlement process.

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4 Potential Impacts

Impacts on Core Industry Documents

This Modification is not anticipated to impact any other industry codes.

Impacts on BSC Systems

This Modification is not anticipated to impact any BSC systems.

Impacts on BSC Parties

Impacted Parties			
☒Supplier	☒Interconnector User	☒Non Physical Trader	☒Generator
☒Licensed Distribution System Operator	☒National Electricity Transmission System Operator	☒Virtual Lead Party	☐Other (Please specify)

There will be no direct impact on any BSC Party. Parties will now be able to share data as part of MHHS Testing.

Impacts on consumers and the environment

Impact of the Modification on consumer benefit areas:	
Consumer benefit area	Identified impact
Improved safety and reliability Elexon believes that this Modification is neutral against this consumer benefit area.	Neutral
Lower bills than would otherwise be the case Elexon believes that this Modification is neutral against this consumer benefit area.	Neutral
Reduced environmental damage Elexon believes that this Modification is neutral against this consumer benefit area.	Neutral

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Improved quality of service This Modification will improve service quality by enhancing data handling and sharing practices in line with modern standards and regulations. The introduction of clear data processor and controller obligations ensures more robust data management, thereby promoting confidence and trust among BSC Parties and consumers. Furthermore, by streamlining the data sharing process, it minimises disruptions and delays, leading to a smoother, more efficient service. Overall, these changes will bolster the integrity and reliability of the Balancing and Settlement arrangements.	Positive
Benefits for society as a whole Elexon believes that this Modification is neutral against this consumer benefit area.	Neutral

Legal Text Changes

We expect this Modification to impact the below documents:

- BSC Section C 'BSCCo and its Subsidiaries'[5]

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

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5 Governance

Self-Governance

☒ **Not Self-Governance –** A Modification that, if implemented:	
☒ materially impacts the Code's governance or modification procedures	☐ materially impacts sustainable development, safety or security of supply, or management of market or network emergencies
☐ materially impacts competition	☐ materially impacts existing or future electricity consumers
☐ materially impacts the operation of national electricity Transmission System	☐ is likely to discriminate between different classes of Parties
☐ involves any amendments to the EBGL Article 18 Terms and Conditions related to Balancing; except to the extent required to correct an error or as a result of a factual change	
☐ **Self-Governance –** A Modification that, if implemented:	
Does not materially impact on any of the Self-Governance criteria provided above	

This Modification should not be seen as Self-Governance based on the rationale that this will be a material change to the MHHS provisions in Section C that were introduced by Ofgem through its SCR powers. Therefore it is appropriate that Ofgem approval is sought for this change.

Progression route

☐ **Submit to assessment by a Workgroup** –:A Modification Proposal which:	
does not meet any criteria to progress via any other route.	
☒ **Direct to Report Phase** – A Modification Proposal whose solution is typically:	
☒ of a minor or inconsequential nature	☒ deemed self-evident
☐ **Fast Track Self-Governance** – A Modification Proposal which meets the Self-Governance Criteria and:	
is required to correct an error in the Code as a result of a factual change including but not limited to:	
☐ updating names or addresses listed in the Code	☐ correcting minor typographical errors
☐ correcting formatting and consistency errors, such as paragraph numbering	☐ updating out of date references to other documents or paragraphs
☐ **Urgent –** A Modification Proposal which is linked to an imminent issue or current issue that if not urgently addressed may cause:	
☐ a significant commercial impact on Parties, Consumers or stakeholder(s)	☐ a Party to be in breach of any relevant legal requirements.
☐ a significant impact on the safety and security of the electricity and/or gas systems	

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This Modification should be progressed straight to the Report Phase. Based on the rationale that data controller and data processor provisions are needed in order for MHHS testing to comply with data protection laws. Therefore there shouldn't be a need for a Workgroup to assess whether this Modification better facilitates the applicable objectives, or whether there is any alternative solution.

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

No. We do not believe this Proposal impacts any open SCRs.

Does this modification impact the code drafting and system development for Market wide Half Hourly Settlement (MHHS), if so, how?

No, we do not believe this impacts the code drafting or MHHS design. Rather it should be noted that this Modification is an interim solution for the eventual enduring MHHS code drafting.

Does this Modification impact any of the EBGL Article 18 Terms and Conditions held within the BSC?

Elexon does not believe that this Modification impacts on the EBGL Article 18 Terms and Conditions held with the BSC. The documents that this Modification seeks to update does not form part of the EBGL Article 18 Terms and Conditions.

Implementation approach

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

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