P458 ‘Introducing Data Controller and Processor Obligations in the BSC for Market-wide Half Hourly Settlement Testing’

ELEXON

Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

This Report Phase Consultation was issued on 17 July 2023, with responses invited by 28 July 2023.

There were 5 respondents to the consultation, of which the majority agreed. Additionally, 2 respondents agreed to the change overall but declined to give any further views via a formal consultation response.

Consultation Respondents

Respondent	Role(s) Represented
MHHS Programme (Elexon)	Other MHHS Programme
Northern Power Grid	Distributor
Drax	Generator and Supplier
Centrica	Supplier
Scottish Power Energy Networks	Distributor

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Question 1: Do you agree with the Panel's initial unanimous recommendation that P458 should be approved?

Summary

Yes	No	Neutral/No Comment	Other
3	2	0	0

Responses

Respondent	Response	Rationale
MHHS Programme (Elexon)	Yes	None given
Northern Power Grid	Yes	None given
Drax	Yes	We agree that P458 will allow efficient compliance with data protection regulations.
Centrica	No	We have provided some suggested changes to the legal text
Scottish Power Energy Networks	No	In terms of objective d, we believe that this proposal would negate the need for individual data sharing agreements between the MHHS Programme and individual parties, however as currently written we do not agree that this provides the clarity and protection required under Data Protection legislation. SPEN are supportive in the intent of this change, however, cannot approve due to lack of clarity and protection as detailed below: We have identified a number of areas within 'Section C' and do not believe that the change as written provides enough clarity on party roles as data processor or data collector. We believe that this lack of detail creates an exposure in responsibility and accountability. We also feel that as written the rights of any other data controller (i.e., DNO) are diminished (if not non-existent and unlawful) and therefor limits the ability of a non BSCCo controller to utilise their own audit function. e.g. In the Programme 'Data cut high level guidance document' it states that Personal Identifiable data is MPAN, address, meter serial number, in the BAU processes we are the data

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		controller for MPAN and Address. As we are essentially using 'live' data cuts we are concerned that there is no reference to the DNO as a data controller. We appreciate while carrying out the testing the DNO will be processors, there does seem to be a gap in clear identification of roles upstream of this, is it the intention that the existing data controllers lose all rights associated with this at the point of transfer of the data extract? SPEN have specific controls in place where data is to be shared, we do not believe that a general clause is sufficient, furthermore there is no reference to the means in which data is to be securely transferred – we believe that this is key to this change and should be addressed accordingly. In terms of Data Subject Rights Requests and Data Subjects' rights, we believe that there is a requirement for an agreed timescale to be included in the text, rather than a generic 'assist' to ensure compliance with Data Protection Legislation. In relation to the data breach section, we would recommend that a timescale is included in this area of text, currently this states reasonable assistance will be provided in notifying a data controller, we would recommend that the data controllers are notified **no later than 24 hours** following initial notification of awareness, as there are time constraints for controllers in reporting this that need to be adhered to. SPEN are of the view that a data processor should notify the data controllers **before** using a sub processor. Blanket approval is not recommended due to the lack of control this provides the data controller before their data is passed to a sub processor. Aspects that need to be considered include updating Article 30 records, reviewing due diligence and agreements in place, completing Transfer impact assessments, updating DPIAs as well as objecting to the use of the sub processor. In terms of the data processer not transferring test data outside of the EU, SPEN believe that there should be an additional requirement to assist and/or complete the Transfer Impact assessment. We are also of the strong view that any permission obtained

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Respondent	Response	Rationale
		in relation to this must be explicitly written permission.

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Question 2: Do you agree with the Panel that the redlined changes to the BSC deliver the intention of P458?

Summary

Yes	No	Neutral/No Comment	Other
2	3	0	0

Responses

Respondent	Response	Rationale
MHHS Programme (Elexon)	Yes	None given
Northern Power Grid	Yes	None given
Drax	No	The definition of MHHS Test Data Subjects excludes non-domestic consumers. As a non-domestic supplier we are participating in MHHS testing and anticipate there may be situations where we will need to transfer personal data, including the data of sole traders, which is treated similarly to domestic consumer data under data protection regulation. We believe “Domestic” should be removed from this definition.
Centrica	No	We have provided some changes to the legal text
Scottish Power Energy Networks	No	We do not believe that the controls that are planned to be implemented provide sufficient assurance to Industry parties in terms of GDPR. We have provided details of this in Section 4.

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Question 3: Do you agree with the Panel's recommended Implementation Date?

Summary

Yes	No	Neutral/No Comment	Other
4	1	0	0

Responses

Respondent	Response	Rationale
MHHS Programme (Elexon)	Yes	This requirement is required to allow the Programme to deliver Testing in line with the agreed Programme Plan.
Northern Power Grid	Yes	None given
Drax	Yes	We agree P458 should be implemented 5 working days after Authority decision.
Centrica	Yes	None given
Scottish Power Energy Networks	No	SPEN are not supportive of this change as currently written, and can therefor not support the implementation date

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Question 4: Do you agree with the Panel's initial view that P458 should not be treated as a Self-Governance Modification?

Summary

Yes	No	Neutral/No Comment	Other
5	0	0	0

Responses

Respondent	Response	Rationale
MHHS Programme (Elexon)	Yes	None given
Northern Power Grid	Yes	None given
Drax	Yes	None given
Centrica	Yes	None given
Scottish Power Energy Networks	Yes	SPEN agree that this should not be treated as self-governance.

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Question 5: Do you agree with the Panel's initial recommendation that P458 does not impact the European Electricity Balancing Guideline (EBGL) Article 18 terms and conditions held within the BSC?

Summary

Yes	No	Neutral/No Comment	Other
5	0	0	0

Responses

Respondent	Response	Rationale
MHHS Programme (Elexon)	Yes	None given
Northern Power Grid	Yes	None given
Drax	Yes	None given
Centrica	Yes	None given
Scottish Power Energy Networks	Yes	SPEN agree that there is no impact on EBGL

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Question 6: Will P458 impact your organisation?

Summary

High	Medium	Low	None	Other
1	1	2	1	0

Responses

Respondent	Response	Rationale
MHHS Programme (Elexon)	High	The MHHS programme described a high impact but this was in relation to the absence of P458 (i.e if P458 is not approved), so the impact can be seen as a positive one."
Northern Power Grid	None	The implementation of P458 will not impact us although if P458 was not implemented there is a risk to the security of personal data shared in the MHHS programme.
Drax	Low	It will impact us only insofar as we are participating in MHHS Testing.
Centrica	Medium	None given
Scottish Power Energy Networks	Low	We anticipate no system or process changes associated with this proposal, however, have concerns regarding the controls in place and protection in line with GDPR legislation.

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Question 7: How much will it cost your organisation to implement 458?

Summary

Solution	High	Medium	Low	None	Other
0	0	0	3	2	

Responses

Respondent	Response	Rationale
MHHS Programme (Elexon)	£0	It should result in more efficient delivery of the MHHS Programme.
Northern Power Grid	None given	None given
Drax	None given	We anticipate no cost for implementation.
Centrica	None given	None given
Scottish Power Energy Networks	£0	We anticipate no cost associated with this change, however, would raise that the GDPR implications of this have the potential to be significant if there are issues. We would request that points raised in section 4 are considered to increase the clarity of responsibilities and robustness of this process.

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Question 8: What will the ongoing cost of P458 be to your organisation?

Summary

Solution	High	Medium	Low	None	Other
0	0	0	3	2	

Responses

Respondent	Response	Rationale
MHHS Programme (Elexon)	£0	It should result in more efficient delivery of the MHHS Programme.
Northern Power Grid	None given	None given
Drax	None given	We anticipate no ongoing cost associated with P458.
Centrica	None given	None given
Scottish Power Energy Networks	£0	As above

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Question 9: How long (from the point of approval) would you need to implement P458?

Summary

0-6 months	6-12 months	>12 months	Other
2	0	0	3

Responses

Respondent	Response	Rationale
MHHS Programme (Elexon)	5 Working Days	Programme is awaiting implementation.
Northern Power Grid	N/A	None given
Drax	N/A	We do not anticipate a lead time will be necessary.
Centrica	None given	5 WDs
Scottish Power Energy Networks	None given	As there are no process changes as part of this proposal, there would be no lead time required, however if areas are still outstanding that conflict with SPEN's internal GDPR, Legal and Cyber security policies then this may impact on the provision of any data to the Programme. SPEN intend to use the qualification route and as such would not be providing data in the first round of the data extract requirements but will be required to provide this at a later stage of the Programme.

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Responses

Respondent	Location	Comment
SPEN	P458 Section C v37.1.docx 12.19C.2 (a), (k)	Data protection legislation requires that the data processor acts in accordance with the Data Controller. It is not clear at this point who the data controller is (e.g., is it the DNo, is it BSCCo, is it both). The clause seems to suggest that the processor only has to act in accordance with BSCCo and no other data controllers that are part of this and this should not be the case. A data processor can only act upon **written instruction of the data controller** and by only allowing this to be BSCCo you are in theory making it unlawful for any other data controllers to be involved. The audit rights should lie with the data controller. This limits a data controller to use their own audit function.
	P458 Section C v37.1.docx 12.19C.2 (e)	The controls that SPEN require before sharing data are key and detailed. A general clause is unlikely to be accepted by our legal/data protection and cyber security functions. These have to agree before any personal data is stored.
	P458 Section C v37.1.docx 12.19C.2 (f)	There should be an agreed time limit to notify the data controllers of any requests such as these so that they can kick off their processes.
	P458 Section C v37.1.docx 12.19C.2 (h)	It is recommended that the data controllers are notified **no later than 24 hours** considering the time constraints a controller has on reporting a breach to supervisory bodies.
	P458 Section C v37.1.docx 12.19C.4	A data processor should notify the data controllers before using a sub processor. Blanket approval is not recommended due to the lack of control this provides the data controller before their data is passed to a sub processor. Aspects that need to be considered include updating Article 30 records, reviewing due diligence and agreements in place, completing Transfer impact assessments, updating DPIAs as well as objecting to the use of the sub processor

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Respondent	Location	Comment
	P458 Section C v37.1.docx 12.19 C6	There should be a requirement to assist and /or complete required Transfer Impact assessments
	P458 Section C v37.1.docx 12.19 C6 (a)	This should be written approval
	P458 Section C v37.1.docx 12.9C.4	The numbering changes at 12.9c.4 (from 12.19C.3 to 12.9c.4) this continues throughout this section to 12.9.7.
Northern Powergrid	12.19A.1(a)	Correct spelling of “Commissioner”
	12.19A.1(c)	Only one party is identified at paragraph 12.19A.3(a) so change “Parties” to “Party”
	12.19A.3(a)	Clarify – “where BSCCo is acting in its capacity as MHHS Implementation Manager, it is the MHHS Data Controller”
Drax	12.19A.1(f)	The definition of MHHS Test Data Subjects excludes non-domestic consumers. As a non-domestic supplier we are participating in MHHS testing and anticipate there may be situations where we will need to transfer personal data, including the data of sole traders, which is treated similarly to domestic consumer data under data protection regulation. We believe “Domestic” should be removed from this definition.

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