

Michael Gibbons  
BSC Panel Chair  
Elexon  
350 Euston Road  
London  
NW1 3AW

Email: [rachel.clark@ofgem.gov.uk](mailto:rachel.clark@ofgem.gov.uk)

BY EMAIL TO:

[PanelSecretary@elexon.co.uk](mailto:PanelSecretary@elexon.co.uk)  
and [bsc.change@elexon.co.uk](mailto:bsc.change@elexon.co.uk)

Date: 17 September 2021

Dear Michael,

**Balancing and Settlement Code (BSC) Modification Proposal P424 'Re-insert correct definition of Settlement Error'**

P424 was raised by the BSC Panel at its meeting on 16 September 2021.<sup>1</sup> Following this meeting, we received a request from the BSC Panel dated 17 September 2021 that P424 be treated as an Urgent Modification Proposal.<sup>2</sup>

**This letter sets out our decision that Modification Proposal P424 should be progressed on an urgent basis.**

**Background**

The Authority approved BSC modification proposal P420 (Retail Code Consolidation Significant Code Review (SCR)) on 23 July 2021.<sup>3</sup> On subsequent review of the P420 legal text, it was found that text changes made to Section W ('Trading Disputes') of the BSC included removal of certain text in Clause 1.3.1. The removed text ought to be re-inserted, in the view of the BSC Panel, to ensure that the Trading Disputes process under the BSC operates as intended.

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<sup>1</sup> More information about [P424](#) including the P424 proposal form is available on the Elexon website.

<sup>2</sup> The terms "the Authority", "we" and "us" are used interchangeably in this document.

<sup>3</sup> Our [P420 decision](#) is on the Ofgem website.

In the P424 proposal form, the BSC Panel argued that the amendment to Clause W 1.3.1 made by P420 was intended to make clear that data produced under the Retail Energy Code (REC), which affects Settlement, is also eligible for consideration under a BSC Trading Dispute. This was correctly included in Section W. However, existing provisions of Section W that enabled errors in BSC data and/or process, used for the purposes of Settlement, to be considered as Trading Disputes were also removed.

Elexon has provided additional context regarding the potential commercial materiality impact of not re-instating the removed text. They have indicated that there are currently 27 open Trading Disputes between BSC Parties and Elexon. Elexon has also noted that, in the 12 months since 1 October 2020, 61 Trading Disputes have been closed with a Materiality of Correctable Error of over £17.3 million. The removal of the text creates uncertainty around the treatment of the open Trading Disputes and the ability of parties to raise new Trading Disputes until the matter has been resolved.

### **P424 overview and request for Urgency**

By raising P424, the Panel proposes to re-insert wording in Section W that was removed when P420 was made to ensure that future Trading Disputes can be raised where an error has been identified as being linked to the data and/or process used for the purposes of Settlement. The text to be re-inserted is set out below (amending Section W1.3.1 of the BSC as follows):

- the data and/or processes **used for the purposes of Settlement (including data required** under the Retail Energy Code which has, or potentially has, an impact on Settlement);

(The re-inserted text is shown in red.)

The Panel is seeking urgent treatment for P424 so that the issue with re-instating the text can be dealt with in the shortest possible timeframe.

### **Panel view**

At the BSC Panel meeting on 16 September 2021, the Panel voted unanimously in favour of recommending to Ofgem that P424 be treated as an Urgent Modification Proposal.

In the Panel's view, the re-insertion of the text that was removed when P420 was made will correct a genuine manifest error, and restoring the wording to its original intent will ensure

there is no significant commercial impact on BSC Parties. By not correcting the error, it is the Panel's view that there is a risk that a Trading Dispute that should be treated as valid would be rejected and could result, in certain cases, in a significant commercial impact on BSC Parties. The Panel's view is that the solution ought to be applied retrospectively from 1 September 2021 when the Settlement Error definition was amended by P420.

## Our view

In reaching our decision on the Urgency of P424 we have considered the details within the P424 proposal form, the justification for urgency, the views of the Panel, and we have also assessed the request against the urgency criteria set out in Ofgem's published guidance.<sup>4</sup>

We agree with the Panel that the re-insertion of the text that was removed by P420 requires urgent consideration. In line with our urgency criteria, we consider that P424 highlights 'a current issue that if not urgently addressed may cause a significant commercial impact on parties'.<sup>5</sup> The definition of Trading Dispute has a material commercial bearing on BSC Parties, and, since Trading Disputes can be raised at any time, it is important that changes proposed to the definition which would have retrospective effect are considered promptly.

The Panel presented us with a proposed Urgent timetable should we agree that Urgency is appropriate for P424. We agree with the proposed timetable and have set out below the process steps and relevant dates we expect to be followed:

Process	Date
Ofgem Decision on Urgency – this letter	17 September 2021
Report Phase consultation issued	20 September 2021
Report Phase consultation ends	24 September 2021
Draft Modification Report presented to the Panel	Week commencing 27 September 2021
Issue Final Modification Report to Ofgem	Panel considers Draft Modification Report + 1 Working Day
Implementation Date	+1 Working Day after Authority Decision

<sup>4</sup> [Ofgem's guidance on Code Modification Urgency Criteria](#) is available on the Ofgem website.

<sup>5</sup> Criterion a) of our urgency criteria – see footnote 4 above.

For the avoidance of doubt, in granting this request for Urgency, we have made no assessment of the merits of P424 and nothing in this letter in any way fetters our discretion in respect of P424.

Yours sincerely,

**Rachel Clark**  
**Deputy Director, Switching Programme**