

# ELEXON

**17 September 2021**

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**RE: Request to treat BSC Modification P424 'Re-insert correct definition of Settlement Error' as an Urgent Modification Proposal'**

**Dear Mr Down,**

The BSC Panel, at a Panel Meeting on 16 September 2021, unanimously agreed to recommend to Ofgem that P424 should be treated as an Urgent Modification Proposal. The Proposal Form details the Modification Proposal, including the case for urgency and the proposed urgent timetable and procedure. However, we summarise the key requests and rationale in this letter.

The Panel recommend that the Modification follow the Report Phase procedure, with a five Working Day consultation and a non-standard Panel meeting to gather the Panel's final views. The Panel also recommend that the Modification is implemented one Working Day after Authority decision, but is effective (retrospective) from 1 September 2021.

The Panel noted that P424 would not meet the Fast Track Self-Governance criteria or the Self-Governance criteria.

## **Modification Background**

[P420 'Retail Code Consolidation Significant Code Review'](#) made changes to [BSC Section W 'Trading Disputes'](#) including removing text in Clause 1.3.1 that following subsequent legal review needs to be re-inserted to ensure no commercial impact on any raised Trading Disputes to Elexon and other BSC Parties.

The text was removed in response to Industry feedback suggesting the proposed wording was not clear. However, the deleted text, means that Parties will be unable to

raise Disputes that arise from data and/or processes used for the purposes of Settlement.

The amendment to Section W 1.3.1 was intended to make clear that data produced under the Retail Energy Code, which affects Settlement, is also eligible for consideration under a BSC Trading Dispute. This was correctly included in Section W, but incorrectly removed the 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. As it stands, the definition of Settlement Error is wrong and will exclude Disputes that should otherwise be considered. For context, of the potential commercial impact to Parties there are currently 27 open Trading Disputes with Elexon. In the 12 month period since 1 October 2020, 61 Trading Disputes have been closed with a Materiality of Correctable Error of over £17.3m.

Due to the potential commercial impacts the current clause could cause for Parties, the Modification has been progressed in the shortest possible timeframe so far. This means that no Initial Written Assessment (IWA) document has been produced rather the details of the initial assessment can be found in the Proposal Form and slides presented to the BSC Panel as attached.

### **Justification for Urgency**

The Elexon Legal team have advised the Modification proposal should be granted Urgent status and retrospective implementation (to 1 September 2021) in order to ensure any Trading Disputes raised in the future can be processed as per the previously established process. They believe that the current text is obviously incorrect and that there could be no difference of opinion about it, thus justifying this is a manifest error to Section W of the BSC.

In this case, their view is that this test has been met because the wording removed from the Code had been an integral part of the BSC definition of Settlement Error since Section W was established and the removal of that wording was an error that was unnecessary to achieve the objectives of P420. The purpose of the P420 amendment was to extend the scope of the definition of Settlement Error to reflected that some BSC processes had transferred to the REC, whereas the implemented drafting constitutes a significant and unintentional reduction in the scope of the definition.

The Panel agreed with the Proposer that this Modification meets the [Ofgem urgent criterion](#) a). This Modification is linked to a current issue that if not urgently addressed may cause a significant commercial impact on parties, consumers or other stakeholder(s) for the reasons detailed by the Proposer in the Proposal Form.

If Urgent status is not granted for this Modification this creates a risk that future Trading Disputes cannot be processed and the Parties involved could incur commercial impacts.

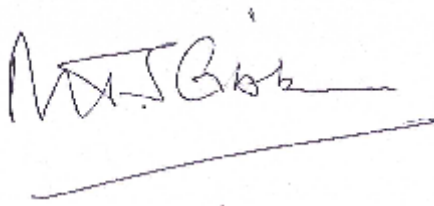
The proposed Urgent timetable is presented below:

Proposed Progression Timetable and Procedure – with Urgent status granted	
Event	Date
Panel considers Modification Proposal	16 September 2021
Consultation – 5 working days	17 September 2021 – 24 September 2021

Proposed Progression Timetable and Procedure – <b>with Urgent status granted</b>	
Event	Date
Present Draft Modification Report to 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

The recommended urgent timetable requires the P424 consultation to be issued on Monday, 20 September 2021. The Panel appreciate the tight timelines and thank Ofgem in advance for their timely response.

Yours sincerely,



Michael Gibbons  
Panel Chairman

List of enclosures

Attachment 1: P424 Proposal Form and Legal Text

Attachment 2: P424 BSC Panel Slides