

INITIAL WRITTEN ASSESSMENT for Modification Proposal P131

Introduction of further provisions relating to the determination of Trading Disputes

Prepared by: ELEXON¹ Limited

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This document has been distributed in accordance with Section F2.1.10² of the Balancing and Settlement Code.

RECOMMENDATIONS

On the basis of the initial assessment BSCCo recommends that the Panel:

- **NOTE the results of the Initial Written Assessment;**
- **DETERMINE that Modification Proposal P131 should be submitted to the Definition Procedure in accordance with section F2.5 of the Code;**
- **AGREE the Definition Procedure timetable such that a Definition Report should be completed and submitted to the Panel for consideration at its meeting of 11 September 2003;**
- **DETERMINE that the Definition Procedure should be undertaken by the P131 Modification Group; and**
- **AGREE any refinement to the Modification Group Terms of Reference.**

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¹ ELEXON Ltd currently fulfils the role of the Balancing and Settlement Code Company ('BSCCo'), pursuant to Annex X-1 of the Balancing and Settlement Code ('the Code').

² The current version of the Balancing and Settlement Code can be found at www.elexon.co.uk/ta/bscrl_docs/bsc_code.html

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SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

As far as BSCCo has been able to assess the following parties/documents have been initially identified as being potentially impacted by Modification Proposal P131.

Parties	Sections of the BSC	Code Subsidiary Documents
Suppliers <input checked="" type="checkbox"/>	A <input type="checkbox"/>	BSC Procedures <input checked="" type="checkbox"/>
Generators <input checked="" type="checkbox"/>	B <input type="checkbox"/>	Codes of Practice <input type="checkbox"/>
Licence Exemptable Generators <input checked="" type="checkbox"/>	C <input type="checkbox"/>	BSC Service Descriptions <input type="checkbox"/>
Transmission Company <input checked="" type="checkbox"/>	D <input type="checkbox"/>	Service Lines <input type="checkbox"/>
Interconnector <input checked="" type="checkbox"/>	E <input type="checkbox"/>	Data Catalogues <input type="checkbox"/>
Distribution System Operators <input checked="" type="checkbox"/>	F <input type="checkbox"/>	Communication Requirements Documents <input type="checkbox"/>
Party Agents	G <input type="checkbox"/>	Reporting Catalogue <input type="checkbox"/>
Data Aggregators <input type="checkbox"/>	H <input type="checkbox"/>	MIDS <input type="checkbox"/>
Data Collectors <input type="checkbox"/>	J <input type="checkbox"/>	Core Industry Documents
Meter Operator Agents <input type="checkbox"/>	K <input type="checkbox"/>	Grid Code <input type="checkbox"/>
ECVNA <input type="checkbox"/>	L <input type="checkbox"/>	Supplemental Agreements <input type="checkbox"/>
MVRNA <input type="checkbox"/>	M <input type="checkbox"/>	Ancillary Services Agreements <input type="checkbox"/>
BSC Agents	N <input type="checkbox"/>	Master Registration Agreement <input type="checkbox"/>
SAA <input type="checkbox"/>	O <input type="checkbox"/>	Data Transfer Services Agreement <input type="checkbox"/>
FAA <input type="checkbox"/>	P <input type="checkbox"/>	British Grid Systems Agreement <input type="checkbox"/>
BMRA <input type="checkbox"/>	Q <input type="checkbox"/>	Use of Interconnector Agreement <input type="checkbox"/>
ECVAA <input type="checkbox"/>	R <input type="checkbox"/>	Settlement Agreement for Scotland <input type="checkbox"/>
CDCA <input type="checkbox"/>	S <input type="checkbox"/>	Distribution Codes <input type="checkbox"/>
TAA <input type="checkbox"/>	T <input type="checkbox"/>	Distribution Use of System Agreements <input type="checkbox"/>
CRA <input type="checkbox"/>	U <input type="checkbox"/>	Distribution Connection Agreements <input type="checkbox"/>
Teleswitch Agent <input type="checkbox"/>	V <input type="checkbox"/>	BSCCo
SVAA <input type="checkbox"/>	W <input checked="" type="checkbox"/>	Internal Working Procedures <input checked="" type="checkbox"/>
BSC Auditor <input type="checkbox"/>	X <input type="checkbox"/>	Other Documents
Profile Administrator <input type="checkbox"/>		Transmission Licence <input type="checkbox"/>
Certification Agent <input type="checkbox"/>		
MIDP <input type="checkbox"/>		
TFLA <input type="checkbox"/>		
Other Agents		
SMRA <input type="checkbox"/>		
Data Transmission Provider <input type="checkbox"/>		

Estimated cost for progressing P131 through Modification Procedures	£ 3,000 + 80 ELEXON man days
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1 DESCRIPTION OF PROPOSED MODIFICATION

1.1 Modification Proposal

Modification Proposal P131 "Introduction of further provisions relating to the determination of Trading Disputes" ("P131") was raised on 23 June 2003 by the Trading Disputes Committee (TDC) on behalf of the BSC Panel.

P131 seeks to modify the Code to incorporate provisions relating to the timely detection and prompt rectification of Trading Disputes, for example the setting of baseline dates for the detection of Settlement errors. It also envisages that there will be a requirement for additional provisions relating to referral of Trading Disputes to the BSC Panel and/or arbitration as a consequence of the provision referred to above.

The TDC is of the view that the BSC should place obligations on Parties with regard to the detection and rectification of Trading Disputes. Furthermore the TDC believes the emphasis on prompt and accurate rectification of Settlement, will promote efficiency in the implementation and administration of the balancing and settlement arrangements, and therefore better facilitate the achievement of Applicable BSC Objective (d).

1.2 Background

Prior to April 2003 the TDC adopted the approach described in BSCP11 "Volume Allocation and Settlement Run Queries", in that a Trading Dispute could not be endorsed unless it fell within one of the criteria described in BSCP11 section 5.15 "Dispute Criteria". In effect, the mechanism in BSCP11 was to prevent a BSC Party from raising a Trading Dispute where that Party had not acted promptly. BSCP11 therefore provided an incentive for BSC Parties to check their Settlement data and raise a Trading Dispute promptly.

However, the position under the Code is that Settlement should be carried out in accordance with the rules in the Code i.e where a Settlement error³ has occurred any Party with an interest should be entitled to the remedy of having the error corrected (Section W.4), subject to the rules of limitation within the BSC (Section W 1.2.5). In other words, as a matter of principle, the emphasis of the Code is to promote transparency and accuracy of information and in this context, the accuracy of Settlement data.

At the Panel meeting on 10 April 2003 the TDC Chairman presented paper 60/017 "TDC Paper concerning the validity and application of BSCP11 criteria" to the Panel. Based on legal advice provided to the TDC, the paper stated that the criteria contained in BSCP11, and used by the TDC to determine the validity of a claim, were inconsistent with the Code and therefore invalid. The Panel agreed with the recommendations in the paper and decided that the TDC should suspend the application of the criteria set out in section 5.15 of BSCP11. In addition the Panel decided that BSCP11 should be modified and in particular should incorporate a valid time limit.

The TDC used the Trading Disputes Criteria Advisory Group (TDCAG) to further investigate this issue and propose a way forward. After taking further legal advice, the TDCAG determined that it was not possible to achieve the desired outcome solely by modifying BSCP11 and that in addition a Modification Proposal was required.

At the Panel meeting on 12 June 2003 the TDC Chairman presented paper 63/012 "TDC Recommendation to raise a Modification Proposal: Introduction of further provisions relating to the determination of Trading Disputes". The Panel agreed with the recommendations in the paper and subsequently TDC, on behalf of the Panel, raised P131 on 23 June 2003.

³ Paper 60/018 provides guidance to the Panel on how "Settlement Error" is defined in and operates under the Code.

1.3 Issues raised by the Modification Proposal

An initial assessment of P131 has identified the following potential areas of impact and issues, which the Modification Group will need to consider and address in progressing the Modification Proposal:

- need to understand the implications of P107 'Data Retention Requirements for Post-Final Trading Disputes', in particular the reduction in the limit for raising a Trading Dispute from 36 months to 20 months⁴, and the Modification Group discussions on this;
- need to determine whether including additional criteria in the Code and/or BSCP11 would better facilitate the achievement of the Applicable BSC Objectives, and in particular on the principle of including a further time limit, to create an incentive for prompt rectification of Settlement errors;
- need to determine an approach to defining the criteria, including whether it should:
 - be based on an objective (i.e. within X Working Days of event Y) or subjective (i.e. in the reasonable opinion of...) measure;
 - be specified in a positive (i.e. you can raise a claim if ...) or negative (i.e. you can raise a claim unless ...) form. This will have an impact on how unforeseen events are treated;
 - include criteria specific to BSCCo's ability to raise a Trading Dispute;
- need to consider the effect of a Party failing to meet the criteria, and whether the matter can still be referred to the Panel or arbitration. In both cases this would need to take into account that the TDC would not have considered whether this claim represented a Settlement error and, in the case of a referral to the Panel, the Modification Group would need to consider what powers the Panel should have;
- need to determine the optimal location for any changes, such that the principle is introduced in the Code and any supporting information is located in BSCP11; and
- need to acknowledge that the existing conflict between the Code and BSCP11 would remain should the Proposed Modification not be made.

In addition the Modification Group will need to recognise that the Modification Proposal has been discussed and the potential benefits already recognised by the TDC. However, Parties will represent a different audience to that of the TDC, with different levels of understanding and potentially different perspectives on such matters. The consultation will need to ensure the benefits of the Modification Proposal are clearly explained.

2 INITIAL ASSESSMENT OF IMPACTS OF MODIFICATION PROPOSAL

2.1 Impact on BSC Systems and processes

An initial assessment has been undertaken in respect of all BSC Systems and processes and the following have been identified as potentially being impacted by the Modification Proposal.

BSC System / Process	Potential Impact of Proposed Modification
Dispute Resolution	P131 will alter what can be classified as a Trading Dispute, and depending on the proposed solution to P131, the processes followed by the TDC and the Panel in assessing Trading Queries and Disputes.

⁴ See section W1.2.6 of the P107 legal text where the new term "relevant deadline" is defined.

2.2 Impact on other systems and processes used by Parties

Parties will need to consider how additional criteria will affect the level of regular monitoring they perform, and processes they have for Trading Queries and Trading Disputes.

2.3 Impact on documentation

2.3.1 Impact on Balancing and Settlement Code

An initial assessment has been undertaken in respect of all Sections of the Code and the following Sections have been identified as potentially being impacted by the Modification Proposal.

Item	Potential Impact of Proposed Modification
Section W	P131 will primarily affect paragraph 3.3 "Raising a Dispute", which will need to be changed to include the criteria to be used in defining what can be classified as a Trading Dispute. However, it may also have an impact on other paragraphs, such as 3.5 "References to the Panel" and 3.6 "Arbitration".

2.3.2 Impact on Code Subsidiary Documents

An initial assessment has been undertaken in respect of all Code Subsidiary Documents (CSDs) and the following CSDs have been identified as potentially being impacted by the Modification Proposal.

Item	Potential Impact of Proposed Modification
BSCP11 - Volume Allocation and Settlement Run Queries	The criteria in section 5.15 will be removed and additional changes will be made to the BSCP to reflect any changes made to Section W of the Code.

2.4 Impact on Core Industry Documents

No impacts have been identified.

2.5 Impact on other configurable items

An initial assessment has been undertaken in respect of other configurable items and the following have been identified as potentially being impacted by the Modification Proposal.

Item	Potential Impact of Proposed Modification
Business Process Model	Changes to reflect any new or revised processes, in particular to "3 Resolve Trading query/dispute".
BSCCo Obligation Register	Changes to reflect any new or revised obligations.

3 IMPACT ON BSCCO

An initial assessment has been undertaken in respect of BSCCo and the following have been identified as potentially being impacted by the Modification Proposal.

Area of Business	Potential Impact of Proposed Modification
BSCCo Procedures	The Assurance department within BSCCo will need to make consequential changes to its procedure for dealing with initial claims of a Trading Dispute, to reflect any changes in Section W of the Code or BSCP11.

4 IMPACT ON BSC AGENT CONTRACTUAL ARRANGEMENTS

No impacts have been identified.

5 RATIONALE FOR BSCCO'S RECOMMENDATIONS TO THE PANEL

Trading Disputes are exceptional events, in that they have resulted from circumstances that the raising Party believe are already outside the normal rules for Settlement contained within the Code:

- any criteria will be attempting to anticipate the nature of future unexpected circumstances and events;
- any criteria for dealing with such events will have a natural tendency to be subjective – i.e. if it was easy for it to be objective then it is likely the existing rules could have taken it into account;
- it will be necessary to strike a balance between the aims of the TDC (to ensure prompt raising of claims) and a Party's right to be able to seek a remedy for what it believes is a genuine and material Settlement error.

Therefore BSCCo believes it will be difficult to draft suitable legal text that satisfies the above criteria. The importance of this also suggests that draft legal text should be available prior to any consultation during the Assessment Procedure, such that it is clear what Parties are being asked to consider.

As a result BSCCo believes a 2-month Definition Procedure is required, to provide the Modification Group sufficient time to consider the issues in Section 1.3, prepare an assessment of the issues and in turn create a clear statement of the P131 requirements prior to entering the Assessment Procedure.

6 PROCESS, TIMETABLE AND COST FOR PROGRESSING THE MODIFICATION PROPOSAL

BSCCo recommends that this Modification Proposal be submitted to a new P131 Modification Group. This Modification Group should be formed from members of the existing Volume Allocation Standing Modification Group (VASMG), the existing Settlement Standing Modification Group (SSMG) and also additional expertise from the TDC and in particular those involved in the TDCAG or with Past Notification Errors experience. The P131 Modification Group should be actioned to provide its report to the Panel by 11 September 2003.

It is estimated that the progression of this Modification through the Definition Procedure will require:

- three Modification Group meetings (plus potentially a number of sub-group meetings); and
- one industry consultation.

The proposed timetable for progression of this Modification is given in Annex 2.

The cost of progressing P131 through the Modification Process will incur third party costs of £3,000, funded from the demand led budget, in addition to 80 man days from the core team. This estimate is based on current information and may be subject to change.

The cost of implementing any Proposed or Alternative Modification will be determined during the Assessment Procedure.

7 DOCUMENT CONTROL

7.1 Authorities

Version	Date	Author	Reviewer	Change Reference
0.1	01/07/03	Change Delivery		Peer review
0.2	03/07/03	Change Delivery		Change Delivery Review
1.0	04/07/03	Change Delivery		For Panel Decision

7.2 References

None

ANNEX 1 MODIFICATION PROPOSAL

Modification Proposal	MP No: 131 (mandatory by BSCCo)
Title of Modification Proposal (mandatory by proposer): Introduction of further provisions relating to the determination of Trading Disputes	
Submission Date (mandatory by proposer): 23 June 2003	
Description of Proposed Modification (mandatory by proposer): <p>This Modification seeks to modify the BSC to incorporate provisions relating to the timely detection and prompt rectification of Trading Disputes, for example the setting of baseline dates for the detection of settlement errors. It is also envisaged that there will be a requirement for additional provisions relating to referral of Trading Disputes to the BSC Panel and/or arbitration as a consequence of the provisions referred to above.</p>	
Description of Issue or Defect that Modification Proposal Seeks to Address (mandatory by proposer): <p>The TDC is of the view that the BSC should place obligations on Parties with regard to the detection and rectification of Trading Disputes.</p> <p>BSC Panel Paper 60/017 presented legal opinion on the criteria for the validity of Trading Disputes in Section 5.15 of BSCP11. The legal opinion stated that most of the criteria in Item 5.15 of BSCP11 are substantively inconsistent with the Code and therefore invalid, and that those remaining are essentially examples of types of potential settlement errors. The preamble in Item 5.15 of BSCP11 which states that all Disputes raised in accordance with BSCP11 must fulfil one of the listed criteria was also judged to be inconsistent with the Code and therefore also invalid.</p>	
Impact on Code (optional by proposer): <p>Section W</p>	
Impact on Core Industry Documents (optional by proposer): <p>Modification of the BSC may necessitate changes to BSCP11</p>	
Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties (optional by proposer): <p>None</p>	
Impact on other Configurable Items (optional by proposer): <p>None</p>	
Justification for Proposed Modification with Reference to Applicable BSC Objectives (mandatory by proposer): <p>This Modification Proposal has been raised by the BSC Panel on the recommendation of the TDC made in accordance with BSC Section W 5.3.1. The proposed changes to the BSC (and if necessary BSCP11), with the emphasis on prompt and accurate rectification of Settlement, will promote efficiency in the implementation and administration of the balancing and settlement arrangements (BSC Objective (d)).</p>	

Modification Proposal	MP No: 131 <i>(mandatory by BSCCo)</i>
Details of Proposer: <div style="margin-left: 40px;"> Name: BSC Panel Organisation: – Telephone Number: – Email Address: </div>	
Details of Proposer's Representative: <div style="margin-left: 40px;"> Name: Claire Maxim Organisation: TDC Telephone Number: 02476 425 378 Email Address: claire.maxim@pgen.com </div>	
Details of Representative's Alternate: <div style="margin-left: 40px;"> Name: Nicole King (TDC Chair) Organisation: ELEXON Telephone Number: 020 7380 4158 Email Address: nicole.king@elexon.co.uk </div>	
Attachments: No If Yes, Title and No. of Pages of Each Attachment:	

ANNEX 2 GANTT CHART

