

## Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

## P351 'Align the BSC with changes to the SCR requirements'

As part of its third Code Governance Review, Ofgem seeks to introduce more flexibility to the (Balancing and Settlement Code) BSC Modifications process following a Significant Code Review. The proposed changes include three routes for progressing an SCR's conclusions, with potential allowance to move between the processes. P351 seeks to align the BSC with the licence changes made by Ofgem to deliver these new processes.



The BSC Panel initially recommends **rejection** of P351

This Modification is expected to impact:

- ELEXON

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## About This Document

This is the P351 Draft Modification Report, which ELEXON will present to the Panel at its meeting on 19 January 2017. It includes the responses received to the Report Phase Consultation on the Panel's initial recommendations. The Panel will consider all responses, and will agree a final recommendation to the Authority on whether the change should be made.

There are four parts to this document:

- This is the main document. It provides details of the solution, impacts, costs, benefits/drawbacks and proposed implementation approach. It also summarises the Workgroup's key views on the areas set by the Panel in its Terms of Reference, and contains details of the Workgroup's membership and full Terms of Reference.
- Attachment A contains the draft redlined changes to the BSC for P351 Proposed Modification.
- Attachment B contains the draft redlined changes to the BSC for the P351 Alternative Modification.
- Attachment C contains the full responses received to the Workgroup's Assessment Procedure Consultation.
- Attachment D contains the full responses received to the Panel's Report Phase Consultation.

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### Why Change?

Ofgem published its [final proposals for Phase 3 of the Code Governance Review \(CGR\)](#) in March 2016. These proposals include changes to Standard Licence Condition C3 'BSC' (SLC3) of the [Transmission Licence](#). The SLC3 creates three additional routes for taking forward the conclusions of a Significant Code Review (SCR). These changes are due to become effective from 31 March 2017.

### Solution

Changes are being made to the Transmission Licence to deliver the new routes. A corresponding change to the BSC is required to align it with the changes to SLC3.

The Workgroup has raised an Alternative Modification that is identical to the Proposed Modification except that, when Ofgem elects to progress its conclusions through the Ofgem-led processes, it must demonstrate to the Panel that the changes meet Exceptional Circumstances Criteria.

### Impacts & Costs

There are no direct impacts anticipated for BSC Parties to implement this change. This change will only impact ELEXON and the processes by which it manages and implements change to the BSC following a Significant Code Review (SCR) as detailed within BSC Section F.

Estimated central implementation costs of £240 (one ELEXON working day) will be required to make the changes to BSC Section F.

### Implementation

It is proposed that P351 will be implemented on 31 March 2017 to align with the activation of the Transmission Licence amendments.

### Recommendation

The initial majority recommendation of the Panel is that P351 should be rejected. The majority of the Workgroup believe that both the Proposed Modification and the Alternate Modification better meet applicable BSC Objective (a) but this is outweighed by detrimental impact on Applicable BSC Objectives (c) and (d). Overall, the Panel believes the Proposed Modification would be better than the Alternative Modification, although neither is better than the current baseline.



### Why do we need to change the Modifications process?

In 2010, Phase 1 of Ofgem's [Code Governance Review](#) (CGR) implemented measures to improve the governance arrangements in three of the main industry codes that underpin the gas and electricity markets (including the BSC). In 2013, Phase 2 of the CGR extended many of the outcomes to the remaining industry codes.

In May 2015, Ofgem announced its intention to conduct Phase 3 of the review (CGR3). This was due to concerns that the code governance arrangements may still not be operating in the best interest of consumers. This was particularly in light of significant changes to the industry such as the roll out of smart meters, the low carbon transition and the European Union (EU) Third Energy Package.

Ofgem published its [final proposals for Phase 3 of the CGR](#) in March 2016. These proposals took into account feedback on the initial proposals as well as input from industry and Code Administrators' workshops (which ELEXON attended). One proposal plans changes to the Transmission Licence, Standard Licence Condition C3 'BSC' (SLC3) to create additional routes for progressing the conclusions of a SCR. These changes are due to become effective from 31 March 2017.

### What is the issue?

In order to keep the BSC aligned with the Transmission licence, changes are required to BSC Section F to introduce the three new routes under which a SCR Modification can progress.

#### What is an SCR?

The SCR process has been added to the licence in order to facilitate significant industry changes in the most efficient manner.

Ofgem has the sole right to raise SCRs, but will consult on scope of the review before commencing the SCR. Once commenced the SCR will utilise a number of industry workshops to develop an SCR conclusion.

The period between the SCR commencing and SCR closing is known as the "SCR Phase". Further details on the SCR process can be found in the final licence modifications.

### Proposed solution

[P351 'Align the BSC with changes to the SCR requirements'](#) was raised by National Grid on 29 July 2016. It proposes to align the BSC with the changes to SLC3. The proposed changes will introduce three routes for taking forward the conclusions of an SCR. It is intended that this will accelerate the change process and enable more efficient delivery of priority Modifications.

You can find a diagram summarising the possible routes in Appendix 1.

#### 1. Ofgem directs licensee(s) to raise Modification Proposal(s)

This is the existing route by which changes arising from an SCR are progressed. At the end of the SCR process Ofgem would issue a direction to National Grid to raise one or more SCR Modification Proposals to take forward the changes to the BSC. This direction may set out high level principles (with the detail to be developed by industry) or more specific, detailed conclusions to be given effect through code change(s). The Modification(s) would then follow the standard BSC Modification processes.

#### 2. Ofgem raises Modification Proposal(s)

At the end of the SCR process Ofgem would raise a Modification(s) itself, and would be the Proposer of that Modification(s). As with Route 1, the Modification(s) would follow the standard BSC Modification processes.

#### 3. Ofgem leads an end-to-end process to develop code Modification(s)

The standard industry process would not apply. Ofgem would lead an end-to-end development and assessment of the solution to deliver its conclusions. As part of this, it would expect to consult and engage with the wider industry. Ofgem would expect close involvement of the industry; for example, it may establish and lead Workgroups similar to the approach under the standard code Modification processes (but led by Ofgem). At the end of this process, Ofgem would present a report to the BSC Panel laying out the solution(s) proposed by the process. The Panel would then provide a recommendation on the proposed solution(s) developed (and if there were multiple solutions put forward then which one the Panel preferred). This would then be delivered to the Authority for final determination. Please note that the standard appeal routes would still be available should the Panel recommendation and Authority determination differ.

### Changing the Route of a SCR Modification

The proposed solution will enable the Authority to issue a Backstop Direction notice at any point during Routes 1 and 2, requiring the Modification(s) be withdrawn and the SCR Phase recommence. Ofgem could also elect to end progression under Route 3 and direct a Modification(s) be raised and progressed under Routes 1 or 2.

The solution will also include a clarification that the Panel retains the option to conduct a consultation on the proposed Implementation date with BSC members so long as this can be completed within the SCR timelines as detailed by Ofgem.

## Are there any alternative solutions?

The Workgroup reflected on comments made by one of the Assessment Consultation respondents with regards to the ongoing discussions about the Competition and Market Authority (CMA) proposed remedies for SCR processes.

In response the Workgroup elected to raise an Alternate Modification which is identical to the proposed solution except the addition of the change detailed below:

The BSC would define 'SCR Exceptional Circumstances Criteria' where any Authority-led Modification Proposal being progressed would be one where, if implemented, would have:

1. significant impact on consumers; or
2. significant impact on market structure; or
3. significant impact on more than one industry code.

Ofgem would be expected to include evidence of meeting one of these criteria in its report to the Panel at the end of the SCR process. If the Panel decided that these criteria were not met they would be bound to recommend rejection of the Modification.

You can find the Workgroup's full discussions and specific questions on these areas in Section 6.

## Legal text

The proposed changes to BSC Section F to deliver the P351 Proposed Modification can be found in Attachment A and the draft Legal text for the P351 Alternate Modification can be found in Attachment B.

## 4 Impacts & Costs

### Estimated central implementation costs of P351

The central implementation costs of P351 are approximately £240 (one ELEXON working day) to implement the changes to the BSC. There is no impact on any BSC Agents or on BSC systems.

### Indicative industry costs of P351

The implementation of P351 is not expected to require any costs or effort from any BSC Party or Party Agent, as all the changes will be to the BSC. Two respondents to the Assessment Procedure Consultation noted possible on-going impacts on their organisations as a result of the new processes, should they ever be invoked. You can find the full responses in Attachment C.

### P351 impacts

#### Impact on BSC Parties and Party Agents

No direct impacts. BSC Parties could be impacted by additional costs levied via proposed SCR route 3.

#### Impact on Transmission Company

None expected

#### Impact on BSCCo

Area of ELEXON	Impact
Change Management	Updates to working instructions to implement the new SCR routes.

#### Impact on BSC Systems and process

None expected

#### Impact on Code

Code Section	Impact
Section F	Amendments to the legal text as drafted in Attachments A and B to implement the new SCR routes.
Section X Annex X-1	

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### Recommended Implementation Date

The Workgroup recommends an Implementation Date for P351 of:

- **1 April 2017** if the Authority's decision is received on or before 1 March 2017;

This would align the implementation of the BSC changes with the go-live date of the changes to the Transmission Licence.

All respondents to the Assessment Procedure Consultation support this approach.

All respondents to the Report Phase Consultation support this approach.



### How would the Ofgem-led process work?

There was consensus across the Workgroup that the [SCR Guidance document](#) provided by Ofgem did not provide sufficient clarity or assurance on how and when the three proposed SCR routes would be used, and in particular the process where Ofgem would lead on the end-to-end development of the solution (Route 3). Members of the Workgroup felt that this lack of certainty undermined confidence in the governance of the energy market and could be damaging to competition. Several members expressed concern that the proposals potentially gave Ofgem the ability to do as it wished within the market without appropriate checks and balances to ensure that the best interests of consumers and BSC Parties were being taken into account.

The Ofgem representative responded that Route 3 is only intended for use when significant cross-code change is required to deliver the SCR's conclusions, which they considered is expected to be rare. They added that Ofgem has the power to implement change now via Licence changes and this third route would better engage BSC Parties and other participants. They also added that Ofgem would provide regular updates via its website and monthly Panel updates on the progress of SCR Route 3 Modifications. A member noted that BSC Parties would also maintain the existing right of appeal to the CMA under Route 3.

Workgroup members noted Ofgem's view but still considered that, without any clear commitment to a process or a timetable in writing (e.g. by updating the SCR Guidance document), there was still the potential for a lack of transparency and confusion for industry Parties as to the process that would be followed and what engagement or consultation would take place. One member also pointed out that raising an appeal with the CMA can be a hugely expensive process, and this would most likely deter most BSC Parties. Workgroup members asked several times for clarification of the guidance from Ofgem with more specifics around the process for Modifications following the Route 3 process and the timetable that any such Modification would follow.

One respondent to the Assessment Consultation also felt that the SCR Guidance document was incomplete and required additional detail to give further clarity and assurance to the Industry.

### Alignment with the proposed CMA remedy

One respondent to the Assessment Procedure Consultation suggested that the proposed Route 3, where Ofgem leads the end-to-end process to develop code modifications(s), goes beyond the recommendation made by the CMA following its recent [Energy Market Investigation](#). The CMA recommended that Ofgem should have the ability to intervene to take substantive and procedural control of an ongoing strategically important modification proposal only in exceptional circumstances. The respondent felt that to go beyond the CMA's recommendation without a clearly defined and documented process undermines confidence in the governance of the energy market and could be damaging to competition and administrative efficiency, negatively affecting Objectives (c) and (d).

The respondent also noted that Ofgem is currently [consulting](#) on the implementation of the CMA's recommendations. In the consultation, it is seeking views on the future of the SCR. Specifically, Ofgem is asking whether their enhanced powers over strategically important modification proposals mean that the existing SCR powers would become

obsolete. The respondent believed it would be sensible to await the conclusion of the consultation to avoid (potentially) wasted time and effort; not just under the BSC but across all codes.

The majority of the Workgroup agreed with these statements and questioned if they should reject P351 and await a revised proposal following the Ofgem consultation. The Proposer noted that there was no clear end date for this process and that it was unlikely any Modification could be raised and implemented before the licence changes from CGR3 come into effect in April 2017. This would misalign the BSC and the Transmission licence, in detriment to Applicable BSC Objective (a). They felt that the most pragmatic approach was to progress the current Proposed Modification based on the current baseline and let Ofgem determine if further changes are required at a later date. Should further changes be needed as a result of Ofgem's consultation, Licence changes would likely be required, triggering appropriate Modifications to align the relevant industry Codes. However, several Workgroup members disagreed as they felt that this was not an efficient way to manage Code change. They felt that, if it was known further changes may arise, it would provide greater stability to the arrangements to wait until there was greater clarity around the further changes.

### **Should there be a limit on what can be progressed via Route 3?**

A Workgroup member suggested an Alternative Modification should be raised in response to the consultation comments about alignment with the CMA's remedy. Under this solution, the BSC would define the 'exceptional circumstances' criteria under which it was appropriate for Ofgem to progress an SCR's conclusions through Route 3. When the final report was presented to the Panel, it would be required to establish if Ofgem had provided sufficient evidence that the SCR was an 'exceptional circumstance' and would be obliged to recommend rejection of the Modification if it determined that the criteria had not been met. This would help ensure that only the Modifications for which Route 3 had been envisioned for were actually progressed down this route. Members were asked whether forcing the Panel's recommendation could be seen to fetter its discretion on this matter, but members felt this was an appropriate approach as this would then ensure a route of appeal on grounds of process would be available should the Authority subsequently approve the changes.

The Workgroup debated whether it was better to define 'exceptional circumstances' or simply a process for determining this. It was noted that 'exceptional circumstances' where the Panel could use discretion in decision-making are mentioned several times in the BSC; however these all applied to minor decisions, and nothing as significant as an SCR Modification with the potential to change fundamental processes.

A member suggested that criteria for an Authority-led Modification Proposal being progressed would be one where the change would, if implemented, would have:

4. significant impact on consumers; or
5. significant impact on market structure; or
6. significant impact on more than one industry code.

The Workgroup agreed with these definitions, and by majority voted to raise the Alternate Modification as defined in Section 3.

## How could participants propose alternate solutions?

A Workgroup member asked how BSC Parties or Industry participants might introduce alternate solutions to a SCR Route 3 Modification. They felt that the existing SCR Guidance did not appear to allow for Alternate solutions.

The Ofgem representative confirmed that there would be the opportunity for Licensees and BSC Parties to propose alternate solutions during consultation. The Final Report presented to Panel would then include the original solution developed by Ofgem as well as any suggested alternate proposals developed for consideration and it would be for the Panel to determine between the proposals

The Workgroup also noted that there is potential for multiple solutions to emerge from an SCR progressed through Route 3 and that the P351 legal text should be amended to accommodate this scenario specifically for Authority-led SCR Modifications.

## How would costs be recovered?

Another issue highlighted was a lack of clarity on how costs would be recovered when Route 3 was followed. A member highlighted the industry experience of the gas code changes under the NEXUS programme. In this instance Ofgem had found it necessary to bring in a third party consultancy to provide assurance and programme management services, which is understood to be more costly than if the existing governance process or industry parties had provided the necessary resource. It is understood that this costs is to be met by Licensees, but there is no visibility of what the costs would be. The Workgroup discussed that it was likely that Ofgem would not have internal resources to manage an SCR Route 3 Modification and that there was concern that they would have to bring in external support. This would be more costly than undertaking development under the existing governance arrangements. It would also be worth noting that ultimately it will be the customer who will pick up these costs.

The Ofgem representative advised that the model for how costs would be recovered during the SCR process would be set out at the beginning of each process, and it is likely that it would be shared between Ofgem and the industry and would be decided on a case-by-case basis. A member pointed out that Ofgem's costs would also be recovered from the industry via the licence fees.

## How would the Implementation Date of SCR solutions be determined?

Workgroup members raised concerns over the process of deciding the Implementation Dates for SCR Modifications following Route 3. Members felt it was unclear how much say the Code Administrators or Code Parties would have in setting the Implementation Date. They felt there is a risk that changes could be rushed in where significant changes to central systems and potentially also BSC Parties were required.

One member could not see how this process was defined in the SCR guidance document, and had concerns that significant change with wide-ranging systems impacts could be pushed through with only months to make changes that could take well over a year or more. They felt that a failure to consult would increase costs and lead to process failure, with significant consumer impact. The Ofgem representative assured the Workgroup that full industry and Code Administrator consultation would be undertaken before any Implementation Date was decided. The Workgroup advised they would feel more assured

if the process was fully defined in the guidance and they were able to reference this in the BSC to give clarity to Parties.

A member proposed that under an SCR Route 3 Modification the BSC Panel should be able to consult the industry only on the Implementation Date put forward by Ofgem, to reassure the Panel that all BSC Parties had been given the opportunity to support or reject the proposed date. Ofgem responded that the Panel would have a say in the Implementation Dates of any such Modification. The Workgroup considered this option, and welcomed the views of Assessment Consultation respondents.

One respondent to the consultation felt that it would be difficult for Ofgem to determine Implementation Dates, outside of the BSC process, without engaging all BSC Parties. In considering Project Nexus, in the gas market, it is apparent that with significant change there is a requirement to consider how quickly industry and the central systems can be adapted to encompass solutions and to consider if testing is required to ensure that the change can be introduced without interruption or detriment to the market or customers.

Two other respondents agreed with this sentiment and felt that the Panel should not be prevented from consulting further on Implementation Dates before deciding on the date. The Workgroup agreed and the Proposer amended the Proposed Modification to include wording that supports the Panel conducting a consultation on Implementation Dates, with the provision that this can only be done as long as it still meets the SCR timetable as set out by Ofgem. The Proposer was concerned that Ofgem would reject the Modification, leading to further delay, if it was compelled to accept further consultation in the process or if the SCR timelines could be put at risk.

### **Amendment of the SCR Guidance note**

The Workgroup queried with Ofgem whether, following its concerns, any changes could be made to its SCR Guidance document to better define the processes under Route 3 for:

1. Assessing and developing the solution, including how industry would be involved;
2. The timetable for progressing these changes;
3. How alternate solutions can be suggested and how they would be taken into account;
4. How costs will be recovered ; and
5. How Implementation Dates will be consulted on and determined.

The Ofgem representative advised that the new SCR proposals had been fully consulted on with Industry during the CGR3 process. They also confirmed that Ofgem has no plans to make any updates or amendments to the existing guidance at this time.

One consultation respondent also expressed concern over the level of detail in the Ofgem SCR Guidance and recommended that these should be updated with more explicit detail.

### **How should the two SCR Modification routes work?**

On balance the Workgroup felt that the proposed Routes 1 and 2 for the progression of SCR Modifications were sensible. Members noted that the first route (where Ofgem directs National Grid to raise a Modification) is the current process now for progressing changes to

the BSC following an SCR, and that Route 2 (where Ofgem raises the Modification itself) was sensible as it would remove pressure from National Grid and provide transparency about the originator of proposed BSC changes.

### **Should SCR Modifications be eligible for progression as Urgent Modifications?**

The Workgroup felt that it was unlikely that any Modification originating from an SCR could meet the Urgent Modification criteria. By definition, Significant Code Reviews have wide ranging and significant impacts across the industry. Members did consider whether P351 should formally remove the right for SCR Modifications to be raised and progressed as Urgent Modifications. On balance it was felt this was unnecessary as any situation deemed large enough to need a full SCR would be unlikely to be deemed urgent. One member also noted that Ofgem could progress any time-critical changes via Route 3, where it would have full control over the timetable.

All consultation respondents felt it was unlikely any SCR Modification would ever meet the criteria for Urgency. However the respondents and the Workgroup concluded that there was no need to prevent this being considered on a case by case basis.

### **Should SCR Modifications be able to progress under Self-Governance?**

The Workgroup considered whether it was appropriate for any SCR Modifications to be determined under Self-Governance. Members felt that it was not appropriate for such Modifications to be progressed down the Self-Governance route. In particular, they could not see how any SCR Modification could be defined as being unlikely to have a material effect on any of the criteria. Furthermore, members felt that if the Authority had raised a Modification to the BSC following an SCR, it should maintain accountability for the final determination on that change.

All consultation respondents felt it was unlikely any SCR Modification would ever meet the criteria for Self-Governance. One respondent felt that it should be explicitly forbidden with the BSC. However the other respondents and the Workgroup concluded that there was no need to prevent this being considered on a case by case basis.

### **Should Ofgem be required to complete full disclosure of any consultation or analysis completed during the SCR when raising an SCR Modification?**

Members suggested that, in order to ensure full transparency of SCR Modifications raised under Routes 1 and 2, Ofgem should be required to publish all material gathered during the preceding SCR, subject to normal confidentiality protections. Another member of the Workgroup agreed this was a reasonable idea but doubted that it would be possible to implement. The member reminded the Workgroup that Ofgem, as the Authority, is not bound by the BSC and that the industry codes have no power to determine how Ofgem should proceed through any process. The Ofgem representative added that this was correct; however they would seek to involve industry throughout the SCR process and would publish all research, analysis and information, as it does now. Members noted this and again responded that, as this was not defined as process in any documentation, it could not be guaranteed.



#### **What is the Self-Governance Criteria?**

A Modification that, if implemented:

- (a) is unlikely to have a material effect on:
  - (i) existing or future electricity consumers; and
  - (ii) competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
  - (iii) the operation of the national electricity transmission system; and
  - (iv) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
  - (v) the Code's governance procedures or modification procedures; and
- (b) is unlikely to discriminate between different classes of Parties.

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A member also asked Ofgem how this information would be shared. They noted that it is very difficult to find any documents on the Ofgem website and that the alerts system provided is often ineffective. A member suggested that any SCR documentation should be linked to the impacted Code Administrators' own websites. The Ofgem representative responded that this sounded like a good approach. It was suggested that this could be achieved by the relevant Code Administrators impacted by an SCR creating a specific webpage on their websites linking back to the relevant Ofgem webpage, as well as providing any further information relevant to their Code.

## **Cross code co-ordination of SCR modifications**

Workgroup members queried how changes across multiple codes conducted via an SCR would be aligned. It was recognised that the purpose of SCR Route 3 was to manage and mitigate these risks by considering the solution holistically. However the Workgroup wondered if any more could be done to ensure alignment of changes across multiple codes, particularly with aligning Implementation Dates.

Consultation respondents agreed that it was important for cross-code collaboration during SCR progression. One respondent suggested that it would be beneficial for the Code Administrators to have links to the relevant areas of each other's websites, where changes impact across multiple Codes. It may also be helpful to have joint meetings to consider issues and agree on progress routes and timelines. In addition, it would be beneficial to appoint a lead Code Administrator for cross code issues.

Another respondent suggested that changes to the Code Administrators Code of Practice (CACoP) may be required, but did not detail what this might look like. They also suggested that Code Administrators working closely with Ofgem was equally important and that the Codes should provide a 'critical friend' approach.

You can find the full responses received to the Assessment Consultation and Report Phase Consultation in Attachments C & D.

## **How could the process transition between the three proposed SCR routes?**

The Workgroup discussed the processes for transition between the three proposed SCR routes. It was noted that Ofgem would issue a Backstop Direction to industry if it believed an SCR Modification under Routes 1 or 2 needed to be stopped and the SCR Phase recommenced. Equally, Ofgem could elect to end progression under Route 3 and instruct an SCR Modification under Route 1 or 2 be raised (for example if it is identified changes to a particular code do not need to be progressed as part of a wider holistic package). However the Workgroup felt that the exact process for transition should be further defined within Ofgem's SCR Guidance note.





## Workgroup's final views

The Workgroup's final majority view is that, while the Alternative Modification would better facilitate the Applicable BSC Objectives compared with the Proposed Modification, neither would overall better facilitate the Applicable BSC Objectives compared to the current baseline. The Workgroup therefore recommends that P351 should be **rejected**.

Members considered that although they unanimously agreed Applicable BSC Objective (a) would be better facilitated by both solutions, the majority felt this was outweighed by detrimental impacts to Applicable BSC Objectives (c) and (d). All members other than the Proposer felt the amendments made under the Alternative Modification mitigated some of the detrimental impacts they had identified under the Proposed Modification.

### Workgroup's Voting (5 voting members attended the final vote, including the Proposer)

Does the Proposed Modification better facilitate the Applicable BSC Objectives than the current baseline?	
Votes for Proposed Modification	1
<b>Votes for current baseline</b>	<b>4</b>
Does the Alternative Modification better facilitate the Applicable BSC Objectives than the current baseline?	
Votes for Alternative Modification	2
<b>Votes for current baseline</b>	<b>3</b>
Does the Alternative Modification better facilitate the Applicable BSC Objectives than the Proposed Modification?	
<b>Votes for Alternative Modification</b>	<b>4</b>
Votes for Proposed Modification	1

The majority of the Workgroup believes that both the Proposed Modification and the Alternate will introduce regulatory uncertainty to the market and/or reduce competition because;

1. The lack of clarity in the SCR Guidance notes present risk of unexpected and unplanned costs to suppliers.
2. The lack of checks and balances on the proposed SCR route 3 means that governance codes could be rewritten at short notice undermining stability and confidence, deterring new market entrants.
3. The proposed route 3 cannot be more efficient and cost effective than utilising existing code governance to progress industry change.

The Workgroup did note that if the Panel is minded to progress P351 they would have a preference for the Alternate Modification to be approved.

## What are the Applicable BSC Objectives?

(a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence

(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System

(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

(d) Promoting efficiency in the implementation of the balancing and settlement arrangements

(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]

(f) Implementing and administering the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation

(g) Compliance with the Transmission Losses Principle

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## Applicable BSC Objective (a)

The Workgroup unanimously agreed with the Proposer that both the Proposed Modification and the Alternate Modification would better meet Applicable BSC Objective (a) than the current baseline. On the basis that P351 will align the BSC with the licence.

## Applicable BSC Objective (c) & (d)

The Proposer had a neutral view on Applicable BSC Objective (c) for both the Proposed Modification and the Alternate.

The remaining Workgroup members believe that the Proposed Modification will have a detrimental impact on Applicable BSC Objectives (c) & (d) due to the consultation response that stated:

‘To go beyond the CMA’s recommendation without a clearly defined and documented process undermines confidence in the governance of the energy market and could be damaging to competition and administrative efficiency, negatively affecting objectives (c) and (d)’.

Members also cited regulatory uncertainty caused by the lack of detail in the route 3 process and concerns over Ofgem having no oversight in developing the solution and approving it. One member did not see how introduction of three new routes could improve the efficiency of the Modification process.

One of the Workgroup members felt that the Alternate Modification addressed some of their concerns of detrimental impact to Applicable BSC Objectives (c) and (d) and therefore was neutral.

The remaining Workgroup members did not agree and felt that the Alternate Modification was still detrimental to Applicable BSC Objectives (c) and (d) for the same reasons as the Proposed Modification.

Do you recommend the Panel approves the Proposed Solution or the Alternate Solution?		
Proposed	Alternate	None
• 1 member	• 1 member	• 3 members

One member felt they favoured the Alternative over baseline overall. With the Proposed, Modification they felt dis-benefits to (c) and (d) outweighed benefits to (a), but under the Alternative Modification the changes meant benefits to (a) outweighed dis-benefits to (d) and were neutral to (c).

## Assessment Consultation respondents’ views on the Applicable BSC Objectives

Of the four respondents to the Assessment Consultation, three felt that the Proposed Modification better facilitated the Applicable BSC Objectives than the baseline. The Workgroup had not elected to create an Alternate Modification prior to the consultation.

All four respondents agreed that the Proposed Modification better facilitated Applicable BSC Objective (a) than the baseline. This was because P351 better facilitates the efficient



discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence; given that Ofgem has amended SLC C3 BSC, to give effect to its CGR3 Final Proposals.

One respondent agreed that the Proposed Modification better facilitated Applicable BSC Objective (d) than the baseline and was neutral on Objective (c). They noted the Workgroup views regarding detriment against Applicable BSC Objective (d), but stated these appear to be in relation the SCR rules themselves rather than in relation to the need for consistency between BSC and licence, which is what the Modification defect relates to. For the avoidance of doubt, it would appear inefficient in terms of implementing BSC arrangements to have contradictions between BSC and licence.

The remaining respondents felt that the Proposed Modification would be detrimental to Applicable BSC Objectives (c) and (d). Two respondents noted; During discussions, Ofgem clarified that they would allow Alternative Modification proposals and also see a role for the Panel in determining Implementation Dates. None of this is documented within the SCR Guidance Document. The respondent therefore believes that the process, under Route 3, could be detrimental to competition, as without a clearly defined process, there remains regulatory uncertainty. In addition in using Route 3, the respondent expects that the costs incurred by Ofgem, who has to date enlisted the assistance of consultants on SCRs, will be inefficient when compared to using the existing governance arrangements to progress change.

### Panel discussions on P351

At the Panel meeting on 8 December 2016, the Panel discussed the Alternative Solution proposed by the Workgroup. A Panel member advised that he was not happy with the approach of the Alternative as it seeks to restrict Ofgem's ability to conduct SCRs. The member noted that this was beyond the powers of the BSC and Codes and as such would be unworkable. A member noted that the Alternative would compel the Panel to reject the Modification even if it was a good solution simply because it did not meet some arbitrary criteria. Several Panel members agreed that this should not be written into a Solution. A Panel member asked if this would be more acceptable if the Alternative was advisory rather than directive. Another Panel member said this would be better but in their view the Alternative Solution would still be unworkable and the Proposed Solution better meets the Applicable BSC Objectives.

The Panel Chairman requested to amend the decision under consideration by the Panel to accept that the Proposed Solution better meets the Applicable BSC Objectives than the Alternative. This reversed the Workgroup's view.

A Panel member noted that he was part of the Workgroup for P351 and chose to abstain from voting on any of the Panels views.

### Panel's initial recommendations

#### Applicable BSC Objectives

The Panel agreed by Majority that P351 **would better facilitate Applicable BSC Objective (a)** and by Majority that P351 **would not better facilitate Applicable BSC Objective (c) or (d)**.

The Panel agreed by Majority that the **Proposed Solution would better meet the Applicable BSC Objectives than the Alternative Solution**.

The Panel agreed by Majority to **reject the Proposed Solution**

The Panel agreed by Majority to **reject the Alternative Solution**

The Panel therefore initially by majority recommends that **P351 should be rejected**.

#### Self-Governance

The Panel by majority agrees with the Workgroup's recommendation that P351 does not meet the Self-Governance Criteria and so **should not** be progressed as a Self-Governance Modification.

#### Legal text

The Panel by majority agrees that the draft redlined changes to the BSC for the Proposed Solution and the Alternative Solution in Attachments A and B deliver the intention of P351.

## Implementation Approach

The Panel unanimously agrees with the Workgroup's recommended Implementation Date

- **1 April 2017** if the Authority's decision is received on or before 1 March 2017;

## 9 Report Phase Consultation Responses

This section summarises the responses to the Panel's Report Phase Consultation on its initial recommendations. You can find the full responses in Attachment D.

### Summary of P351 Report Phase Consultation Responses

Question	Yes	No	Neutral/ No Comment	Other
Do you agree with the Panel's initial unanimous recommendation that P351 should be rejected?	4	0	0	0
Do you agree with the Panel that the redlined changes to the BSC deliver the intent of P351?	4	0	0	0
Do you agree with the Panel's recommended Implementation Date?	4	0	0	0
Do you agree with the Panel's initial view that P351 should not be treated as a Self-Governance Modification?	4	0	0	0
Do you have any further comments on P351?	0	4	0	0

## Consultation responses summary

### Who responded?

Four responses were received in the Report Phase Consultation. Two of the respondents had previously responded to the Assessment Consultation and two were new respondents. The respondents from the Assessment Procedure Consultation who did not respond to the Report Phase Consultation were contacted and confirmed they had no further comments.

### Respondents views

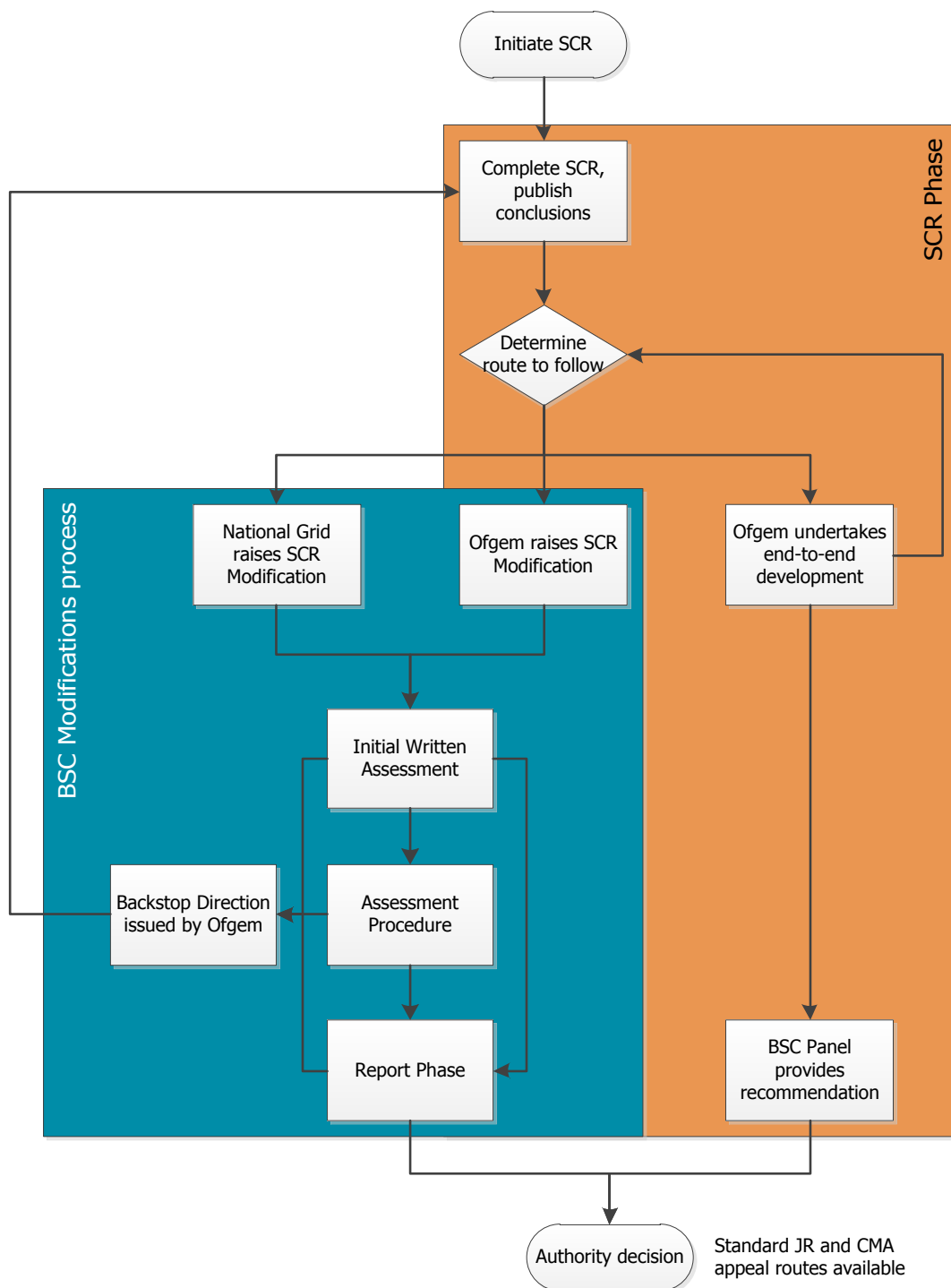
All of the respondents supported the Panel's decision to reject P351. Three of the respondents explicitly agreed that the Proposed Solution extends beyond the CMA intent. Respondents also expressed concern that without clearer guidance and processes progression of Modifications under SCR route 3 could erode confidence in the SCR process. Further, although it is recognised that an appeals process will be retained, it is expensive to appeal to CMA and this will be a deterrent to many Parties.

## 10 Recommendations

We invite the Panel to:

- **AGREE** that the P351 Proposed Modification:
  - **DOES** better facilitate Applicable BSC Objective (a);
  - **DOES NOT** better facilitate Applicable BSC Objective (c); and
  - **DOES NOT** better facilitate Applicable BSC Objective (d);
- **AGREE** that the P351 Alternative Modification:
  - **DOES** better facilitate Applicable BSC Objective (a);
  - **DOES NOT** better facilitate Applicable BSC Objective (c); and
  - **DOES NOT** better facilitate Applicable BSC Objective (d);
- **AGREE** that the P351 Proposed Modification is better than the P351 Alternative Modification;
- **AGREE** a recommendation that the P351 Proposed should be **rejected** and that the P351 Alternative Modification should be **rejected**;
- **APPROVE** an Implementation Date for the Proposed Modification of:
  - 1 April 2017 if an Authority decision is received on or before 1 March 2017;
- **APPROVE** the draft legal text for the Proposed Modification;
- **APPROVE** the draft legal text for the Alternative Modification; and
- **APPROVE** the P351 Modification Report.

## Appendix 1: Diagram of the SCR Progression Routes



### Workgroup's Terms of Reference

Specific areas set by the BSC Panel in the P351 Terms of Reference

How efficient is the process to transition between the three proposed SCR routes for the progression of a Modification?

What the impacts and risks for ELEXON, where Ofgem raises, assesses, and sets the Implementation Dates (option 3)? How can these be addressed and mitigated?

What changes are needed to BSC documents, systems and processes to support P351 and what are the related costs and lead times?

Are there any Alternative Modifications?

Does P351 better facilitate the Applicable BSC Objectives than the current baseline?

Should P351 be determined as a Self-Governance Modification?

### Assessment Procedure timetable

P351 Assessment Timetable

Event	Date
Panel submits P351 to Assessment Procedure	11 Aug 16
Workgroup Meeting 1	13 Oct 16
Workgroup Meeting 2	27 Oct 16
Workgroup Meeting 3	07 Nov 16
Assessment Procedure Consultation	10 Nov 16 – 25 Nov 16
Workgroup Meeting 4	29 Nov 16
Panel considers Workgroup's Assessment Report	08 Dec 16

## Workgroup membership and attendance

P351 Workgroup Attendance					
Name	Organisation	13 Oct 16	27 Oct 16	07 Nov 16	29 Nov 16
Members					
Royston Black	ELEXON <i>(Chair &amp; Lead Analyst)</i>	✓	✓	✓	✓
Alex Haffner	National Grid <i>(Proposer)</i>	☎	☎	☎	☎
Andrew Colley	SSE	☎	☎	☎	☎
Angela Love	Scottish Power	☎	☎	☎	☎
Esther Sutton	Uniper Energy	☎	☎	☎	☎
David Smith	Npower	☎	☎	☎	☎
Attendees					
David Kemp	ELEXON <i>(Design Authority)</i>	✓	✓	✓	✓
Toby Godrich	ELEXON <i>(Lead Lawyer)</i>	✓	✓	✓	✓
Nadir Hafeez	Ofgem	☎	✓	☎	☎
Key					
Attended	✓				
teleconference	☎				
Did not attend	✗				

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## Appendix 3: Estimated Progression Effort

The following tables contain the estimated effort in progressing P351:

Assessment Effort	
Participant	Effort (man days)
ELEXON	10
Workgroup members	48
<b>Total</b>	<b>58</b>

Consultation Response Effort	
Consultation	No. of responses
Assessment Procedure Consultation	4
Report Phase Consultation	4
<b>Total</b>	<b>8</b>

## Appendix 4: Glossary & References

### Acronyms

Acronyms used in this document are listed in the table below.

Acronyms	
Acronym	Definition
BSC	Balancing and Settlement Code
CACoP	Code Administrators Code of Practice
CGR	Code Governance Review
CMA	Competition and Markets Authority
EU	European Union
SCR	Significant Code Review
SLC3	Standard Licence Condition 3

### External links

A summary of all hyperlinks used in this document are listed in the table below. All external documents and URL links listed are correct as of the date of this document.

External Links		
Page(s)	Description	URL
3, 4	Final proposals for Phase 3 of the Code Governance Review	<a href="https://www.ofgem.gov.uk/system/files/docs/2016/03/code_governance_review_phase_3_final_proposals_2.pdf">https://www.ofgem.gov.uk/system/files/docs/2016/03/code_governance_review_phase_3_final_proposals_2.pdf</a>
3	The Transmission Licence	<a href="https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf">https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf</a>
4	The Code Governance review documents	<a href="https://www.ofgem.gov.uk/licences-codes-and-standards/codes/industry-codes-work/code-governance-review#of-block-views-publications-and-updates-block">https://www.ofgem.gov.uk/licences-codes-and-standards/codes/industry-codes-work/code-governance-review#of-block-views-publications-and-updates-block</a>
5	P351 Modification Webpage	<a href="https://www.elexon.co.uk/mod-proposal/p351/">https://www.elexon.co.uk/mod-proposal/p351/</a>
9	Significant Code Review Guidance Document	<a href="https://www.ofgem.gov.uk/system/files/docs/2016/06/scr_guidance.pdf">https://www.ofgem.gov.uk/system/files/docs/2016/06/scr_guidance.pdf</a>
9	CMA Investigation	<a href="https://www.gov.uk/cma-cases/energy-market-investigation">https://www.gov.uk/cma-cases/energy-market-investigation</a>
9	Ofgem consultation on implementing CMA recommendations	<a href="https://www.ofgem.gov.uk/system/files/docs/2016/11/industry_code_governance_-_initial_consultation_on_implementing_the_competition_and_markets_authoritys_recommendations.pdf">https://www.ofgem.gov.uk/system/files/docs/2016/11/industry_code_governance_-_initial_consultation_on_implementing_the_competition_and_markets_authoritys_recommendations.pdf</a>

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