













P382

Amendments to the BSC to reflect the United Kingdom’s withdrawal from the European Union without a deal

01	Modification
02	Workgroup Report
03	Draft Modification Report
04	Final Modification Report

Purpose of Modification: The Balancing and Settlement Code (BSC) contains multiple references to European Union (EU) legislation and bodies. Additionally, it also contains text introduced as a result of implementing various EU legislation. Retaining these references and text following the United Kingdom’s (UK’s) withdrawal from the EU without a deal (‘no-deal Brexit’) will mean that the BSC is no longer technically accurate.


	<p>The Proposer recommends that this Modification should:</p> <ul style="list-style-type: none"> • Be sent directly into the Report Phase <p>This Modification will be presented by the Proposer to the BSC Panel on 14 March 2019. The Panel will consider the Proposer’s recommendation and determine how best to progress the Modification.</p>
	<p>High Impact: None</p>
	<p>Medium Impact: None</p>
	<p>Low Impact: All BSC participants BSCCo</p>

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Timetable		
The Proposer recommends the following timetable:		
Initial Written Assessment	14 March 2019	 as above
Initial consideration by Workgroup	Not applicable	 as above
Report Phase Consultation (10 Working Days)	18 March 2019 – 29 March 2019	 as above
Draft Modification Report presented to Panel	11 April 2019	Other: [Insert name]
Final Modification Report published	15 April 2019	 [Insert email]
		 [Insert number]
		Other: [Insert name]
		 [Insert email]
		 [Insert number]


 Any questions?


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1 Summary

What is the issue?

The [European Union Withdrawal Act \(2018\)](#) will allow the BSC to remain operative immediately following exit day. However, there will be technical inaccuracies, which may lead to confusion for anyone not familiar with the relevant Brexit legislations, and will need updating as soon as possible.

Most EU regulations will be retained in UK law in the event of the UK leaving the EU without a deal – a ‘no-deal Brexit’. However, the UK government has laid Statutory Instruments (SIs) that, when in force, will mean that some parts of EU Regulations will not be retained i.e. some Articles within Regulations will effectively be ‘deleted’ from retained UK law (some of the ‘deleted’ articles are, in some cases, replaced by UK replacement legislation but, not all). This means that the BSC will need to be updated to reflect this. Additionally, references to partially retained EU Regulations will need to be updated.

What is the proposed solution?

The BSC, and its Code Subsidiary Documents (CSDs), should be amended to reflect where EU regulations will not be retained in EU law and will make the BSC inoperable/confusing. If parts of the BSC are no longer applicable (as the associated EU regulation will not be retained), they may however, not necessarily need to be changed as allowing them to be dormant (i.e. not used but still there) may be more appropriate depending on the circumstances. ELEXON should make it clear in their Initial Written Assessment to the Panel where this option is used¹.

2 Governance

Justification for proposed progression

The European Union (Withdrawal) Act 2018 will allow any European legislation enacted into UK law to continue to be operative following the UK’s withdrawal from the EU. This means that, in the event of a no-deal Brexit the BSC will continue to be operative even if the BSC retains references to EU legislation and bodies that are no longer applicable following withdrawal. Because of this, there is no immediate need to remove the references from the BSC following withdrawal from the EU. This means that P382 should proceed as a standard (non-urgent) Modification.

P382 will not require the Gas and Electricity Market Authority (GEMA) approval because, thanks to the Withdrawal Bill, Settlement operations will not be affected, and therefore there will be no impact on Market Participants or consumers. This in turn means that there will be no impact on competition or how the Total System is operated. Similarly, the Withdrawal Bill will mean that there will be no effect on:

- Sustainable development;
- Safety or security of Supply; or
- The management of market or network emergencies

P382 will have no effect on BSC governance and will not, in any way, discriminate between different classes of Parties. Consequently, P382 meets the Self-Governance Criteria and should be progressed as

¹ An example of this may be legal text relating to P344 Project TERRE where the associated obligations will not come into force until a later time and it may be determined between exit day and coming into force that the text is still required for other reasons

a Self-Governance Modification. Further, this is the approach being taken by other similarly impacted Codes.

In the event that a no-deal Brexit is averted this Proposal will no longer be required. The Proposer will withdraw the Modification if the Initial Written Assessment has not yet been presented to the Panel (or in Assessment Procedure), or the Proposer recommends that the Panel reject the Modification if moved to the Report Phase.

Requested Next Steps

This Modification should:

- Be sent directly into the Report Phase

As it is evident what changes need to be made, there is nothing that a Workgroup will be able to offer; so there is no reason not to proceed directly to Report Phase.

Each Industry Code needs to be updated following the UK's withdrawal from the EU. Ofgem has stated² that it expects changes akin to P382 'to be raised through the industry-led code Modification process and, where appropriate, to follow the self-governance route'. This is in line with recent publications by code administrators³. By following the Modification process, it is self-evident what changes need to be made, and therefore P382 should proceed directly to Report Phase (or Code specific equivalent).

3 Why Change?

What is the issue?

The UK is due to withdraw from the EU at 23:00:00 BST on 29 March 2019 unless otherwise agreed by the UK and EU. In the case the UK leaves the EU without a deal, From 23:00:01 BST on 29 March 2019 EU legislation will no longer apply in the UK other than where it has been retained by specific SIs and EU bodies will no longer have authority in the UK. This means that retaining text introduced by BSC Modifications to implement EU regulations, as well as references to EU legislation, will mean that the BSC, though still operable, is not entirely accurate, as it will contain defunct text and references.

The European Union (Withdrawal) Act 2018 means that any EU legislation that has been subsumed into the BSC will continue to be applicable, until it is changed by the EU or a UK replacement comes into force. This means that the BSC will remain operable, Settlement will continue as before withdrawal and day-to-day operations will not be affected.

The government has laid one Statutory Instrument (SI) that amends the Electricity Act and three SIs that will affect the EU regulations. One SI amend EU regulations has already been made (see Section 4). Amendments to the Transmission licence will not affect the BSC.

This is an industry wide issue and all Code Administrators have been working together to co-ordinate updating of their respective Codes.

² <https://www.ofgem.gov.uk/publications-and-updates/update-preparing-eu-exit-licence-and-industry-code-modifications>

³ <https://www.elexon.co.uk/news/code-administrators-preparing-brexit/>

4 Code Specific Matters

Technical Skillsets

Knowledge of the BSC and its governance

Knowledge of European legislation relating to the Electricity Industry

Understanding of the processes associated with the UK's withdrawal from the EU

Understanding of UK parliamentary processes, including how legislation is made and knock-on affects

Reference Documents

[Balancing and Settlement Code](#)

[European Union \(Withdrawal\) Act 2018](#)

[Draft Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019⁴⁵](#)

[Draft Electricity and Gas \(Market Integrity and Transparency\) \(Amendment\) \(EU Exit\) Regulations 2019⁴](#)

[Electricity and Gas \(Powers to Make Subordinate Legislation\) \(Amendment\) \(EU Exit\) Regulations 2018⁴](#)

[Draft Electricity Network Codes and Guidelines \(Markets and Trading\) \(Amendment\) \(EU Exit\) Regulations 2019⁴](#)

[Draft Electricity Network Codes and Guidelines \(System Operation and Connection\) \(Amendment etc.\) \(EU Exit\) Regulations 2019⁴](#)

5 Solution

Proposed Solution

Any parts of the BSC made defunct by the UK's withdrawal from the EU should be removed or updated as required. There will be a need to amend some references along the lines of 'as amended by X'. ELEXON has reviewed all Modifications implemented as a result of the UK implement EU legislation to see if any legal text introduced by those Modifications needs to be removed. Where parts of retained EU regulations will have some sections deleted, the BSC has been checked to ensure that obligations etc. within the BSC are not affected. Finally, CSDs have been reviewed in a similar manner to the BSC.

ELEXON is preparing the draft legal text and redlining and will present this as part of the Initial Written Assessment.

6 Impacts & Other Considerations

Impacts

P382 will have an impact on ELEXON (as the BSC Company (BSCCo)) as the required changes to the BSC, its CSDs and other documentation (e.g. guidance) will need to be amended and implemented.

⁴ This is a draft regulation as it has not yet been 'made by Parliament' at time of submitting this Proposal

⁵ This SI will amend the Electricity Act, others will amend EU regulations

P382 will have negligible impact on any other BSC participant. As mentioned already, the BSC will continue to operate following the UK's withdrawal from the EU in the event of 'no-deal', and the purpose of P382 is merely to remove defunct references. It will not, in any way, impact how the BSC operates.

There may be subsequent changes to the BSC require following a no-deal Brexit, such as how amendments to [P344 'Project TERRE'](#). It is our understanding that this will be dealt with separately. The purpose of this Modification is simply to ensure that the BSC remains operative following a no-deal Brexit and any other Modifications will be raised separately.

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

We do not believe P382 will impact any of the open SCRs. P382 will have no impact on Settlement or wider industry operations. As such, we request that this Modification be exempt from the SCR process.

It is not envisaged that this Modification will impact other significant industry change projects.

Consumer Impacts

Given that P382 will have no impact on Settlement, or wider industry operations, there will be no consumer impact.

Environmental Impacts

Given that P382 will have no impact on Settlement, or wider industry operations, there will be no environmental impact.

Cross-Code collaboration

Ofgem's expectation is that all Code Administrators (CAs) will have Modifications raised similar to this to modify their respective Codes. Every effort has been made by CAs to ensure consistency between the Codes and as such we do not envisage any cross-Code impacts.

However, we would request that ELEXON continue to liaise with other CAs to ensure that this remains this case. If conflicts do arise, we would expect ELEXON to make the Panel and ourselves aware and recommend an appropriate cause of action to resolve the matter.

7 Relevant Objectives

Impact of the Modification on the Relevant Objectives:	
Relevant Objective	Identified impact
a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence	Positive
(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System	Neutral
(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	Neutral
(d) Promoting efficiency in the implementation of the balancing and settlement arrangements	Positive
(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]	Positive
(f) Implementing and administrating the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation	Neutral
(g) Compliance with the Transmission Losses Principle	Neutral

Applicable BSC Objective (a) – Our Transmission Licence requires that the BSC facilitate Settlement. If there is confusion in the BSC caused by defunct references then it will not be allowing us to discharge Section C2 of our Transmission Licence.

Applicable BSC Objective (d) – There is potential for confusion if the BSC contains defunct references to EU Legislation and bodies and such. This in turn could lead to reduced efficiency in implementing Balancing and Settlement arrangements.

Applicable BSC Objective (e) – This objective will be retained in the event of a no-deal Brexit. The Electricity Regulation and other regulations will remain as part of UK law but be amended from time to time by UK legislation for GB (we expect that the draft legal text will refer to ‘The Electricity Regulation as amended by...’). As such, we, and by association, ELEXON will be required to comply with the Electricity Regulation. In the event of a no-deal Brexit, the Electricity Regulation will be amended and P382 will allow the BSC to comply with the amended Electricity Regulation etc.

8 Implementation Approach

This Modification should be implemented on the later of:

- Sixteen working days following the final determination on whether to approve this Modification (in accordance with the Self-Governance modification window); or
- The day following the UK's formal withdrawal from the EU without a deal i.e. if exit day is delayed from 29 March 2019 (exit day at the time of the proposal's submission) to a date after the Self-Governance modification window

9 Legal Text

Text Commentary

Proposed changes to BSC Sections and CSDs have been drafted alongside ELEXON. The proposed draft text will remove, replace or amend references to EU legislation, bodies or such as directed.

Suggested Text

The proposed draft legal text is contained in attachment A. The proposed draft redlining of CSDs is in attachments B to Z.

10 Recommendations

Proposer's Recommendation to the BSC Panel

The BSC Panel is invited to:

- Agree that P382 be progressed as a Self-Governance Proposal
- Agree that P382 be sent directly into the Report Phase;