

Stage 04: Draft Modification Report

What stage is this document in the process?

- 01 Initial Written Assessment
- 02 Definition Procedure
- 03 Assessment Procedure
- 04 Report Phase

P268: 'Clarify the P/C status process for exempt BM Units'

It is currently optional for the Lead Party of an Exempt Export BM Unit to elect a specific Production/Consumption Status.

From the P268 Implementation Date onwards, the BSC will require all Exempt Export BM Units to have an elected P/C Status in place.

The Proposed Modification also retrospectively applies to any Exempt Export BM Units which did not have an elected P/C Status between 1 March 2010 and the P268 Implementation Date. The Alternative Modification only applies prospectively (going forwards).



The Panel provisionally recommends to Ofgem:

- **Rejection** of the retrospective Proposed Modification; and
- **Approval** of the prospective Alternative Modification.

High Impact:



- All existing and future Exempt Export BM Units (Exemptable generators); and
- All other BSC Trading Parties, whose Trading Charges will retrospectively change under the Proposed Modification.



Medium Impact:

- The Central Registration Agent and ELEXON.

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Any questions?

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About This Document:

This is the P268 Draft Modification Report, which ELEXON is issuing for industry consultation on the BSC Panel's behalf. It contains the Panel's provisional recommendations on P268. The Panel will consider all consultation responses at its next meeting on 11 August 2011, when it will agree a final recommendation to Ofgem on whether or not the change should be made.

This document has 8 attachments as follows:

- **Attachment A** contains more information on the P268 Workgroup's analysis and assessment. It includes further details of the current P/C Status rules, the results of the Group's analysis, and an overview of the impact of P268 on Code Subsidiary Documents. It also contains the Workgroup's membership and Terms of Reference.
- **Attachment B** contains the Assessment Consultation responses.
- **Attachments C-G** contain the draft BSC and Code Subsidiary Document changes.
- **Attachment H** contains the specific questions on which the Panel seeks your views. Please use this form to provide your response to these questions, and to record any further views/comments you wish the Panel to consider.

The Panel has progressed P268 in parallel with related Modification Proposal [P269](#) 'Prevention of Base Trading Unit BMUs' Account Status Flipping from Consumption to Production'. Both P268 and P269 impact the P/C Status rules and Exempt Export BM Units (P269 also impacts Suppliers). Section 3 provides a summary of the interaction between P268 and P269. For more information about P269, please refer to the separate P269 Draft Modification Report.

P269 is being progressed as a Self-Governance Modification Proposal, meaning that the Panel (not Ofgem) will decide whether to approve or reject it. P268 will be sent to Ofgem for decision.

P268
Draft Modification Report

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Version 1.0

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Why change?

If a Lead Party does not elect a specific P/C Status for its Exempt Export BM Unit, the BM Unit's P/C Status is by default determined dynamically and can change at any time.

The Proposer believes that no Exempt Export BM Unit should ever be given a P/C Status which it has not explicitly elected, as this could lead to unintended Imbalance Charges.

Solution

P268 will make it mandatory for the Lead Parties of all existing and future Exempt Export BM Units to elect a P/C Status which is either Production or Consumption.

ELEXON and the Central Registration Agent (CRA) will have an obligation to ensure that each Exempt Export BM Unit has an elected P/C Status in place at all times.

Retrospective or prospective application?

The Proposed Modification also retrospectively applies to all Exempt Export BM Units whose P/C Status was determined dynamically by default at any time between 1 March 2010 and the P268 Implementation Date. These BM Units will be required to retrospectively elect a P/C Status of either Production or Consumption. If this changes the BM Unit's original P/C Status, its Imbalance Charges will be recalculated – resulting in consequential retrospective changes to the Trading Charges of all BSC Trading Parties.

The Alternative Modification only applies prospectively (going forwards). In all other respects, the Proposed and Alternative Modification solutions are identical.

Impacts & costs

P268 amends the BSC, BSC Procedures 15 & 31, CRA Service Description and other CRA documents. It impacts all Exempt Export BM Units (Exemptable generators), ELEXON and the CRA. Retrospection would impact the Trading Charges of all BSC Trading Parties.

The central implementation costs of the Proposed Modification (including the retrospective element) are £15.5k, comprising £1k in CRA costs and £14.5k in ELEXON effort. The central Alternative Modification costs are £8k (£1k CRA costs, £7k ELEXON effort).

Implementation

The proposed P268 Implementation Date is 23 February 2012 or 5 April 2012 depending on when ELEXON receives Ofgem's decision. This is identical for both the Proposed Modification and Alternative Modification. The Proposed Modification's retrospection is delivered through the legal drafting rather than a retrospective Implementation Date.

The Workgroup and the Panel recommend implementing P268 in parallel with P269.

The case for change

The Workgroup and the Panel believe that:

- The prospective part of P268 facilitates clarity (BSC Objectives (c) and/or (d)); but
- This benefit would be outweighed by the uncertainty/disruption of retrospection, and its associated negative effect on competition/efficiency (BSC Objectives (c) and (d)).

The Workgroup and the Panel therefore recommend rejecting the retrospective Proposed Modification and approving the prospective Alternative Modification.

Recommendation

The Workgroup and the Panel recommend rejecting the retrospective Proposed Modification, and approving the prospective Alternative Modification.

Respondents to the Group's Assessment Consultation support this recommendation.



Where can I find...?

An explanation of the following terms?

- BM Unit;
- Exempt Export BM Unit;
- Exemptable Generating Plant;
- Lead Party;
- Trading Unit;
- Base Trading Unit;
- Relevant Capacity.

You can find definitions of all these terms in Attachment A.

This section summarises the background to P268 and the defect which the Proposer identifies in the current P/C Status rules. You can find a more detailed explanation of the existing rules in Attachment A.

What's a P/C Status and why does it matter?

Every BM Unit has a P/C Status which, on any given Settlement Day, is either Production or Consumption.

A BM Unit's P/C Status is important, as it determines which of a Party's Energy Accounts the BM Unit's Metered Volume is allocated to for that Settlement Day. If the BM Unit's P/C Status is Production, its Metered Volume will be allocated to the Production Energy Account. If its P/C Status is Consumption, its Metered Volume will be allocated to the Consumption Energy Account.

If a Party notifies its contracts to the wrong account (e.g. if its P/C Status is Consumption but it notifies its contracts to its Production Account), it will be in imbalance on both accounts and will incur associated Imbalance Charges.

How is P/C Status currently determined?

BSC Section K3 contains the existing rules for determining P/C Status. These rules are different for Exempt Export BM Units compared with other BM Units. The following explains how.

The BSC's normal P/C Status rules

The P/C Status for a generator or Supplier BM Unit is normally determined dynamically by summing the Relevant Capacities of all BM Units in its Trading Unit. The Relevant Capacity of a BM Unit is based on its Generation Capacity (GC) and Demand Capacity (DC) values.

If the sum of these Relevant Capacities means that the overall status of the Trading Unit is Production, then the P/C Status of all its BM Units will be Production. If the Trading Unit is Consumption, then all its BM Units will have a P/C Status of Consumption. You can find a more detailed explanation in Attachment A.

If a BM Unit is in a Sole Trading Unit on its own, then its P/C Status is only affected by its own GC and DC values. However, if it is part of a Trading Unit with other BM Units then its P/C Status is affected by the GC/DC values of all other BM Units in the Trading Unit.

A BM Unit's P/C Status is redetermined, and can change, each time:

- The BM Unit joins or leaves a Trading Unit;
- Another BM Unit joins or leaves the Trading Unit to which the BM Unit belongs; and/or
- There is any change in the GC and/or DC values of any of the BM Units which belong to that Trading Unit.

The BSC's exception for Exempt Export BM Units

Exempt Export BM Units for Exemptable Generating Plant (licence-exempt generators such as wind farms) are the only type of BM Unit which can elect (choose) their P/C Status regardless of the overall status of their Trading Unit.¹ This is currently an optional ability, and the Code therefore has a default rule to cover the situation where no election is made.

If the Lead Party for an Exempt Export BM Unit elects to have a P/C Status of either Production or Consumption, then its P/C Status is fixed accordingly and does not change unless the Lead Party makes a new election. If the Lead Party does not make an election, then the P/C Status of its Exempt Export BM Unit is determined dynamically according to its Trading Unit's status and can change at any time.

BSC Procedure (BSCP) 15 'BM Unit Registration' contains the supporting operational process by which Exempt Export BM Units can elect their P/C Status. As well as enabling Exempt Export BM Units to elect a 'fixed' P/C Status of Production or Consumption, BSCP15 also allows the Lead Party to elect that its P/C Status is determined dynamically at the Trading Unit level. In practice, making an explicit election for a dynamic P/C Status has the same effect as making no election and having a dynamic P/C Status by default. You can find more information in Attachment A.

An embedded Exempt Export BM Unit automatically belongs to the Base Trading Unit for its Grid Supply Point (GSP) Group unless the Lead Party elects otherwise. A Base Trading Unit also contains all Supplier BM Units for that GSP Group. Currently, all Base Trading Units have an overall status of Consumption, and all BM Units whose P/C Status is linked to the Base Trading Unit's therefore have a P/C Status of Consumption.²

P100 introduced these rules in 2003.³

What's wrong with the current rules?

The Proposer believes that the current provisions of Section K3 of the BSC ('the Code') are deficient, and that this may be due to flaws in the P100 drafting which introduced these provisions.

This is because:

- The Code refers to an Exempt Export BM Unit's P/C Status automatically being set to the overall Trading Unit P/C Status in the absence of an election by the Lead Party. The Proposer believes that it is inappropriate for an Exempt Export BM Unit's P/C Status to be allocated or changed without the Lead Party's explicit instruction/agreement, because of the potential impact on its trading position. The Proposer notes that this could lead to unintended Imbalance Charges for the Party if it is unaware of the BM Unit's P/C Status, and if its contract notifications and Metered Volumes are therefore not aligned to the same Energy Account.

¹ Interconnector BM Units are allocated in fixed Production/Consumption pairs, whose P/C Status does not change.

² See the separate P269 Draft Modification Report for more information on the rules for Base Trading Units, and the implications for Parties if a Base Trading Unit becomes Production.

³ Approved Modification [P100](#) 'Extension of Demand-side Trading Units in order to increase the competitiveness of the market for embedded benefits'.



Where can I find...?

More details of the Proposer's views?

You can download a copy of the original Modification Proposal, as submitted by the Proposer, from ELEXON's website [here](#).

- The Code currently states that an Exempt Export BM Unit's P/C Status election shall not become effective until at least 28 calendar days have passed. The Proposer believes that this does not allow for any election by the Lead Party to become effective before the Exempt Export BM Unit's P/C Status is automatically set by default.
- The Proposer considers that the Code is unclear/ambiguous as to the treatment of an Exempt Export BM Unit which had previously been another type of BM Unit (i.e. not Exempt Export) and already had an existing P/C Status. The Proposer believes that a Lead Party would naturally assume that no further 'election' is required to retain that P/C Status.
- The Proposer highlights an inconsistency between the provisions of the Code and the CRA Service Description, in that the Service Description only refers to the P/C Status being changed for an Exempt Export BM Unit following an instruction from the Lead Party. The Proposer considers that the uncertainty caused by any inconsistency and/or ambiguity disproportionately impacts new entrants who are less familiar with BSC procedures, and are therefore exposed to risks and potentially significant costs. The Proposer considers that a Lead Party reading both the Code and Service Description would draw the conclusion that no further 'election' is required.

The Proposer highlights recent Trading Dispute DA375. This Dispute was not upheld, as the Trading Disputes Committee (TDC) and the Panel found that the Code's provisions had been followed and that no Settlement Error had therefore occurred. The Proposer believes that DA375 illustrates deficiencies in the Code wording, inconsistencies between the Code and Code Subsidiary Documents, and how these can lead to adverse financial consequences for Parties.

3 Solution

This section summarises the P268 Proposed Modification, which the Proposer has put forward as their preferred solution. You can find further details of this solution in Attachment A. The Proposed Modification solution is unchanged from that outlined in the P268 Assessment Consultation Document and Assessment Report.

The Proposer has developed the solution with the Group's assistance. The Group believes that the prospective element of the solution is the best way to achieve the Proposer's intention going forwards. The other members of the Group do not support retrospection. However they believe that, if it is to apply, then the Proposer's chosen retrospective solution requirements are the most appropriate way to deliver it.

The only area of disagreement between the Proposer and the Group over the solution is therefore whether it should apply retrospectively or purely prospectively. The Group has developed a prospective Alternative Modification as described in Section 4.

What is the prospective part of the P268 solution?

Under P268, all Exempt Export BM Units will be required to have an elected P/C Status in place. This changes the current optional ability to a mandatory requirement.

All Exempt Export BM Units will be required to elect a P/C Status which is either Production or Consumption. Exempt Export BM Units will no longer have the option to choose (either explicitly through an election, or implicitly by not making any election) that their P/C Status is determined dynamically at the Trading Unit level.

ELEXON and the CRA will have an obligation to ensure that each Exempt Export BM Unit has an elected P/C Status in place at all times.

This means that, from the P268 Implementation Date onwards:

- All existing Exempt Export BM Units must have elected a P/C Status which is either Production or Consumption; and
- Any new application by a Lead Party for Exemptable Generating Plant status must include its P/C Status election for the associated BM Unit, and no BM Unit will be classified as Exempt Export unless this election has been made.

P268 does not change an Exempt Export BM Unit's ability to subsequently elect a different P/C Status (i.e. to change its election from Production to Consumption or vice versa). However, it does change the minimum notice period which is required before a P/C Status election becomes effective. See below for more details.

As part of the implementation exercise, ELEXON will contact the Lead Parties for all Exempt Export BM Units to clarify that:

- Any which currently have a dynamically-determined P/C Status must elect a P/C Status of either Production or Consumption in time for the P268 Implementation Date; and
- The P/C Status of any Exempt Export BM Units which have already elected to be either Production or Consumption will remain unchanged unless the Lead Party elects otherwise.

Why make a P/C Status election mandatory?

This removes the need for any default rule, and achieves the Proposer's intention that no Exempt Export BM Unit is ever allocated a P/C Status which it has not explicitly elected.

The Group has not identified any other way of achieving this intention. The Group's analysis of current elections by Exempt Export BM Units shows that there is no obvious P/C Status preference among these BM Units – with roughly half choosing to be Production and half choosing to be Consumption (see Attachment A). Changing the existing default rule to allocate either a Production or Consumption P/C Status in the absence of any election by the Lead Party would therefore not resolve the issue identified by P268.

What happens if an Exempt Export BM Unit changes ownership?

To achieve the intention of P268, the new Lead Party will be required to elect a P/C Status for the BM Unit. In practice, this may be the same as the previous Lead Party's election.

This removes the need for any default rule (e.g. that the previous P/C Status continues to apply in the absence of any election to the contrary by the new Lead Party), and thereby removes any potential for confusion and unintended imbalance.

Why remove the option of a dynamically-determined P/C Status?

Since P100 introduced the current P/C Status rules in 2003, no Exempt Export BM Unit has ever explicitly elected to have a P/C Status which is dynamically determined. Of the small number of Exempt Export BM Units which have had a dynamically-determined P/C Status at any point since 2003, all have had this by default because they have not made any specific election.

The Group notes that this could be considered an implicit choice by these Parties. However, the Group notes that there is only one current Exempt Export BM Unit which has not already elected a 'fixed' P/C Status which is either Production or Consumption. This BM Unit has been part of a Base Trading Unit for the entire period that it has held Exempt Export status, and in practice has therefore always had a P/C Status of Consumption. The Group notes that the BM Unit's Lead Party is one of the 'Big 6' industry participants, who has provided a member of the Workgroup and responded to the Assessment Consultation. In their consultation response, the Party supports removing the ability for Exempt Export BM Units to have a dynamic P/C Status.

If P268 is approved, ELEXON will contact this Lead Party to remind them of their new obligation to elect a Production or Consumption status by the P268 Implementation Date. If any other BM Units apply for Exempt Export status between now and Ofgem's decision to approve/reject P268, ELEXON will also advise their Lead Parties of the possible forthcoming rule change and the implications of not electing a fixed P/C Status.

The Group has not identified any reason why an Exempt Export BM Unit would want to have a dynamically-determined P/C Status. Such a status is affected by the behaviour of any other BM Units in its Trading Unit, can therefore change at any time and carries a risk of unintended imbalance if the Lead Party is unaware of the change. The Group believes that removing the option for Exempt Export BM Units to choose a dynamically-determined P/C Status is therefore the best way to remove any risk of confusion and deliver the intention of P268. The Group notes that an Exempt Export BM Unit can still change its P/C Status election from Production to Consumption (or vice versa) at any time, subject to the new P268 minimum notice period.

The Group has asked a specific Assessment Consultation question in this area. Only one respondent disagrees with removing the ability for an Exempt Export BM Unit to have a dynamically-determined P/C Status. This respondent believes that the existing P/C Status rules for Exempt Export BM Units are clear, and that these BM Units can already manage the risk of imbalance by exercising the current option to 'fix' their P/C Status.

The respondent considers that:

- Where Parties can manage risk they should be encouraged to do so;
- Permitting a dynamically-determined status is consistent with this approach; and
- This should only be removed where the Party cannot reasonably manage the risk.

The Group notes the respondent's view, and that this appears to be based on a principle rather than any evidence that an Exempt Export BM Unit would want to have a dynamically-determined status. The Group's views therefore remain unchanged.

You can find a summary of the Assessment Consultation responses in Attachment A, and the full responses in Attachment B.

Why change the minimum notice period for a P/C Status election?

Currently, the Code and BSCP15 state that any P/C Status election by an Exempt Export BM Unit shall not become effective until at least 28 calendar days after the Lead Party has notified its election to ELEXON and the CRA.

To achieve the intention of P268, there must not be any gap between the effective dates of a BM Unit's Exempt Export status and its first P/C Status election. The Group believes that part of the original reason for the current 28-day rule may have been to tie it to the process for registering a new BM Unit (which takes 30 Working Days). Providing that the Lead Party makes its election as part of this process, its P/C Status election will become effective on the same day as its BM Unit registration.

The P268 solution also needs to be robust to situations where an existing BM Unit applies for Exempt Export status. Currently, the Lead Party can specify what effective date it is seeking for its Exempt Export BM Unit. If it wishes to simultaneously elect its P/C Status as part of this application it can do so through a separate, optional BSCP15 form. Providing it requests an identical effective date on both forms (of at least 28 calendar days away), its BM Unit's Exempt Export status and P/C Status will become effective together.

Making a P/C Status election is currently an optional part of the process for registering a BM Unit or applying for Exempt Export status. To ensure that each Exempt Export BM Unit always has an elected P/C Status in place, P268 will make the P/C Status election a mandatory part of the Exempt Export application process (which must be used by both new and existing BM Units seeking Exempt Export status), thereby aligning it with the existing timescales for this process. See Attachment A for more details.

The Group has not identified any reason why the existing 28-day notice period is necessary for any subsequent change by the Lead Party to its P/C Status election. This is because a change to an Exempt Export BM Unit's P/C Status does not affect the P/C Status of any other BM Units (only its GC/DC values affect other BM Units in its Trading Unit). In practice, ELEXON and the CRA are able to process elections within 1-2 Working Days – normally for the next Working Day if received by 2pm. The Group has agreed that the timescales for any subsequent changes by an Exempt Export BM Unit to its P/C Status election should therefore be reduced accordingly, so that these are always effective 2 Working Days after submission unless:

- The Lead Party requests a later effective date; or
- The Lead Party requests that the election becomes effective on the next Working Day and ELEXON and the CRA agree.

It is unusual for the Code to contain a timescale for an operational process. The Group agrees that the Code should contain the obligations on Parties, ELEXON and the CRA regarding P/C Status elections, but should refer to BSCP15 for the detailed operational process and timescales. You can find a copy of the draft P268 Code changes in Attachments C and D, an overview of the required BSCP15 changes in Attachment A, and the full redlined changes to BSCP15 in Attachment E.

No Assessment Consultation responses disagree with this approach, and one cites the reduction in notice period as beneficial. You can find a summary of the Assessment Consultation responses in Attachment A, and the full responses in Attachment B.

Are the current notification methods for P/C Status changes appropriate?

If the Lead Party for an Exempt Export BM Unit with a dynamically-determined P/C Status is aware in advance of a change in its P/C Status, then it could take action to prevent imbalance by re-notifying its contracts to the Energy Account that matches its new P/C Status.

However, Parties are not aware in advance of changes in the GC/DC values of other Parties in their Trading Unit unless they have specific bilateral agreements in place with these Parties.

Most existing Exempt Export BM Units are embedded and, by default, are part of a Base Trading Unit with other BM Units who are also in that Trading Unit by default (i.e. Supplier BM Units and other Exempt Export BM Units). Unlike other types of Trading Unit, which can only be formed with the agreement of all the Lead Parties, BM Units in Base Trading Units are unlikely to be aware if another BM Unit joins/leaves the Trading Unit or changes its GC/DC values. If this changes the Base Trading Unit's overall P/C Status, then the BM Units in the Trading Unit are therefore unlikely to be aware of this until they are notified after the event through the CRA-I014 data flow.⁴

The Group has considered whether it could address the Proposer's identified defect by amending the way in which P/C Status changes are notified to Parties. The Group notes that this could go beyond the scope of P268, and has some interaction with P269, because a dynamically-determined P/C Status based on GC/DC values is the normal situation for other generator and Supplier BM Units. The Group has therefore also considered this further under P269, which deals with the implications of a P/C Status change for Supplier BM Units in Base Trading Units.

For P268, the Group believes that simply providing advance notice of P/C Status changes would not address the Proposer's issue of an Exempt Export BM Unit being allocated a P/C Status which it has not explicitly elected. Moreover, the Group agrees that the chosen P268 solution makes any reporting changes unnecessary for Exempt Export BM Units, since the BM Unit's P/C Status will be set by (and will only change if instructed by) the Lead Party.

The Proposer agrees with this view.

No Assessment Consultation respondents have suggested considering this area further.

Why is the Proposer seeking retrospection?

The Proposer seeks retrospection back to at least 1 April 2010, in order to recover the Imbalance Charges it incurred as a result of a particular set of circumstances. These circumstances relate to the P/C Status of the Proposer's Exempt Export BM Units, and were considered by the TDC and the Panel as part of Trading Dispute DA375.

The Proposer has chosen to apply retrospection back to 1 March 2010, rather than 1 April 2010, in order to avoid any confusion/doubt as to whether any retrospective P/C Status election for its BM Units complies with the minimum notice period for such election (either under the old or new rules).

⁴ Although ELEXON publishes the GC/DC values and P/C Status of every BM Unit through the ELEXON Portal every day, these only show the current values and not forthcoming changes. See the P269 Draft Modification Report for more information on Base Trading Units and the role of GC/DC values in determining P/C Status.

The Proposer and the Group have considered the precedent of other previous retrospective changes, as well as the criteria which Ofgem has historically used to consider these changes. Section 7 of this document ('The Case for Change') contains the views of the Proposer, Group and Assessment Consultation respondents on whether P268 meets these criteria. You can find the Panel's initial views in Section 8.

How will retrospection affect Exempt Export BM Units?

Any Exempt Export BM Units whose P/C Status was determined dynamically by default at any time between 1 March 2010 and the P268 Implementation Date will be required to retrospectively elect a P/C Status of either Production or Consumption. For the purposes of this retrospective exercise, all of these elections will be deemed to comply with the minimum notice period.

The Lead Party of an Exempt Export BM Unit which is affected by this retrospective requirement has two choices:

- Elect a fixed P/C Status which is identical to the BM Unit's original (dynamically-determined) P/C Status, such that it preserves the status quo for that BM Unit and its Imbalance Charges remain unchanged; or
- Elect a fixed P/C Status which changes the BM Unit's original (dynamically-determined) P/C Status, such that this retrospectively changes which Energy Account its Metered Volume is allocated to and thereby retrospectively alters its Imbalance Charges.

The Proposer will therefore be able to retrospectively change its P/C Status to recover its original Imbalance Charges.

There is currently only one other Exempt Export BM Unit which has had a dynamically-determined P/C Status by default at any time since 1 March 2010, and there is no evidence that its Lead Party has ever incurred Imbalance Charges as a result (see below and Attachment A for further details). However, this BM Unit will be able to retrospectively change its P/C Status if it wishes.

If any other BM Units apply for Exempt Export status between now and when Ofgem makes its decision to approve/reject P268, ELEXON will advise their Lead Parties of the possible forthcoming rule change and the implications (both prospective and retrospective) of not electing a fixed P/C Status.

The Group notes that the P/C Status of a non-Credit Qualifying BM Unit determines whether its GC or its DC is used in the calculation of its required Credit Cover.⁵ However, the Group agrees that any retrospective change to an Exempt Export BM Unit's P/C Status under P268 shall not affect its historic credit position.

What impact will retrospection have on other Parties?

If one or more Exempt Export BM Units retrospectively changes its P/C Status, the recalculation of the Lead Party's Imbalance Charges will lead to retrospective adjustments to the Trading Charges of all other BSC Trading Parties through the Residual Cashflow Reallocation Cashflow (RCRC).

⁵ A Credit Qualifying BM Unit is a BM Unit which submits Final Physical Notifications (FPNs). Exempt Export BM Units can be Credit Qualifying. See the P269 Draft Modification Report for more information on the role P/C Status has in determining Credit Cover.

Is there a risk of gaming?

Potentially. However, as a precaution against this risk, the P268 retrospective solution limits affected Exempt Export BM Units to a single retrospective change of P/C Status to cover the entire period in which they had a dynamically-determined P/C Status. This reduces the risk that a Lead Party could use retrospective changes to its P/C Status to reduce Imbalance Charges which were caused by other factors – e.g. by making different P/C Status elections for different parts of the period.

Any remaining potential for gaming is small as:

- An Exempt Export BM Unit which retrospectively changes its P/C Status does so at its own risk, because the Lead Party will not be able to retrospectively amend its contract notifications. A change in P/C Status will therefore either retrospectively benefit or disadvantage the Lead Party depending on its overall imbalance position at that time. It will be the Lead Party's responsibility to decide what P/C Status it wishes to retrospectively elect and, in doing so, it shall accept responsibility for any retrospective changes to its imbalance position.
- Other than the Proposer's BM Units, there is only one other existing BM Unit which would be eligible to make a retrospective P/C Status change if P268 was applied back to 1 March 2010. This BM Unit has consistently had a Consumption P/C Status for the entire period. See Attachment A for more details.

The Group therefore cannot identify any reason why more than one retrospective change in P/C Status would be necessary to rectify any imbalance caused purely by that status. The Proposer agrees with this view.

The Group has assessed whether there are other possible ways of enabling affected Exempt Export BM Units to retrospectively change their P/C Status, while reducing the potential for gaming. The Group has considered:

- Introducing a bespoke claims process; or
- Retrospectively changing the Code but leaving it up to affected Parties to raise a Trading Dispute.

Both approaches would put the onus on the affected Party to prove that it had suffered a direct loss as a result of its P/C Status. A materiality threshold/claims fee could also apply.

However, establishing a specific claims process would involve cost and effort, and could end up simply replicating the existing Disputes process. Using the actual Disputes process would mean waving/extending the normal deadline for raising a Trading Dispute, in order to allow the Dispute to apply back to 1 March 2010. It would also effectively mean drafting the P268 Code provisions in such a way as to retrospectively create a Settlement error – a precedent that the Group is uncomfortable with. Finally, the Proposer does not support the use of a claims/Disputes process under P268, as there would be no guarantee that its claim would be upheld.

On balance, the Proposer and the Group therefore agree that the best way to reduce the risk of gaming is to limit affected BM Units to a single retrospective change of P/C Status.

No Assessment Consultation respondents disagree with this view.

Why not apply retrospection back to 2003?

The Proposer has chosen 1 March 2010 because this date corresponds to the only known instance, since the implementation of P100 in 2003, of any Exempt Export BM Unit incurring Imbalance Charges as a consequence of having its P/C Status determined dynamically by default. The Proposer believes that this is therefore the first point at which the defect in the current Code provisions was highlighted.⁶

The Proposer and the Group initially considered whether, if P268 is to be retrospective, it would be more appropriate to apply retrospection back to the P100 Implementation Date in 2003. The Group suggested that, because this would cover the entire period in which any Party may have been confused by the P100 rules, it might have more objective justification than a date which is tied to the particular circumstances of a single Party.

Applying retrospection back to 2003 would affect four Exempt Export BM Units who would not be covered by a 1 March 2010 retrospection. However, further analysis has led both the Proposer and the Group to conclude that there is no evidence to suggest that, with the exception of the Proposer, any Party has incurred Imbalance Charges as a consequence of the P100 rules. You can find the results of this analysis in Attachment A.

In addition, the Proposer and the Group note that the central (ELEXON and BSC Agent) implementation costs of retrospectively applying P268 back to 2003 would be significant and potentially in the region of £150k.

This is because, under retrospection, the resulting adjustments to Parties' Trading Charges would have to be carried out:

- As part of the next timetabled Settlement Run for Settlement Days which fall within the normal 14-month Settlement timetable (i.e. which have not been through a Final Reconciliation (RF) Run);
- In a Post-Final Settlement Run (PFSR) for Settlement Days which have passed RF but which fall within the maximum 28-month PFSR window; and
- Outside the Settlement Run process for any Settlement Days beyond the maximum 28-month PFSR window, using an Extra-Settlement Determination (ESD) approach.

Applying retrospection back to 2003 would therefore mean using an ESD approach for all Settlement Days which occurred more than 28 months before the P268 Implementation Date (assuming that at least one eligible Exempt Export BM Unit retrospectively changes its P/C Status for one or more of these Settlement Days).

BSC Section U1.6 requires all Parties and BSC Agents to retain settlement data for 28 months in a format in which it can be used in a Settlement Run, and for 40 months in archive form for use in any ESD. In addition, ELEXON contractually requires BSC Agents to hold data in archive form for 7 years. Currently, the CRA holds data back to NETA Go-Live and could be instructed to retain this data for use under P268.

Although the necessary data is available, there would be costs to the CRA in extracting it from archiving and storing it. Following an ESD approach would also incur significant ELEXON effort to produce both the ESD methodology for Panel approval, and a system for retrospectively recalculating Trading Charges. There would also be BSC Auditor costs in auditing the approach/methodology.

⁶ Previous Trading Dispute DA96 in 2002 did concern the P/C Status of an Exempt Export BM Unit. However, this Dispute predated the implementation of P100 and its identified Settlement Error related to a rule which no longer exists. The Dispute was upheld and the Settlement Error was rectified.



What is...?

A Post-Final Settlement Run?

A PFSR is a Settlement Run carried out after a Reconciliation Final (RF) Run.

An Extra-Settlement Determination?

An ESD is a determination (or adjustment) of Trading Charges outside normal Settlement Runs. Parties are billed (or credited) for the difference between their original Trading Charges in the preceding Settlement Run and those determined under the ESD.

PFSRs and ESDs are normally used to rectify upheld Trading Disputes, but would be used under P268 through a specific provision in the legal text.

Applying retrospection back to 2003 would retrospectively adjust the Trading Charges of all the Trading Parties which have since left the Code. The resulting payments/credits to an individual Party could be very small when netted over the whole period. The Proposer and the Group note that ELEXON would incur significant effort in attempting to recover/make small payments from/to these Parties.

In contrast, a 1 March 2010 retrospection can be delivered using normal (RF or earlier) Settlement Runs and a PFSR, providing Ofgem approves P268 in time. The central implementation costs for this approach are substantially lower at £15.5k.

The Proposer and the Group have therefore concluded that a 2003 retrospection would add significant disruption for no additional benefit, and that its associated implementation costs would significantly outweigh the materiality of the Proposer's Imbalance Charges.

The Group has asked a specific Assessment Consultation question in this area. Only one respondent disagrees with the Group's conclusion. This respondent believes that, although they do not support retrospection, if retrospection is to apply then it should be back to when the defect arose. The Group notes the respondent's view, and that this appears to be based on a principle rather than any evidence that any BM Unit has been disadvantaged by the current rules prior to 1 March 2010. The Group's views therefore remain unchanged.

You can find a summary of the Assessment Consultation responses in Attachment A, and the full responses in Attachment B.

How do P268 and P269 interact?

Separate Modification Proposal P269⁷ seeks to always allocate a fixed P/C Status of Consumption to all BM Units in Base Trading Units whose P/C Status is dynamically determined at the Trading Unit level. It will not change the ability of Exempt Export BM Units in Base Trading Units to independently elect a P/C Status of Production.

P268 and P269 address separate issues and have separate solutions. However, the exact P/C Status rules which apply to Exempt Export BM Units will differ depending on whether both, only one, or neither of the changes are approved as shown in the table on the following page.

All P268 Assessment Consultation respondents and Group members agree that, if P268 and P269 are both approved, implementing both changes in parallel will give additional certainty/clarity of the rules for Exemptable generators.

For a more detailed explanation of P269, please refer to the separate P269 Draft Modification Report.

⁷ P269 'Prevention of Base Trading Unit BMUs' Account Status Flipping from Consumption to Production'.

P268 and P269 interaction

If both P268 & P269 are implemented	If P268 is rejected but P269 is implemented	If P268 is implemented but P269 is rejected	If both P268 & P269 are rejected
<ul style="list-style-type: none"> All Exempt Export BM Units will be required by P268 to elect a fixed P/C Status of either Production or Consumption, and will be unaffected by the P269 solution. 	<ul style="list-style-type: none"> All Exempt Export BM Units which have voluntarily elected under the current rules to have a fixed P/C Status of Production or Consumption will be unaffected by either the P268 issue or the P269 solution. Any Exempt Export BM Units which have not made a specific P/C Status election under the current rules, and which are not part of a Base Trading Unit, will be affected by the P268 issue but not by the P269 solution.⁸ Any embedded Exempt Export BM Units which have not made a specific P/C Status election under the current rules, and which are part of a Base Trading Unit, will be affected by both the P269 solution (which will give them a fixed P/C Status of Consumption) and the P268 issue.⁸ 	<ul style="list-style-type: none"> All Exempt Export BM Units will be required by P268 to elect a fixed P/C Status of either Production or Consumption, and will be unaffected by the P269 issue. 	<ul style="list-style-type: none"> All Exempt Export BM Units which have voluntarily elected under the current rules to have a fixed P/C Status of Production or Consumption will be unaffected by either the P268 or P269 issues. Any Exempt Export BM Units which have not made a specific P/C Status election under the current rules, and which are not part of a Base Trading Unit, will be affected by the P268 issue but not by the P269 issue. Any embedded Exempt Export BM Units which have not made a specific P/C Status election under the current rules, and which are part of a Base Trading Unit, will be affected by both the P268 and P269 issues.

⁸ P269 does not resolve the defect identified by P268, which is that an Exempt Export BM Unit should never be allocated a P/C Status which it has not explicitly elected.

4 Alternative Solution

The Group has developed a purely prospective (forward-looking) Alternative Modification.

The Alternative Modification solution is identical to the Proposed Modification without its retrospective element. The Group's prospective Alternative Modification will go to Ofgem for decision alongside the Proposer's retrospective Proposed Modification.

The Group has developed this Alternative Modification after seeking industry views on it as a potential Alternative. The Alternative solution is unchanged from that detailed in the Assessment Consultation Document and Assessment Report.

5 Impacts & Costs

Costs of the Proposed Modification

The total central implementation cost for the retrospective Proposed Modification is approximately £15.5k.

This comprises:

- £1k in CRA costs; and
- £14.5k (60 man days) in ELEXON effort.

These costs include updating processes and documentation (see below), contacting all Exempt Export BM Units to explain the new prospective and (where eligible) retrospective rules, publicising the retrospective implementation exercise to Parties, managing the retrospective P/C Status elections, calculating the consequential changes to Parties' Trading Charges, and chasing payments from/to any Parties who have left the Code.

If the P268 Proposed Modification and P269 are implemented together, this will deliver a 33% saving from their combined separate costs.

Delivering the Proposed Modification at this cost is dependent on all the retrospective changes to Trading Charges forming part of normal (pre-RF) Settlement Runs or a PFSR.

Costs of the Alternative Modification

The total central implementation cost for the prospective Alternative Modification is approximately £8k.

This comprises:

- £1k in CRA costs; and
- £7k (30 man days) in ELEXON effort.

If the P268 Alternative Modification and P269 are implemented together, this will deliver a 42% saving from their combined separate costs.

The lower implementation cost, and bigger saving if combined with P269, is because a prospective P268 solution requires less distinct project management activities than its retrospective version. Its effort is limited largely to updating processes/documentation and publicising the new rules to Exempt Export BM Units. The majority of its project overheads can therefore be subsumed within those for P269 if the two changes are delivered in parallel.

P268 impacts

Impact on BSC Systems and process

BSC System/Process	Potential impact
Central Registration Agent	Will need to ensure that each Exempt Export BM Unit has an elected P/C Status in place. See Attachment A for more details.

Impact on BSC Parties and Party Agents

P268 will impact all existing and future Exempt Export BM Units. The retrospective element of the Proposed Modification will also impact all other BSC Trading Parties.

Impact on Transmission Company

None. The Transmission Company has confirmed that it is not impacted by P268, and that it is neutral on whether P268 better facilitates the Applicable BSC Objectives. You can find a copy of the Transmission Company's response on ELEXON's [P268 webpage](#).

Impact on ELEXON

Area of ELEXON's business	Potential impact
BM Unit registration / handling applications for Exemptable Generating Plant status	Will need to ensure that each Exempt Export BM Unit has an elected P/C Status in place. See Attachment A for more details.
Release Management	ELEXON will manage the P268 implementation project.

Impact on Code

Code section	Potential impact
Section K 'Classification and Registration of Metering Systems and BM Units'	See draft legal text in Attachments C and D. The Workgroup has consulted on these changes as part of its Assessment Consultation; no respondents had any comments.

Impact on Code Subsidiary Documents

CSD	Potential impact
BSCP15 'BM Unit Registration'	Changes are required to the BSCP's procedures and forms. See Attachment A for more details, and Attachment E for the full draft redlined changes.
BSCP31 'Registration of Trading Units'	BSCP31 references the determination of P/C Status for Exempt Export BM Units, and changes are needed to reflect the new P268 rules. See Attachment A for more details, and Attachment F for the full draft redlined changes.
CRA Service Description	Changes are required to remove the existing inconsistency between the Service Description and the Code, and to deliver the P268 solution. See Attachment A for more details, and Attachment G for the full draft redlined changes.

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Impact on other Configurable Items	
Configurable Item	Potential impact
CRA User Requirements Specification	Changes will be needed to reflect the P268 solution. ELEXON will draft and make these changes during the P268 implementation exercise.
Interface Definition and Design (IDD)	Changes will be needed to reflect the P268 solution. ELEXON will draft, consult on, and make these changes during the P268 implementation exercise.

Other Impacts	
Item impacted	Potential impact
ELEXON guidance (e.g. the 'Production/Consumption Flag' & 'BM Unit' guidance notes)	Will need to correctly reflect the new P268 rules/process. ELEXON will make these changes during the P268 implementation exercise.

Note on Code Subsidiary Document changes

P268 concerns the clarity of the P/C Status rules, including the consistency of the Code Subsidiary Documents with the Code itself. The Group has therefore developed and agreed the changes to BSCP15, BSCP31 and the CRA Service Description as part of the Assessment Procedure along with the Code legal text. This enables the Panel, Parties and Ofgem to have sight of all the changes together, rather than waiting for the Code Subsidiary Document changes to be drafted during the implementation phase.

The Group has already consulted on the Code legal text, but not the BSCP/Service Description changes. The Panel invites you to comment on the changes as part of this Report Phase Consultation.

While making the BSCP/Service Description changes for the P268 solution, the Group has taken the opportunity to generally 'tidy up' all references to P/C Status and Exempt Export BM Units throughout these documents. These additional changes are intended to maximise clarity and consistency with both the Code and operational practice.

The Group has developed the P268 and P269 Code legal text and Code Subsidiary Document changes in a way that minimises the interactions between the two sets of changes. This ensures that either or both can be implemented as required, without one set of drafting being contingent on the other.

Proposed Modification

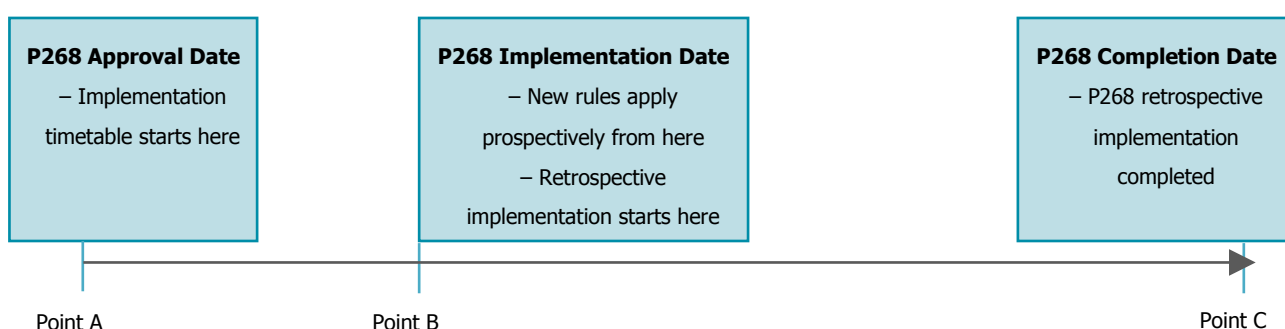
The Group's recommended Implementation Dates for the Proposed Modification are:

- 23 February 2012 (the date of the February 2012 Release), if ELEXON receives Ofgem's decision on or before 13 October 2011; or
- 5 April 2012 (a stand-alone Release), if ELEXON receives Ofgem's decision after 13 October 2011 but on or before 1 December 2011.

This aligns with the Group's recommended Implementation Dates (and associated 'decision by' dates) for P269.

Both of these dates will allow all required retrospective changes to Trading Charges to form part of normal (pre-RF) Settlement Runs or a PFSR. Note that the draft legal text also limits any Trading Charges adjustments to normal Settlement Runs or a PFSR. A later decision would require ELEXON to use an ESD-approach to deliver retrospection, the costs of which would be significantly higher to both ELEXON and BSC Agents. If, for any reason, Ofgem is unable to make a decision by either of the dates provided then it should use its ability to 'send back' P268 to the Panel. This will allow the Panel to revise the legal text and conduct a further impact assessment/consultation to establish the exact costs and lead times associated with an ESD approach, whether these alter participants' views on whether P268 facilitates the Applicable BSC Objectives, and what revised Implementation Date(s) are appropriate.

The Proposed Modification's retrospection is achieved through the legal drafting rather than using a retrospective Implementation Date (see Attachment C). Delivering the prospective and retrospective elements of the Proposed Modification requires a staged implementation approach as shown in the following diagram.



Between Points A and B:

- All impacted documents will be amended and published;
- ELEXON will contact all Exempt Export BM Units to explain the new rules;
- Any existing Exempt Export BM Units with a default dynamic P/C Status will make a prospective P/C Status election of Production or Consumption; and
- ELEXON and the CRA will undertake all preparatory work for the retrospective exercise.

Between Points B and C:

- All affected Exempt Export BM Units will make their retrospective P/C Status elections;
- The CRA will enter these retrospective elections into BSC Systems; and
- BSC Systems will process the consequential changes to Trading Charges as part of the next normal Settlement Run or PFSR.

Alternative Modification

The Group's recommended Implementation Dates (and associated 'decision by' dates) are identical for the prospective Alternative Modification. As the Alternative Modification has no retrospective element, the activities between points B and C above are not needed. All other activities between Points A and B will be the same (with the exception of removing the preparation for retrospection).

Parallel P268/P269 implementation

All P268 Assessment Consultation respondents and Group members agree that, if both P268 and P269 are approved, then implementing the two changes in parallel would be beneficial. The Group notes that this would achieve some central cost-savings (see Section 5). It also agrees that a parallel implementation would also be in the interests of clarity/certainty. This is because both changes impact the P/C Status rules, the same Code section and Code Subsidiary Documents, and Exempt Export BM Units. See Section 3 for a description of the interaction between the P268 and P269 issues/solutions.

No Assessment Consultation respondents disagree with the Group's proposed Implementation Dates. One respondent and one Group member note that they take comfort from the fact that, although the Alternative Modification will not be implemented until February 2012 at the earliest, no Party will be disadvantaged in the meantime. The Group member notes that there is currently only one Exempt Export BM Unit with a default dynamic P/C Status, whose Lead Party is aware that this status can change. If any other BM Units are granted Exempt Export status before the P268 Implementation Date, ELEXON will explain both the current rules and those that will apply if P268 is approved. The consultation respondent considers that, on its own, P268 could be implemented quicker (as it does not involve a systems change and therefore has a shorter lead time than P269). However, they agree that implementing both changes together will provide cost savings.

This section explains the views of the Group and Assessment Consultation respondents. You can find the Panel's initial views in Section 8.

What are the Group's views on Trading Dispute DA375?

The specific circumstances covered by the Trading Dispute are confidential, and the Group has therefore not considered these in detail during its assessment of P268.

The Group notes that it is not its role to re-examine the merits of the Dispute, or the decision of the TDC and Panel that no Settlement error occurred. The questions a Workgroup must consider for any Modification Proposal is whether there is an issue or defect in the current Code provisions, and whether changing the Code to deliver the proposed solution better facilitates the Applicable BSC Objectives.

However, the Group notes that the existence of the Trading Dispute (rather than its detailed circumstances) is relevant to its consideration of retrospection. This is because the Proposer believes the Dispute demonstrates that the current Code provisions can cause confusion and unintended imbalance. The period in which the Proposed Modification would be retrospectively effective is the period in which the Proposer incurred Imbalance Charges, and which was covered by the Dispute. You can find the Group's views on this below.

The Group notes that, because the Trading Dispute was referred to the Panel, the Panel and Ofgem will be aware of its detailed circumstances and will be able to take these into account when deciding whether P268 better facilitates the Applicable BSC Objectives.

Does the Group agree with the Proposer that the BSC is unclear?

No. The other members of the Group believe that the current Code provisions are clear, although some believe they could be made even clearer.

Some members believe that the existence of Trading Dispute DA375 highlights a potential question of interpretation regarding the current rules; exacerbated by the current inconsistency between the provisions of the Code and the CRA Service Description.

Other members note that, in the event of a conflict between the provisions of the Code and any Code Subsidiary Document, the Code takes precedence (BSC Section H1.5). The Group notes that aligning the Service Description with the current Code provisions would not need a Modification Proposal (a Code change), as this could be achieved by raising a Change Proposal (CP) to change the Service Description.

Does the Group agree with the Proposer that the original P100 drafting was defective?

No. The other members of the Group have not identified any reason to believe that the original drafting did not deliver the P100 Workgroup's intended solution.

These members note that P100 extended a rule which had already been present since NETA Go-Live. Before P100, the Lead Party of an Exempt Export BM Unit which was not in a Trading Unit with any other BM Units could independently elect the BM Unit's P/C Status regardless of its Relevant Capacity (i.e. its own GC/DC values). The pre-P100 wording in BSC Section K stated that, in the absence of such an election by the Lead Party, the BM Unit's P/C Status would be determined by its Relevant Capacity. P100 extended this ability and default rule to Exempt Export BM Units in Trading Units with other BM Units.

Some members believe that the P100 Group may have assumed that all applications for Exempt Export status would come from new BM Unit registrations, and therefore may not have considered a situation in which an existing non-Exempt Export BM Unit subsequently applies for Exempt Export status. In this situation, the BM Unit's P/C Status would have been dynamically determined before it held Exempt Export status (as this is the normal rule for non-Exempt Export BM Units), and would continue to be dynamically determined afterwards by default unless the Lead Party made a specific P/C Status election in accordance with BSC Section K/BSCP15.

A worked example:

The Group has considered a scenario in which a 'normal' (non-Exempt Export) embedded generator BM Unit is a Sole Trading Unit. Because its GC value exceeds its DC, the BM Unit's P/C Status is dynamically determined as Production. The Lead Party then applies for Exempt Export Status. In the absence of any specific elections by the Lead Party to the contrary, the newly Exempt Export BM Unit will automatically join the Base Trading Unit for its GSP Group and its P/C Status will be dynamically determined as Consumption (as all Base Trading Units are currently Consumption).

The Proposer believes this demonstrates flaws in the P100 legal text. However, other members of the Group do not believe that this necessarily demonstrates that the P100 Group's solution or legal drafting was flawed – more that embedded generators' trading options/choices have changed since 2003. The Group notes that, in the seven and a half years since P100 was implemented, the Proposer's situation represents the only known occurrence of an Exemptable generator incurring Imbalance Charges as a consequence of having a dynamically-determined P/C Status. Some members believe that, in the scenario described above, the consequences of the Code rules are clear (although whether these rules are the most appropriate/desirable is a different question).

As well as the Code and the CRA Service Description, P100 made changes to BSCPs 15 & 31, the Interface Definition and Design (IDD) document and reporting catalogues, and other CRA systems documentation. The Group notes that no inconsistencies have been identified between these other documents and the Code. The Group also notes that the original wording which P100 introduced to the CRA Service Description in 2003 matched the Code, but that in 2008 CP1228 appears to have inadvertently amended this wording and introduced the current inconsistency.⁹

You can find copies of the original P100 and current Service Description wording in Attachment A. You can download a copy of the original P100 redlined changes to the Code from ELEXON's website [here](#).

⁹ CP1228 'CRA Service Description Re-write'. The Proposer and the Group briefly considered whether it would be more appropriate to apply retrospection back to 2008 than 2010, but ruled this out for the same reasons as a 2003 retrospection – i.e. the costs/ disruption of retrospectively adjusting Trading Charges outside the normal maximum 28-month Settlement timetable, and the lack of evidence that any Party other than the Proposer had occurred Imbalance Charges as a consequence of having a dynamically-determined P/C Status.

Does the Group agree with the Proposer that the current default rule is inappropriate?

Yes. The other members of the Group believe that the forward-looking solution proposed by P268 is clearer and/or more appropriate than the existing rules. This is because it removes any possible potential for confusion by ensuring that each Exempt Export BM Unit elects a specific P/C Status.

The Group notes that Parties do not apply for Exempt Export BM Units frequently or in large numbers,¹⁰ and that the Lead Parties of these BM Units may be smaller participants and/or new entrants to the market. Some members consider that it is not helpful to these Parties to have a default rule which applies in the event of the Party's inaction.

These members note that, under the current rules, it is not possible to tell whether an Exempt Export BM Unit which has a dynamically-determined P/C Status by default has one because it has not understood the rules or because it has made an implicit (passive) choice to have its status determined this way. Making each Exempt Export BM Unit actively elect its status will remove any potential for misunderstanding and unintended imbalance.

Does the Group agree with the Proposer that P268 should have retrospective effect?

No. The other members of the Group are sympathetic to the Proposer's situation but believe that there are well-established reasons to avoid retrospective rule changes.

The Group notes the criteria against which Ofgem has previously considered retrospection. The Group has assessed P268 against these criteria on its own merits, while being mindful of Ofgem's reasons for approving previous retrospective changes [P37](#), [P141](#), [P210](#), [P235](#) and [P248](#).¹¹ It has also noted the progression of retrospective UNC Modification [0341](#),¹² which Ofgem has recently rejected.

The table on the following page shows the Proposer's and the Group's general views on whether P268 merits retrospection, as well as whether it meets Ofgem's specific criteria.¹³

¹⁰ Currently there are around 30 Exempt Export BM Units.

¹¹ Approved Modifications P37 'To provide for the remedy of past errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications', P141 'Removal of Unintentional Effects of Approved Modification P106 on Supplier Charges', P210 'Revisions to the Text in Section P related to Single Notifications of Energy Contract Volumes and Metered Volume Reallocations', P235 'Aligning BSC requirements with the calculation of reconciliation interest performed by the Funds Administration Agent' and P248 'Aligning BSC interest calculation requirements with the FAA calculation method and P235 principles'.

¹² UNC Modification 0341 'Manifest Errors in Entry Capacity Overruns'.

¹³ Ofgem's criteria are worded slightly differently in its different decision letters, although the criteria themselves are the same. The Group has primarily referred to those in Ofgem's P210 decision. These are cited by the Proposer in the Modification Proposal form, and represent Ofgem's fullest explanation of its criteria in a BSC decision letter. Ofgem has since updated its [guidance](#) on the criteria it applies when considering requests for changes to be granted urgent status, to include its views on the balance between the cases for urgency and retrospection. The Group notes that this guidance includes a copy of Ofgem's retrospection criteria. It agrees that the wording of these is not materially different from the P210 decision letter and does not change its views.

Does P268 merit retrospection?



What are Ofgem's retrospection criteria?

In its [P210](#) decision letter, Ofgem states that, in general, retrospective rule changes damage confidence in, and the efficiency of, the market.

It believes Parties prefer the assurance/certainty of rules that are unlikely to change retrospectively, and notes the general legal principle that rule changes should not change past transactions completed on the basis of the then existing rules.

However, it believes retrospection may occasionally be justified where:

- The fault or error occasioning the loss was directly attributable to central arrangements;
- There were combinations of circumstances that could not have reasonably been foreseen; or
- The possibility of a retrospective action had been clearly flagged to participants in advance, allowing the detail and process of the change to be finalised with retrospective effect.

It notes that the loss sustained, or consequence of the problem, would need to be material.

Yes (the Proposer)	No (the other Group members) ¹⁴
<ul style="list-style-type: none"> The financial consequences of the events covered by Trading Dispute DA375 were significant (both in absolute terms and in relation to the Party's trading base). The Trading Disputes process is itself retrospective, and ambiguities in BSC documentation only become apparent after the event. No other Party would be impacted through retrospective rectification, and there is therefore no risk of a disorderly market as a result. 	<ul style="list-style-type: none"> The central question of principle is whether it is appropriate to correct a Party's mistake (and address any consequential loss to that Party) through a retrospective rule change. Not convinced by the Proposer's argument that P268 retrospectively achieves clarity – how can you retrospectively make the rules clearer? Retrospection itself reduces certainty and clarity, which could be a barrier to entry. Retrospection sends the wrong message to Parties, who should be incentivised to read the Code and actively monitor their trading/imbalance positions. Would the situation be different if the affected Party had been one of the Big 6, rather than a new GB market entrant who had previously raised a Trading Dispute?
<ul style="list-style-type: none"> The situation occasioning the loss to the Lead Party is directly attributable to central arrangements. The interaction of circumstances could not have reasonably been foreseen. The provisions of K3.5.5 may have arisen because of faulty legal drafting for P100. 	<ul style="list-style-type: none"> The Proposer's situation was not directly attributable to central arrangements, as the Code was clear (although the inconsistency in the Service Description was unhelpful and may have led to a question of interpretation). P268 would apply retrospection back before the date that the Modification Proposal was raised – it therefore cannot be argued that the possibility of this retrospection was flagged in advance.

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¹⁴ Not all members necessarily agree with all of these arguments.

Does the Group agree with the Proposer that P268 better facilitates the Applicable BSC Objectives?

Only if P268 is applied prospectively and not retrospectively. The other members of the Group believe that the forward-looking part of P268 facilitates clarity/simplicity, but that this benefit is outweighed by the disruption and uncertainty of retrospection.

The Group's views centre on Applicable BSC Objectives (c) and (d). Neither the Proposer nor the Group has identified any impact on Objectives (a) or (b).

Group's initial views (pre-consultation)

This table shows the Group's initial views before issuing its Assessment Consultation. At this stage, the Group had not formally developed its prospective Alternative Modification and was seeking industry views on whether to do so. The table therefore shows only the Group's views on the retrospective Proposed Modification. The initial view of all members other than the Proposer was that the Proposed Modification should be rejected.

Initial views: Does the P268 Proposed Modification better facilitate the Applicable BSC Objectives?		
Objective	Proposer's views	Other Group members' views ¹⁵
(d) – efficiency	<ul style="list-style-type: none"> Yes – increases the clarity of the Code provisions (which are currently ambiguous) and removes an inconsistency between the Code and the Service Description. Variances in interpretation of the Code and Code Subsidiary Documents create inefficiency/ uncertainty, with potentially significant costs for Trading Parties. P268 provides certainty in the interpretation of the Code. 	<ul style="list-style-type: none"> Fairly neutral – there is not necessarily a defect in the Code, but the existence of the Dispute suggests the Code could be made even clearer. Yes, but it is not a large defect. A Modification Proposal is one way to achieve the intended clarity, although it could be delivered through a CP to amend the Service Description. Yes – the existing default rule is not appropriate for new entrants, who should not be given a P/C Status by default which may be different to expectations. In favour of anything which increases clarity and adds certainty.
(c) - competition	<ul style="list-style-type: none"> Yes – gives a level playing field for new entrants, who are less familiar with BSC procedures and are disproportionately impacted by the risks and uncertainty caused by any inconsistency/ ambiguity in the rules. 	<ul style="list-style-type: none"> No – retrospection introduces uncertainty and disruption for all Trading Parties. The uncertainty caused by retrospection outweighs any increased certainty delivered by the prospective part of the solution. No – but depends on your view of whether it is appropriate to use a retrospective rule change to correct a Party's mistake and consequential loss.



What are the Applicable BSC Objectives?

- The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence;
- The efficient, economic and co-ordinated operation of the National Electricity Transmission System;
- 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;
- Promoting efficiency in the implementation of the balancing and settlement arrangements.

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¹⁵ Shows the different views expressed by the other Group members – not all members necessarily agree with all of these views.

Group's final views (post-consultation)

The view of all Parties who responded to the Group's Assessment Consultation was that the retrospective Proposed Modification should be rejected, and that the prospective Alternative Modification should be developed by the Group and approved.

The table below shows the Group's final views after considering the Assessment Consultation responses. The Proposer was not present at this meeting. The unanimous view of those members present was that the Proposed Modification should be rejected and the Alternative Modification should be approved.

Final views: Does P268 better facilitate the Applicable BSC Objectives? ¹⁶		
Objective	Proposed Modification	Alternative Modification
(d) – efficiency	<p>No, because:</p> <ul style="list-style-type: none">• The disruption and complexity of retrospection outweighs any benefit of increased clarity/simplicity from the prospective part of the solution.• If Parties know that they can retrospectively change the rules following a mistake, this reduces the incentive for them to actively read the Code or monitor their position. This sets an undesirable precedent for the efficiency of the BSC arrangements.	<p>Yes, because:</p> <ul style="list-style-type: none">• It adds clarity and simplicity.• Additional simplicity avoids the risk of further Trading Disputes and the time/effort spent on any problems that arise through complexity.• A Party has been caught out by the current rules. Although these are clear, the P268 rules would be even clearer/simpler – delivering a small positive benefit.• It improves clarity, although it is not a large defect. A Modification Proposal is one way to achieve the intended clarity, although it could be delivered through a CP to the Service Description.• The existing default rule is not appropriate for new entrants, who should not be given a P/C Status by default which may be different to expectations.• The Proposer's arguments have justification when applied to the prospective solution, but not when applied to retrospection.

¹⁶ Shows the different views expressed by those members who were present at the Group's final meeting. Not all members necessarily agree with all of these views.

Does P268 better facilitate the Applicable BSC Objectives?		
Objective	Proposed Modification	Alternative Modification
(c) – competition	<p>No, because:</p> <ul style="list-style-type: none"> Retrospection introduces uncertainty and disruption for all Trading Parties. The uncertainty caused by retrospection outweighs any increased certainty delivered by the prospective part of the solution. Retrospection damages confidence in the market, and does not facilitate competition. Retrospective changes can reduce the incentive to understand the rules and act accordingly. Retrospectively changing the rules to rectify a material mistake made due to lack of investment removes the benefit to those who do make investment. It ultimately depends on your view of whether it is appropriate to use a retrospective rule change to correct a Party's mistake and consequential loss. In this case, the criteria for retrospection have not been met. 	<p>Yes, because:</p> <ul style="list-style-type: none"> It makes the rules clearer/simpler, and thereby helps new and existing Parties have greater certainty and understanding of the rules. The benefit to competition and Objective (c) is small, and is consequential to the benefit to efficiency and Objective (d).

Assessment Consultation respondents' views on the merits of P268 generally mirror the Group's. You can find a summary in Attachment A, and the responses in Attachment B.

One respondent distinguishes between P269 (which they see as resolving an unmanageable risk of P/C Status changes for BM Units in Base Trading Units) and P268 (which they see as relating to a manageable risk, because Exempt Export BM Units always have the option to fix their P/C Status under the current rules). The respondent believes that Parties should be encouraged to manage risk, which should only be removed where it cannot be reasonably managed. The respondent believes the existing P/C Status rules for Exempt Export BM Units are clear and does not support the retrospective Proposed Modification. However they consider that, if the prospective Alternative Modification is felt to add clarity and simply confirms an existing position (that, unlike other BM Units, Exempt Export BM Units can already elect their P/C Status), then on balance the Alternative Modification should better facilitate Applicable BSC Objective (d). The Group notes this view.

The Group notes that, despite ELEXON's efforts, no small Parties have responded to the consultation.¹⁷ However, it notes that all of the Parties who did respond are Lead Parties for Exempt Export BM Units.

¹⁷ ELEXON has publicised the P268 and P269 issues and consultations through Newscast and the Cross-Codes Electricity Forum, and has used a longer-than-normal Assessment Consultation period of 3 weeks as agreed by the Panel.


What is the Panel's initial view?

By majority, the Panel agrees with the Workgroup's recommendation that the retrospective Proposed Modification should not be made and that the prospective Alternative Modification should be made.

This section summarises the Panel's initial views after considering the Group's Assessment Report. The Panel invites you to comment on its views as part of this Report Phase Consultation.

Views on retrospection

The Panel agrees that the fundamental question is whether the central BSC arrangements have directly caused a Party a material loss, and whether retrospection is therefore justified. The Panel notes the Proposer's view that lack of clarity over the rules for Exempt Export BM Units has caused it such a loss.

Views against retrospection

A majority of Panel Members agree with the Group's reasons for believing that retrospection is not appropriate in this case. The Panel notes that these reasons can be broadly summarised as follows:

- A Modification Proposal must identify a defect in the Code. The Group agrees that there is no defect regarding the clarity of the Code's provisions for Exempt Export BM Units. The Group believes that the Code's provisions (and the implications of not electing a specific P/C Status) would be clear to any Party reading the Code.
- The Group agrees that the CRA Service Description is inconsistent with the Code. It agrees that this is unhelpful. However, it agrees that the Code clearly states that, in the event of any inconsistency between the Code and a Code Subsidiary Document, the Code takes precedence. The Group therefore agrees that any Party reading the Code would be clear that they should rely on the Code provisions over and above any other BSC documentation.
- While the Group is sympathetic to the Proposer's situation, it therefore believes that the Party's loss was due to its own error rather than a direct result of the central BSC arrangements.
- The Group believes that, while retrospection can be appropriate in exceptional circumstances, P268 does not meet any of Ofgem's criteria for retrospection.

You can find further details of the Group's views in Section 7, and a copy of Ofgem's retrospection criteria on page 24.

One Panel Member comments that, since P100 introduced the current rules in 2003, many Parties have successfully registered Exempt Export BM Units and only the Proposer has misinterpreted the Code.

Views for retrospection

A minority of Panel Members believe that retrospection is justified in the case of P268.

- One of these Panel Members comments that they generally do not support retrospection. However, in this case they question whether the inconsistency between the Service Description and the Code constitutes a defect in the central arrangements. They query what would happen in a hypothetical situation where the Code is correct but the BSC Systems do not correctly implement the Code. Another Panel Member notes that, in this hypothetical scenario, there would clearly be a Settlement Error for rectification through a Trading Dispute. The Panel notes that, in the case of P268, there is no inconsistency between the BSC Systems and the Code. A Panel Member highlights that the TDC and the Panel have both considered the Proposer's situation under Trading Dispute DA375 and found that no Settlement Error occurred.
- Another Panel Member disagrees with the Group's view that the Proposer's loss is not directly attributable to the central BSC arrangements. This Panel Member considers that the Service Description is clearly part of the central arrangements, and therefore the first of Ofgem's criteria is met. They believe that Applicable BSC Objective (d) refers to the 'BSC arrangements' in the broader sense, and that a Code modification is therefore appropriate. They consider that Ofgem's second criteria (combinations of circumstances that could not be reasonably foreseen) may potentially be met but that the third (possibility of retrospection flagged in advance) is clearly not. However, they note that Ofgem only requires one of the criteria to be met to justify retrospection.

Views on the Applicable BSC Objectives

Majority view

The majority view of the Panel is that the retrospective Proposed Modification should not be made, but that the prospective Alternative Modification should be made.

These Panel Members agree with the Group's views on Applicable BSC Objectives (c) and (d). You can find the Group's full views in Section 7. In summary, these are that:

- The existing Code rules are clear, but the prospective P268 rules are simpler and even clearer. By removing the need for a default rule they may also be more appropriate. This should particularly benefit new entrants and small Parties (although many Group members believe this is a small defect/benefit).
- Because the existing Code rules are clear, there is no defect to address retrospectively. Retrospection would create inappropriate disruption, complexity and uncertainty – outweighing any benefit from the prospective solution.

Minority view

The minority view of the Panel is that the retrospective Proposed Modification should be made, and that the Alternative Modification should not be made, for the reasons set out above in favour of retrospection.

Views on Implementation Date and legal text

The Panel unanimously agrees with the Implementation Dates proposed by the Group, and with the Group's redlined changes to the Code and Code Subsidiary Documents.

9 Recommendations

The Panel provisionally recommends to the Authority:¹⁸

- That the retrospective Proposed Modification P268 **should not** be made;
- That the prospective Alternative Modification P268 **should** be made;
- An provisional Implementation Date for Proposed Modification P268 of 23 February 2012 if an Authority decision is received on or before 13 October 2011, or 5 April 2012 if the Authority decision is received after 13 October 2011 but on or before 1 December 2011;
- An provisional Implementation Date for Alternative Modification P268 of 23 February 2012 if an Authority decision is received on or before 13 October 2011, or 5 April 2012 if the Authority decision is received after 13 October 2011 but on or before 1 December 2011;
- That, if approved, P268 and P269 should be implemented in parallel;
- The draft legal text for Proposed Modification P268;
- The draft legal text for Alternative Modification P268; and
- The draft P268 changes to BSCP15, BSCP31 and the CRA Service Description.

10 Further Information

You can find more information in:

Attachment **A**: Detailed Assessment

Attachment **B**: Assessment Consultation Responses

Attachment **C**: Draft BSC Legal Text – Proposed Modification

Attachment **D**: Draft BSC Legal Text – Alternative Modification

Attachment **E**: Draft BSCP15 Changes

Attachment **F**: Draft BSCP31 Changes

Attachment **G**: Draft CRA Service Description Changes

Attachment **H**: Report Phase Consultation Questions

P269 Draft Modification Report

¹⁸ The Authority is the body that governs Ofgem and to whom the Panel makes its recommendations under the BSC.