

**Phase**

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

## P318 'Change of Party ID/Company Number Through Enabling Assignment'

P318 seeks to enable a BSC Party to transfer its Party ID and/or change its Company Number in order to reassign its rights and obligations under the BSC, without going through the full Market Exit and Market Entry procedures. The intention of this Modification is for this to apply when such a change is of an administrative nature only.



The Workgroup recommends **approval** of P318

This Modification is expected to impact:

- ELEXON (as BSCCo)

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## About This Document

This document is the P318 Workgroup's Assessment Report to the BSC Panel. ELEXON will present this report to the Panel at its meeting on 10 September 2015. The Panel will consider the Workgroup's recommendations, and will agree an initial view on whether this change should be made. It will then consult on this view before making its final recommendation to the Authority on 8 October 2015.

There are three parts to this document:

- This is the main document. It provides details of the solution, impacts, costs, benefits/drawbacks and proposed implementation approach. It also summarises the Workgroup's key views on the areas set by the Panel in its Terms of Reference, and contains details of the Workgroup's membership and full Terms of Reference.
- Attachment A contains the draft redlined changes to the BSC for P318.
- Attachment B contains the full responses received to the Workgroup's Assessment Procedure Consultation.

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### Why Change?

There is currently no route for a BSC Party to transfer its rights and obligations under the BSC to a new company (or Party), without going through the full Market Exit and Market Entry procedures. The P318 Proposer believes that the current arrangements restrict BSC Parties from making such administrative changes when there is a genuine business need. They add that the Authority is required to approve all electricity supply licence transfers and that, if the rationale for the transfer is a legitimate business reason that has met the tests applied by the regulator there should not be a BSC restriction in place that adds additional time to the transfer processes.

### Solution

This Modification seeks to enable a Party to transfer its rights and obligations under the BSC to a new company (or Party) by allowing a **transfer of Party ID** and **change of Company Number** via a "Novation Agreement" as follows:

- the company wishing to be admitted as a BSC Party (i.e. the incoming party) under the Novation Agreement ("Novation Applicant") will be required to submit a completed application form to ELEXON as BSCCo as well as payment for the £500 application fee;
- ELEXON as BSCCo will inform the industry when the incoming Party submits a Novation Agreement application form;
- Novation Agreements will be considered by the PAB who will provide a recommendation to the Panel; and
- the execution of all Novation Agreements by ELEXON will approved or rejected by the BSC Panel.

### Impacts & Costs

P318 will not impact BSC Parties or Party Agents. However, some participants may be indirectly impacted if a Party they have a contract with chooses to use the processes introduced by this Modification.

The total cost to deliver P318 is estimated at £240 (one ELEXON man day) for ELEXON to implement the necessary document changes should P318 be approved.

### Implementation

The proposed Implementation Date for P318 is:

- **25 February 2016** as part of the February 2016 BSC Systems Release

### Recommendation

The Workgroup unanimously agrees that P318 does better facilitate Applicable BSC Objectives (c) and (d) and should therefore be **approved**.

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### Market Entry and Exit

Any company looking to become a Balancing and Settlement Code (BSC) Party must Acceded to the BSC, which includes completing the required application form and paying the associated costs. ELEXON executes the Accession Agreement and provides the new Party with its BSC Party ID. The Party must then follow the [Market Entry](#) process which includes undertaking Qualification for a given Trading Role and ends with the Party registering with the Central Registration Agent (CRA). ELEXON will inform the Panel, existing Parties, the Authority and BSC Agents of the new Party at both Accession and Registration. Should a Party wish to withdraw from the BSC it will be subject to the full [Market Exit](#) procedure

### Qualification under the BSC

The BSC Qualification processes are designed to provide assurance that Parties and Party Agents entering the market develop their systems and processes to the right standard. Supplier and Supplier Agent Qualification applications are considered by the [Performance Assurance Board](#) (PAB). The PAB conducts and administers activities to provide assurance that Suppliers and Supplier Agents under the BSC arrangements are suitably qualified and that the relevant standards are maintained.

The Supplier Volume Allocation (SVA) Qualification process is documented in [BSC Section J 'Party Agents and Qualification under the Code'](#) and in [BSC Procedure \(BSCP\) 537 'Qualification Process for SVA Parties, SVA Party Agents and CVA Meter Operators'](#). All new BSC Parties are subject to the Central Volume Allocation (CVA) Qualification process as defined in [BSCP70 'CVA Qualification Testing'](#).

### What is the Issue?

There is currently no route for a BSC Party to transfer its rights and obligations under the BSC to a new company (or Party), without going through the full Market Exit and Market Entry procedures.

When a Party accedes to the BSC, the Party ID and the Company Number of the acceding Party become linked. If for example, due to a genuine business need, a BSC Party wishes to change its Company Number or transfer its Party ID (along with its rights and obligations under the BSC) it will have to withdraw the original company through the Market Exit procedures and then re-apply with the new company through the Market Entry procedures. This process can take between two months and one year to complete, and can vary massively depending on the Trading Role and the company.

The P318 Proposer believes that the current arrangements restrict BSC Parties from making such administrative changes. They add that the Authority is required to approve all electricity supply licence transfers and that, if the rationale for the transfer is a legitimate business reason that has met the tests applied by the regulator there should not be a BSC restriction in place that adds additional time to the transfer processes.

The Proposer believes that the current arrangements are both disproportionate and unnecessary if there have been no changes to a Party's ability to discharge its responsibilities under the BSC. The Proposer also considers that the current processes place unnecessary cost on BSC Parties and is a waste of BSC resource for what should be



#### What is a Party ID?

A BSC Party ID means an alphanumeric, unique identifier, assigned to a Party by BSCCo following accession.



#### What is an Accession Agreement?

An Accession Agreement means an agreement in the form set out in BSC Section A Annex A-1, whereby a Party Applicant accedes to the Framework Agreement.

Further information on the Accession process can be found in [BSC Section A 'Parties and Participation'](#).



#### What is a Company Registration Number?

A Company Registration Number (also referred to as Company Number) is a unique number that is issued to a limited company or Limited Liability Partnership (LLP) upon incorporation with [Companies House](#).

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a purely administrative change. The Proposer therefore concludes that the BSC should contain provisions to make such administrative changes without the requirement for the full Market Entry process that applies to genuine new entrants.

### Proposed solution

Green Energy raised [P318 'Change of Party ID/Company Number Through Enabling Assignment'](#) on 26 February 2015.

This Modification seeks to enable a BSC Party to transfer its rights and obligations under the BSC to a new company (or Party) without going through the full Market Exit and Market Entry procedures. P318 proposes to do this by allowing a **transfer of Party ID** and a **change of Company Number**<sup>1</sup> via a "Novation Agreement".

Novation is where a continuing party signs an agreement with an incoming party and outgoing party, agreeing that at a fixed point in time, the incoming party will take over all of the outgoing party's debts, obligations, liabilities and benefits etc.

P318 proposes to allow the transfer of Party ID and change of Company Number under a Novation Agreement on the following basis:

- the company wishing to be admitted as a BSC Party (i.e. the incoming party) under the Novation Agreement ("Novation Applicant") will be required to submit a completed application form to ELEXON as BSCCo as well as payment for the £500 application fee;
- ELEXON as BSCCo will inform the industry when the incoming Party submits a Novation Agreement application form (in the same way it would inform the industry when a Party accedes to the BSC);
- Novation Agreements will be considered by the PAB who will provide a recommendation to the Panel; and
- the execution of all Novation Agreements by ELEXON will be approved or rejected by the BSC Panel:
  - Panel Members will consider all relevant information from the incoming Party, including clear evidence that there is no material change in the ability of the incoming Party to meet the objectives and obligations of the outgoing Party.
  - The Panel will then confirm on behalf of BSC Parties whether it is content to allow the novation to take place.

The novation procedures set out under the P318 proposed solution will apply to all BSC Parties (regardless of whether they are a Supplier, Generator etc.)

The intention of this Modification is for the proposed solution to apply when such a change is of an administrative nature only. For example, due to a company re-branding or a company takeover where the staff and internal systems remain unchanged. It is therefore not expected that an incoming Party will be subject to the full CVA/SVA Qualification or re-Qualification processes. However, the PAB may recommend or the Panel may request that the incoming Party qualify or re-Qualify depending on the circumstances of the Novation Agreement being applied for.

<sup>1</sup> This includes a transfer of any authorisations and qualifications obtained under the Code which are associated with that Party ID.

For the avoidance of doubt, P318 does not make wider changes to the Market Entry and Qualification processes for new or existing Parties.

## **Legal text changes**

Changes will be required to BSC Section A, Section B 'The Panel', Section H 'General' and Section X Annex X-1 'General Glossary' in order to deliver the P318 proposed solution. Full details of the draft legal text changes can be found in Attachment A.

ELEXON will provide the industry with guidance on the intended use of the novation procedures if P318 is approved.

## **Potential alternative solutions**

The Workgroup have not identified a potential Alternative Modification that would better facilitate the Applicable BSC Objectives and have unanimously agreed with the proposed solution.

The Workgroup requested industry views on whether there were any potential alternatives in scope of P318 that needed to be taken into account. The Workgroup considered the views put forward by the industry and agreed that there was still no Alternative Modification that facilitates the Applicable Objectives better than the Proposed Modification. Further details of the Workgroup's discussions can be found in Section 6.

### Estimated central implementation costs of P318

The total costs to deliver P318 are estimated at £240 (one ELEXON man day) for ELEXON to implement the necessary document changes should P318 be approved.

### Indicative industry costs of P318

There are no implementation impacts or costs to BSC Parties or Party Agents under P318.

One respondent to the Assessment Procedure Consultation indicated potential impacts to the extent that their organisation may be a counterpart to agreements or contracts with a Party that chooses to use the processes set out under P318. However, the effort to revise such agreements should not be significantly different under P318 compared to the current baseline.

### P318 impacts

#### Impact on BSC Parties and Party Agents

The implementation of this Modification will not impact BSC Parties or Party Agents as the aim of P318 is to enable a Party to transfer its Party ID and change its Company Number without going through the full Market Entry/Exit processes. However, contracts between a Party and its agents may be impacted should the Party wish to transfer its rights and obligations under the BSC via the Novation Agreement process introduced by P318. Although, it will be up to the Party(s) involved in the novation processes to revise any impacted contracts.

#### Impact on Transmission Company

We do not expect the implementation of this Modification to impact the Transmission Company.

#### Impact on BSCCo

ELEXON as BSCCo will be impacted through the implementation of the Modification should it be approved. This will include the implementation of corresponding document changes as well as ensuring that any business-as-usual processes are adapted accordingly.

#### Impact on BSC Systems and processes

There are no impacts to BSC Systems due to the implementation of P318. However, there will be some changes required to internal BSC processes.



| Impact on Code      |  |
|---------------------|--|
| Code Section        | Potential Impact   |
| Section A           | Changes will be required to implement this Modification. |
| Section B           |  |
| Section H           |  |
| Section X Annex X-1 |  |

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### Recommended Implementation Date

The Workgroup recommends the following Implementation Date if P318 is approved as Self-Governance:

- **25 February 2016** as part of the February 2016 Release.

If not Self-Governance the Workgroup recommends an Implementation Date of:

- **25 February 2016** as part of the February 2016 Release if an Authority decision is received on or before **1 December 2015**.

The Workgroup originally recommended an Implementation Date of 5 November 2015. However, due to the significant size of the November 2015 Release and the two month extension to the P318 Assessment Procedure, the Workgroup agreed that an Implementation Date of 5 November 2015 was no longer feasible.

### Consideration of industry views on the implementation of P318

The Workgroup issued the P318 Assessment Procedure Consultation with a recommended Implementation Date of 5 November 2015.

Five of the seven consultation respondents agreed with the proposed date noting that there should be minimal impact on the industry and that the date should be achievable. One respondent provided a neutral view and the other respondent did not agree with the Implementation Date as they did not entirely support the Modification.

The Workgroup considered the views put forward by respondents, the size of the November 2015 Release as well as the limited time between a decision to approve P318 and its implementation in November 2015. The Workgroup unanimously agreed that, due to the minimal impact to the industry in implementing P318, a change in the Implementation Date from 5 November 2015 to 25 February 2016 was required. They overall believed that February 2016 is now the most appropriate Implementation Date for this Modification as it will allow sufficient time to implement the proposed changes.

### Self-Governance appeal window

The Workgroup is recommending to the Panel that P318 be treated as a Self-Governance Modification Proposal. Therefore, if this Modification is approved by the BSC Panel at its meeting on 8 October 2015, it will be subject to a 15 Working Day appeal window, which would close on 30 October 2015.

If an appeal is received, the implementation of the Modification will be suspended and the appeal tabled at the next available Panel meeting. In the case of this Modification this would be on 12 November 2015. If no appeals are received, the Panel will be advised and the Modification will be implemented on 25 February 2016.

### Assignment versus Novation

ELEXON clarified the differences between facilitating assignment and facilitating novation:

- **Assignment** allows for a transfer of the benefit(s) of a contract from one party to another party; and
- **Novation** is where a continuing party signs an agreement with an incoming party and outgoing party, agreeing that at a fixed point in time, the incoming party will take over all of the outgoing party's debts, obligations, liabilities and benefits etc.

ELEXON advised the Workgroup that, in order to achieve the intention of the Modification Proposal (which is to facilitate a transfer of rights and obligations under the BSC from one Party or another) it will need to allow for novation under the BSC rather than assignment. The Proposer and the Workgroup agreed that this was the most appropriate way forward.

### Enabling a change of Party ID and Company Number

ELEXON provided the Workgroup with its initial analysis for enabling a change of Party ID. It impact assessed two different routes for enabling this: firstly a system-only based solution and secondly, enabling this change through de-registration and re-registration.

ELEXON asked the Workgroup why a Party may want to change or transfer a Party ID. A Workgroup member noted that a parent company may want to transfer a subsidiary as part of its re-branding and have the Party ID transferred with it to avoid having to change the associated Market Participant Identifiers (MPIDs). The member highlighted that changing the associated MPIDs will result in a change of Supplier on all its accounts.

ELEXON advised the Workgroup that the system-based solution was only assessed at a high level as it quickly became apparent that there would be a significant impact on all of the BSC Central Systems and applications. These impacts would result in significant costs, ultimately to BSC Parties. ELEXON therefore recommended that a system-based solution to enable a change of Party ID should not be progressed. A Workgroup member, who also sits on the BSC Panel, advised that if the costs are high and are not outweighed by the benefits then it is likely that the Modification will be rejected. Two Workgroup members believed that, given the potentially significant costs and impacts to enable a change of Party ID in central systems, it is hard to see how the benefits will ever outweigh the costs.

The Proposer advised that they are not wedded to allowing a change of Party ID and that transferring a Party ID and changing the Company Number (and other company details) is the more important aspect. Based on the information provided and the Workgroup discussions, the Proposer agreed with allowing a transfer of Party ID (i.e. from one Party to another) rather than allowing a Party to change its Party ID.

ELEXON presented the Workgroup with its assessment of a change of Company Number (and other company details). It determined that facilitating a change of Company Number (and de-coupling the Company Number and Party ID) would not require changes to BSC Central Systems. It also noted that there would be impacts on ELEXON as changes will be required to internal process. However, there would be no impact on ELEXON's internal systems.

**The Workgroup and the Proposer agreed that enabling a change of Company Number and a transfer of Party ID via a Novation Agreement is the most efficient and pragmatic approach for P318.**

## **What issues may be associated with the implementation of P318?**

ELEXON advised the Workgroup that there could be a straightforward administrative change of Company Number and transfer of Party ID. For example, where a Party is simply re-branding or being taken over by a parent company and all the employees and systems are staying the same. ELEXON noted that it is currently coming to the end of such a transfer process for Green Energy and that it is possible to enable these changes through the current Market Entry and Market Exit procedures. However, this can be quite a lengthy process.

In addition to this, the Party absorbing or taking over will have to be signed up to the BSC and the old Party will have to be held on the system for 14 months due to the Reconciliation processes. This means that the new Party will have to pay BSC charges for both Parties. A difficult stage in the process is getting a Party into a position where there can be a transfer of live customers. In the case of Green Energy there was a 'like for like' transfer of customers so it was relatively straightforward.

A Workgroup member believed that there is a real risk related to assurance. They were also concerned about allowing re-assignment or novation under the BSC. They noted that there must have been a good reason why this was not allowed before now. Therefore, we need to ensure we are not introducing liabilities and stranded debt.

## **What issues may be associated with off-the-shelf Suppliers?**

The Workgroup discussed whether the implementation of P318 will exacerbate issues with off-the-shelf Suppliers and whether off-the-shelf Suppliers will create issues under P318.

ELEXON advised the Workgroup that there may be risks associated with liability and debt if a company is splitting or an off-the-shelf Supplier absorbs a company that hasn't been fully qualified under the BSC. It noted that there are always risks and liabilities associated with a company's new systems, processes and people.

The Proposer believed that enabling a change of Company Number and a transfer of Party ID through a Novation Agreement, which will sit under Panel assurance, will mitigate any risk associated with off-the-shelf Suppliers being involved in the processes set out under P318. The Workgroup agreed that the implementation of P318 will not exacerbate the issues currently associated with off-the-shelf Suppliers. They also noted that P318 will not go towards fixing any of the outstanding issues either.

## **Will there be any impacts on the transfer of Party License processes?**

The Workgroup asked the Ofgem representative if a change of Company Number or transfer of Party ID will impact the 'transfer of licence' processes. Ofgem advised that it could not see any impact on its current processes due to the implementation of this Modification.



### **What is an off-the-shelf Supplier?**

In more general terms an 'off-the-shelf' company refers to a company that has been pre-registered at [Companies House](#) but has never traded. An off-the-shelf company is ready to be used immediately and can be sold or transferred to an existing company.

An off-the-shelf Supplier is an electricity supply company that has been set up in the same way as any other off-the-shelf company.

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## **Will the short timescales under P318 impact the MRA?**

A Workgroup member asked whether the short timescales associated with the P318 proposed solution may be an issue where BSC processes interact with the Master Registration Agreement (MRA) processes. ELEXON advised that the PAB works closely with the MRA and takes some testing reliance from them so it is possible that they may also have to make some changes to their processes. We noted that the MRA's key interest is that the MPID is functional and can send the required data.

The Workgroup requested that ELEXON contact the MRA and check the potential impacts with them. A member added that, should the MRA be unable to amend their processes, it may add to the length of the transfer processes under P318. The key benefit and intention of P318 is to allow a transfer of Party ID and change of Company Number without going through a lengthy process.

ELEXON has provided details of the P318 proposed Modification to the MRA who have assessed the potential impacts on their internal processes. The MRA has confirmed that the implementation of this Modification will not impact the MRA or its processes. ELEXON has updated the Workgroup on the MRA's response.

## **What impacts are there on ELEXON's internal processes?**

The Workgroup queried how the implementation of P318 will impact ELEXON's internal processes. ELEXON clarified that there will be impacts on the Market Entry team and its processes. This will include work on how it handles the Novation Agreement submissions, the different scenarios in which a Novation Agreement may be requested, and ultimately how best to provide the required information for decision.

A Workgroup member asked whether there needs to be work carried out as part of the P318 Assessment Procedure on the different scenarios in which a Novation Agreement may be requested. They noted that details of what scenarios are and are not considered acceptable may need to be added to a BSCP. Another member disagreed commenting that there may be an endless number of scenarios and by specifying what is and is not acceptable, may open the flood gates and inadvertently create loopholes. The member suggested that the view on what is and is not considered acceptable should sit with the Panel, who will ultimately make the final decision.

ELEXON advised the Workgroup that, should there be issues identified after the P318 solution has been used, a Change Proposal (CP) can be raised to tighten up the requirements in the process if needed. ELEXON recommended that the Market Entry team provide guidance to the industry on how it intends the process to be used (for example, administrative changes relating to rebranding or takeovers etc.) and then re-assess should issues arise. The Proposer and the Workgroup agreed with this view.

## **Novation Agreement, application form and submission fees**

### **Should there be a Novation Agreement application form?**

ELEXON recommend that an application form be introduced to ensure that all the required information is obtained from the applicant wishing to submit a Novation Agreement for Panel consideration. In addition, this will make it explicitly clear to the applicant what information they need to provide. The Proposer and the Workgroup agreed that a Novation Agreement application form should be introduced as part of P318.

A member of the Workgroup queried whether there should be a standard Novation Agreement submitted with the application form. ELEXON advised that its intention is for the Novation Agreement and application form to be sent out together. Another member questioned whether the Novation Agreement and application form should be managed as ELEXON documents. They noted that these could be updated by ELEXON as and when required, or sit within an appropriate Code Section or BSCP which will require a BSC Change to update. A member commented that they would be comfortable with the Novation Agreement and/or application form being managed by ELEXON.

ELEXON advised the Workgroup that the Accession Agreement is currently an annex in the BSC. It noted that it would seem appropriate to do the same with the Novation Agreement if required, and then have the application form managed by ELEXON. A member noted that the outgoing Party will need to complete the [BSCP65 'Registration of Parties and Exit Procedures'](#) tasks and it would make sense for the application form to sit in that same BSCP.

### **Industry views on the location of the Novation Agreement application form**

The Workgroup requested industry views on whether the Novation Agreement application form should be managed as an ELEXON owned document which could be updated as and when required, or whether it should sit within BSCP65, which will require a CP to update.

Four of the seven respondents expressed a preference for the Novation Agreement application form to sit within BSCP65. Respondents noted that this ensures that any changes to the form are managed through the change process and will provide transparency and clear governance. Two respondents believed it would be more efficient to manage the application form as an ELEXON owned document.

The Workgroup agreed with industry views that the Novation Agreement and application form should be introduced into BSCP65 as an additional appendix.

### **Should there be a fee associated with the application form?**

A Workgroup member queried whether or not it would be appropriate to incorporate an administration fee to be paid when a Novation Agreement application form is submitted. ELEXON advised that it currently charges an accession fee of £500 when an Accession Agreement is signed and submitted. It clarified that the administrative work associated with a Novation Agreement application should be the same as that associated with an Accession Agreement. ELEXON therefore believed that a fee of £500 for the Novation Agreement application form would be reasonable.

A Workgroup member asked whether or not both Parties involved in the Novation Agreement should be charged. Another member suggested that it should be the new Party who is trying to avoid the full Market Entry process that should pay the fee rather than the exiting Party. The Workgroup and the Proposer agreed with this view.

### **What information questions should be included in the application form?**

In addition to the Company Number, Company Name and Address etc. ELEXON recommended to the Workgroup that the application form include the following questions:

- Please describe the reason you are applying for a Novation Agreement?

- Will there be any system changes?
- Will there be any staff changes?
- Will there be any immediate customer growth as a result of this change?
- When will the change happen?

One member asked whether a question was needed about off-the-shelf Suppliers. ELEXON advised that the Market Entry team will know straight away if a company is an off-the-shelf Supplier based on the answers to the questions above. Additionally, the answer to the question about staff changes will also allow an off-the-shelf Supplier to be picked up.

The Workgroup and the Proposer agreed with ELEXON's suggested application form questions and that one is not needed for off-the-shelf Suppliers.

## Panel approval and criteria for consideration

The Workgroup discussed the areas that should be considered by the Panel when making a decision on whether to approve or reject a submitted Novation Agreement.

## Credit Worthiness, liabilities and debt

In order to limit the risks associated with liabilities and stranded debt, the Workgroup agreed that the Party entering under a Novation Agreement must be able to meet the expected credit requirements as a new entrant.

The Workgroup queried whether ELEXON performs any credit checks as part of the Market Entry process. ELEXON confirmed that the only check the Market Entry team run is on whether or not the company is registered on [Companies House](#) and then it obtains the accession forms and fees. It does not perform a background credit check as part of the Market Entry process. It also noted that the new entrant starts paying the monthly BSC charges as soon as the Accession Agreement is signed. ELEXON noted that there have been a handful of instances where a Party stops paying their charges soon after acceding. However, it will look to address this issue as soon as possible and therefore it is very rare for a new entrant to default.

A member of the Workgroup, who also sits on the BSC Panel, advised that the Panel will want to be cautious and make sure that all BSC Parties are protected. The member recommended that a provision be added to allow the Panel to request further information on a new Party's credit worthiness as well the size of its liabilities and debts. The Workgroup and the Proposer agreed with this view.

## PAB Opinion

The PAB conducts and administers activities to provide assurance that all participants in the BSC arrangements are suitably qualified and that the relevant standards are maintained. ELEXON recommended to the Workgroup that PAB's opinion on a Novation Agreement be obtained prior to taking a paper to the Panel for decision. A Workgroup member agreed that it would be useful for the Panel to have the PAB's views on a Novation Agreement. These views will then help the Panel make a fully informed decision on whether to approve or reject the agreement.



The Proposer and the Workgroup agreed that the PAB's views on a Novation Agreement should be obtained and included in the paper ELEXON presents to the Panel for decision on said agreement.

### **Should Parties involved in a Novation Agreement be able to appeal a decision made by the Panel?**

A Workgroup member queried whether the Panel's decision to approve or reject a Novation Agreement should be able to be appealed by a Party involved. A member commented that they could not see why a Party entering into a Novation Agreement would want to appeal a decision, unless it was to reject it. They added that the Panel's decision should be final with no right to appeal. The member highlighted that the Panel will make a decision on whether to approve or reject the Novation Agreement based on what is best for the industry and the Parties involved. A member of the Workgroup queried who a Party would appeal to. ELEXON advised that an appeal would need to be raised through the Competitions and Market Authority (CMA).

The Proposer and the Workgroup agreed that a decision made by the Panel on a Novation Agreement should be final and binding with no right of appeal.

### **Industry views on Panel approval and criteria for consideration**

Five of the seven Assessment Procedure Consultation respondents agreed with the areas for Panel consideration when making a decision on whether to approve or reject a Novation Agreement.

One respondent believed that the main areas of potential concern to the Panel are addressed under the Modification. For example, ensuring a new legal entity has the requisite credit status to be able to manage their position under the BSC.

Another respondent who agreed with the criteria believed that the application form questions (set out earlier in this section) cover most areas of potential concern. They agreed with the Workgroup's view that the Panel must be able to seek additional information relating to credit worthiness and debt liabilities in order to protect existing BSC Parties. They also agreed that the PAB should review any submitted application forms and provide a recommendation to the Panel. One respondent agreed with the criteria but suggested that acknowledgement and agreement of the transferring Party's counterparts should be sought as well.

One respondent disagreed and argued that clearer criteria for the use of P318 needs to be included in the BSC to support the delivery of this Modification, including a definition of 'simply administrative'. As noted earlier in this section, the Workgroup agreed that by specifically defining the instances where novation is and is not appropriate will open the process up to loopholes. The Workgroup believe that it should be up to the Panel to determine when the use of the P318 procedures is acceptable. The Workgroup therefore agreed not to introduce a definition of simple administrative at this time.

### **Will the progression of a Novation Agreement be different for a Generator?**

One respondent to the Assessment Procedure Consultation queried how the novation processes would work for a Generator. They suggested that it would be helpful for the



Workgroup to consider this and ensure that all data flows align and the BMUs correspond with the transferred Party ID.

ELEXON advised the Workgroup that P318 will not impact data flows related to Generators or Suppliers. This is because, from the systems point of view, nothing will have changed. The BMUs and MPIDs will still sit under the same Party ID. When a company transfers its Party ID under the proposed solution, the only thing changing under said ID will be the company information. Therefore, there should be no issues from a Generation or Supply point of view.

A Workgroup member asked whether a Generator application for novation under P318 will still need to go to the PAB, given the PAB do not usually deal with Generator issues. ELEXON advised that the consideration and progression of Novation Agreement applications will remain the same. Therefore the PAB will consider all applications before they are presented to the Panel for approval.

## What current BSC processes could be used to facilitate the changes under P318?

ELEXON advised the Workgroup that if a Party wants to transfer its rights and obligations under the BSC the Party would need to go through the full Market Entry and Market Exit processes. It noted that the length of the process for a Supplier acceding to the BSC is approximately six to nine months.

A Workgroup member asked how quickly this process could be streamlined. ELEXON advised that the quickest this has ever been carried out was in three to four months. However, it highlighted that it is not possible to streamline the processes any further due to the PAB and Market Domain Data (MDD) timescales. If a Party is transferring everything over to a new Party, and has live customers, they have to register in MDD after PAB. Therefore it is the new MPID(s) and MDD that add time to the process.

The Workgroup agreed that there are no other BSC processes that could help to reduce the time it takes to complete the existing processes.

## Self-Governance

The Proposer and the Workgroup agree that this Modification does meet the Self-Governance Criteria as it will have no material impact on:

- existing or future consumers;
- competition;
- the operation of the Transmission System;
- wider market/network management issues or Code procedures; and
- does not discriminate between different classes of Parties.

## Industry views on Self-Governance

Five of the seven respondents to the Assessment Procedure Consultation agreed with the Workgroup's view that P318 should be treated as a Self-Governance Modification Proposal. Respondents' views were broadly in line with the Workgroup's views.



### What is the Self-Governance Criteria?

A Modification that, if implemented:

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

(b) is unlikely to discriminate between different classes of Parties.

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One respondent did not believe that this Modification should be treated as Self-Governance as there may be a material impact on other participants if transfers occur without acknowledgement and acceptance from contractual counterparts. For example, a BSC Party could transfer its rights and obligations to a new party without novating contracts it has outside the BSC leaving an agent or wholesale counterpart exposed to risk. The other respondent provided a neutral view but they did not provide rationale.

## Workgroup's view on Self-Governance

The Workgroup considered the views put forward by the Proposer and respondents to the Assessment Procedure Consultation on whether P318 should be treated as a Self-Governance Modification Proposal.

The Ofgem Representative provided their view that, having considered the Workgroup and industry views, P318 does meet the Self-Governance Criteria as there are no material impacts on consumers or the industry. They added that, although this Modification is giving a new decision-making ability to the BSC Panel, a Party would still be able to achieve the same outcome by going through the current exit and entry procedures. The Workgroup and the Proposer agreed with this view.

**The Workgroup unanimously agreed that P318 does meet the Self-Governance criteria and should therefore be treated as a Self-Governance Modification Proposal.**

## Legal text changes

### Assessment Procedure Consultation responses

The Workgroup considered respondents' views on the draft legal text changes issued as part of the Assessment Procedure Consultation.

Three of the seven respondents agreed that the draft legal text changes delivered the intention of the Modification. Out of the remaining respondents, one respondent disagreed, two respondents were neutral and one respondent was unsure about the potential changes.

### Is a reference to the maximum limit of MPIDs required?

One respondent did not agree with the legal text and believed that a reference should be made to BSC Section S1.3.5(a) which concerns the maximum limit of MPIDs that can operate under a supply license. BSC Section S1.3.5(a) currently states that a Supplier may hold:

- *"no more than three Supplier IDs in relation to which the Supplier is the first holder of such Supplier ID"*

ELEXON advised the Workgroup that a cross-reference to the above paragraph is not required because there is no direct impact on it. Section S1.3.5(a) will still apply regardless of P318 as it is already an obligation under the BSC. The Workgroup agreed with this view and that no change should be made to the legal text.

ELEXON contacted the respondent and confirmed that no change to the legal text is required. Additionally, we noted that although a Supplier may hold no more than three

original Supplier IDs (for which they are the first holder) they can inherit additional IDs as per S1.3.5(b).

### **Should BSC Parties and Party Agents be able to object to a novation?**

One respondent was unsure as to whether the legal text delivered the intention of the Modification. They believe that Parties should be able to object to the transfer of rights and obligations under the BSC if it is materially inconsistent with related external contracts. They also believe that there needs to be well-defined conditions on the ability to novate activities to another company. In addition, they suggest that a requirement is introduced to determine that there can be no objection by Party Agents, notification counterparts, network companies and other industry code administrators.

A Workgroup member queried whether ELEXON currently consults the industry before a Party accedes to the BSC. ELEXON advised that it processes the application form and does not advise the industry until after the new Party accedes. There is therefore no consultation included in the Market Entry processes. A Workgroup member questioned why a consultation should be required for a Novation Agreement when one is not issued for new BSC Parties. It was also noted that the intention of this Modification is to shorten the timescales associated with the transfer of rights and obligations under the BSC and that including a consultation will go against this intention.

One Workgroup member noted that contract management between a Party and its agents is a commercial matter and therefore sits outside the BSC and the scope of this Modification. Another member agreed with this view adding that, like any transfer of rights, obligations and liabilities it is up to the parties involved to revise any impacted contracts.

The Workgroup agreed that no consultation or change to the legal text is required to inform or obtain approval for impacted commercial contracts. However, the Workgroup also believe that the industry needs to be made aware of any accepted Novation Agreement applications in the same way they would be made aware of a new BSC Party.

The Ofgem Representative advised that Ofgem currently publishes details of Party License transfers on its [website](#) and a similar approach could be taken for Novation Agreements. The Workgroup agreed with this view and noted that communicating information on accepted Novation Agreement application forms will ensure the industry remains aware of which Party(s) are going through the novation processes.

ELEXON advised the Workgroup that when a new BSC Party accedes to the BSC it notifies the industry on the day the Accession Agreement is signed. It noted that industry is informed through emails as well as through information detailed in Newscast. The Workgroup agreed that the same approach should be taken for submitted Novation Agreement application forms.

### **How explicit should the legal text be on the acceptable circumstances of use for the P318 solution?**

One respondent to the Assessment Consultation did not agree with the legal text as it did not restrict the number of specific circumstances in which the P318 solution may apply.

A Workgroup member noted that there may be an endless number of scenarios where one Party may want to transfer its rights and obligations to another Party (or company) and by

specifying what is and is not acceptable could potentially open the floodgates and inadvertently create loopholes. The decision on what is and is not considered acceptable will sit under Panel Governance (with input from the PAB) and it will be the Panel who ultimately makes the final decision to accept or reject a Novation Agreement.

ELEXON advised the Workgroup that it will publish guidance on how the processes under the P318 solution should be used and that it will be up to the Panel as to whether or not the reasoning behind a transfer of rights and obligations is appropriate. We added that, should the Panel in future determine specific circumstances where novation is not appropriate a BSC Change can be raised to address this.

The Workgroup agreed that the legal text should not restrict specific circumstances of use for the P318 solution.

### **Other comments on the draft legal text changes**

One respondent to the Assessment Procedure Consultation agreed that the draft legal text delivers the intention of the Modification but that a change may be required to BSC Section A2.1.1 to reflect that a new party can be admitted through Novation.

ELEXON advised the Workgroup that BSC Section A2.1.1 currently states that:

- *"Subject to paragraphs 2.1.2 and 2.2.5, any person shall be entitled to be admitted as a party to the Framework Agreement subject to and in accordance with the provisions of this paragraph 2."*

We note that the novation procedures introduced by P318 will already be covered by A2.1.1. This is because a Party being admitted to the Framework Agreement is subject to all of the provisions in BSC Section A2 'Accession' (referred to as 'paragraph 2' above).

There is no change required to A2.1.1 as the P318 draft legal text changes introduce the novation procedures into BSC Section A2.7.

The Workgroup agreed with this view and that no change should be made. ELEXON has since advised the respondent of the rationale for no change being made.



### What are the Applicable BSC Objectives?

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

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

(c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity

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

(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]

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

### Final views against the Applicable BSC Objectives

The Workgroup has provided its final views against the Applicable BSC Objectives. The Workgroup and the Proposer unanimously believe that P318 better facilitates:

- **Applicable BSC Objective (c)** as allowing a Party to transfer its rights and obligations under the BSC without going through the entire Market Entry and Market Exit Procedures will reduce barriers to entry. This will make the process more efficient and reduce the administration effort required from ELEXON as BSCCo.
- **Applicable BSC Objective (d)** as the transfer process will be shorter and efficient and will therefore reduce the cost to Parties and ELEXON as BSCCo.

**The Workgroup unanimously believe that P318 does better facilitate the Applicable BSC objectives compared to the current baseline. It therefore unanimously recommends that P318 should be approved.**

### Self-Governance

The Workgroup unanimously agreed that P318 does meet the Self-Governance criteria and should therefore be treated as a Self-Governance Modification Proposal. Details of the Workgroup rational for Self-Governance can be found in Section 6.

### Implementation approach

The Workgroup unanimously recommend an Implementation Date for P318 of:

- **25 February 2016** as part of the February 2016 BSC Systems Release.

### Legal text changes

The Workgroup unanimously agreed with the draft legal text changes to the BSC, which can be found in Attachment A.

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## 8 Recommendations

The P318 Workgroup invites the Panel to:

- **AGREE** that P318:
  - **DOES** better facilitate Applicable BSC Objective (c); and
  - **DOES** better facilitate Applicable BSC Objective (d);
- **AGREE** an initial recommendation that P318 should be **approved**;
- **AGREE** an initial view that P318 should be treated as a Self-Governance Modification;
- **AGREE** an initial Implementation Date for P318 of:
  - if Self-Governance, 25 February 2016 as part of the February 2016 Release; or
  - if not Self-Governance, 25 February 2016 as part of the February 2016 Release if an Authority decision is received on or before 1 December 2015.
- **AGREE** the draft legal text;
- **AGREE** that P318 is submitted to the Report Phase; and
- **NOTE** that ELEXON will issue the P318 draft Modification Report (including the draft BSC legal text) for a 12 Working Day consultation and will present the results to the Panel at its meeting on 8 October 2015.

## Appendix 1: Workgroup Details

### Workgroup's Terms of Reference

Specific areas set by the BSC Panel in the P318 Terms of Reference

Whether the implementation of P318 will exacerbate the risks associated with off-the-shelf Suppliers? If so, how would these risks be mitigated?

What issues are associated with the transfer of liability and the responsibility of Reconciliation Runs?

What are the reasons for assignment facilities being introduced into other industry codes? Do these reasons also apply to the BSC?

What current BSC processes, if any, could be used to address the issue?

Are there any changes required to the Panel's terms of reference around the approval process for any requested Party ID and/or Company Number changes? If so, what changes need to be made with respect to criteria and procedure?

Under what circumstances would a Party be able to request a change to its Party ID and/or Company? How likely are Parties to request such a change?

Should P318 be treated as a Self-Governance Modification Proposal?

What changes are needed to BSC documents, systems and processes to support P318 and what are the related costs and lead times?

Are there any Alternative Modifications?

Does P318 better facilitate the Applicable BSC Objectives than the current baseline?

### Assessment Procedure timetable

#### P318 Assessment Timetable

| Event   | Date           |
|---|----------------|
| Panel submits P318 to Assessment Procedure    | 12 Mar 15      |
| Workgroup Meeting 1                           | 22 Apr 15      |
| Workgroup Meeting 2                           | 9 Jun 15       |
| Assessment Procedure Consultation             | 10 – 31 Jul 15 |
| Workgroup Meeting 4                           | 6 Aug 15       |
| Panel considers Workgroup's Assessment Report | 10 Sep 15      |

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## Workgroup membership and attendance

| P318 Workgroup Attendance |  |           |          |          |
|---------------------------|--|-----------|----------|----------|
| Name                      | Organisation   | 22 Apr 15 | 9 Jun 15 | 6 Aug 15 |
| Members                   |  |           |          |          |
| Simon Fox-Mella           | ELEXON ( <i>Chair</i> )                              | ✓         | ✗        | ✗        |
| Claire Kerr               | ELEXON ( <i>Chair</i> )                              | ✗         | ✓        | ✓        |
| Talia Addy                | ELEXON ( <i>Lead Analyst</i> )                       | ✓         | ✓        | ✓        |
| Doug Stewart              | Green Energy ( <i>Proposer</i> )                     | ✗         | ✓        | ✗        |
| Andrew Colley             | SSE  | ✓         | ✓        | ✗        |
| Azeem Khan                | npower   | ✓         | ✓        | ✓        |
| Lyndsey Antrobus          | Utilisoft  | ✗         | ✓        | ✓        |
| James Anderson            | ScottishPower  | ✓         | ✓        | ✓        |
| Ryan Guttridge            | Dong Energy  | ✗         | ✓        | ✓        |
| Attendees                 |  |           |          |          |
| Ed Morris                 | ELEXON ( <i>Design Authority</i> )                   | ✓         | ✓        | ✓        |
| Geoff Norman              | ELEXON ( <i>Lead Lawyer</i> )                        | ✓         | ✓        | ✓        |
| Rory P. Edwards           | Ofgem  | ✓         | ✓        | ✓        |
| Adam Boorman              | Cornwall Energy ( <i>Proposer's Representative</i> ) | ✓         | ✗        | ✗        |
| Chris Greer               | Green Energy ( <i>Representative's Alternate</i> )   | ✓         | ✗        | ✓        |



## Appendix 2: Glossary & References

### Acronyms

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

| Acronym |   |
|---------|---|
| Acronym | Definition  |
| BSC     | Balancing and Settlement Code                       |
| BSCP    | Balancing and Settlement Code Procedure             |
| CMA     | Competitions and Market Authority                   |
| CP      | Change Proposal                                     |
| CSD     | Code Subsidiary Documents                           |
| CVA     | Central Volume Allocation                           |
| DCUSA   | Distribution and Connection Use of System Agreement |
| EFR     | Error and Failure Resolution                        |
| IWA     | Initial Written Assessment                          |
| MDD     | Market Domain Data                                  |
| MRA     | Master Registration Agreement                       |
| OTS     | Off-the-shelf                                       |
| PAB     | Performance Assurance Board                         |
| SVA     | Supplier Volume Allocation                          |

### External links

A summary of all hyperlinks used in this document are listed in the table below.

All external documents and URL links listed are correct as of the date of this document.

| External Links |                               |   |
|----------------|-------------------------------|---|
| Page(s)        | Description                   | URL   |
| 4              | Performance Assurance webpage | <a href="https://www.elexon.co.uk/reference/market-compliance/performance-assurance/">https://www.elexon.co.uk/reference/market-compliance/performance-assurance/</a>                       |
| 4              | Market Entry webpage          | <a href="https://www.elexon.co.uk/reference/market-entry/">https://www.elexon.co.uk/reference/market-entry/</a>   |
| 4              | BSC Sections webpage          | <a href="https://www.elexon.co.uk/bsc-related-documents/balancing-settlement-code/bsc-sections/">https://www.elexon.co.uk/bsc-related-documents/balancing-settlement-code/bsc-sections/</a> |
| 4              | Performance Assurance Board   | <a href="https://www.elexon.co.uk/group/performance-assurance-board-pab/">https://www.elexon.co.uk/group/performance-assurance-board-pab/</a>   |
| 4              | BSCPs webpage                 | <a href="https://www.elexon.co.uk/bsc-related-documents/related-documents/bscps/">https://www.elexon.co.uk/bsc-related-documents/related-documents/bscps/</a>                               |
| 4              | Companies House webpage       | <a href="https://www.gov.uk/government/organisations/companies-house">https://www.gov.uk/government/organisations/companies-house</a>   |

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| External Links |                  |   |
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| Page(s)        | Description      | URL   |
| 5              | P318 webpage     | <a href="https://www.elexon.co.uk/mod-proposal/p318/">https://www.elexon.co.uk/mod-proposal/p318/</a>         |
| -              | PAB155 webpage   | <a href="https://www.elexon.co.uk/meeting/pab-155/">https://www.elexon.co.uk/meeting/pab-155/</a>             |
| -              | Panel220 webpage | <a href="https://www.elexon.co.uk/meeting/bsc-panel-220/">https://www.elexon.co.uk/meeting/bsc-panel-220/</a> |