

PUBLIC

P370 'Allow the Panel to designate non-BSC Parties to raise Modifications'

Business Requirements

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1. INTRODUCTION

1.1 Purpose of document

This document contains ELEXON's Business Requirements for Balancing and Settlement Code (BSC) Modification [P370 'Allow the Panel to designate non-BSC Parties to raise Modifications'](#).

The purpose of this document is to formally catalogue the Business Requirements that ELEXON has drafted pursuant to the P370 Workgroup's solution as of its meeting on 28th August 2018. The Business Requirements are subject to Workgroup approval.

This document will form the basis on which:

- i) ELEXON agrees the Business Requirements for P370; and
- ii) ELEXON maintains any changes to the Business Requirements.

The Business Requirements for this Modification are limited as no BSC System changes are envisaged as this is a BSC documentation only change.

1.2 Background

1.2.1 P370 Overview

[P355' Introduction of a BM Lite Balancing Mechanism'](#) was raised as a BSC Modification in June 2017. This Modification is noteworthy as it was a Modification raised by a Non BSC Party where the Authority granted a Designation to this particular party for the purposes of raising a Modification to the Code.

As the Energy Market evolves it is envisaged that the number of Interested Third Parties who wish to raise a Modification to the BSC is likely to increase.

Current Baseline

Section F Modification Procedures' paragraph 2.1.1 'of the BSC outlines the parties which may raise Modifications to the BSC.

"2.1 Modification Proposals

2.1.1 A proposal to modify the Code may be made by any of the following:

- (a) a Party (other than BSCCo or the BSC Clearer);
- (b) Citizens Advice and Citizens Advice Scotland;
- (c) such other bodies representative of interested third parties as may be designated in writing for this purpose by the Authority from time to time;**
- (d) the Panel:..."

2. WHAT IS THE ISSUE?

In the face of an ever changing energy sector, we continue to see an increasing and often publically stated view that the governance and regulatory arrangements act as a barrier to innovation, restrict the introduction of new operating models and can also pose as a barrier to market entry. We continue to see the emergence of a range of new operating models that do not “fit” with the traditional roles around which the BSC was originally designed. Increasingly these new operating models require access to, or are impacted by, arrangements that are governed, either partially or wholly, under the BSC.

For example, there are growing numbers of small flexible generators, which are not licenced and so have their meters registered to Suppliers. This means that they are indirectly bound by the BSC but are not signatories to it. Consequently, this limits their privileges towards raising changes to the BSC.

2.1 What is the proposed solution?

It is important to note that this Modification is not introducing a process which cannot already be undertaken by an interested third party who wishes to raise a BSC Modification. They can seek Designation from the Authority to raise a Modification. The aim is to move the current Designation process from the Authority to the BSC Panel. This move will provide transparency to the process and prescribed timescales. It must be made clear in the Business Requirements that any Designation request will be for the Modification submitted at the same time as the Designation Form.

This modification will also introduce the ability for interested third parties to raise an Issue as prescribed in BSCP40. An Issue is raised when a BSC Party is unsure of the exact Defect or Solution and feels it necessary to assess both of these with Industry’s help before raising a Modification. A Modification requires a defined Defect which cannot be changed once a Modification is raised as well as the proposed solution. By allowing Non BSC parties to raise an Issue this may encourage BSC Parties to raise a Modification on the Original Proposers behalf thus negating the need for Designation, or provide further detail to enhance the Proposers subsequent Modification Proposal and strengthen any request for Designation.

By allowing Non BSC parties to raise an Issue and discuss this with Industry may be a satisfactory outcome for the Proposer and prevent an increase in Modifications.

The main features of the solution are:

- to move responsibility for the operation of the current F2.1.1 (c) Designation process from the Authority to the BSC Panel; and
- for the Authority to become the body to whom appeals may be made.

This would:

- extend and improve the scope of the BSC Panel’s self-governance arrangements;
- improve the accessibility of the Modification Procedures to “interested third parties” removing any perceived barriers to innovation and change;
- be complementary to other proposed changes, particularly [P362: ‘Introducing BSC arrangements to facilitate an electricity market sandbox’](#) to the extent that it facilitates increased engagement with non-BSC Parties; and
- improve Designation timescales and transparency through the development and publication of the criteria to be used by the Panel to determine which “bodies representative of interested third parties....” may be designated as organisations that may raise Modification Proposals.

3. BUSINESS REQUIREMENTS

P370 aims to alter current processes before a Modification or Issue is raised. For these reasons there are no System Changes to be made therefore limited Business requirements.

The Business Requirements are colour coded dependent on the requirement and how it will be delivered:

- Legal BSC = The requirement will be defined within the BSC
- Legal Subsidiary Documents = The requirement will be defined within the Subsidiary documents
- Operational = The requirement will be delivered by ELEXON but does not need to be or cannot be codified

3.1 Interested third parties shall be able to raise Modification Proposals

It must be noted that third parties can already raise Modification Proposals if the Authority grants them Designation. Instead of the non-BSC Party applying to the Authority this Modification Proposal moves the Designation decision from the Authority to the Panel. As with Modification Proposals, ELEXON will act as the critical friend, and will receive the Designation Form ahead of any panel meeting.

BR1	
Interested third parties shall be able to request Designation from the Panel to raise Modification Proposals	
1.1 Legal Subsidiary Documents	Interested third parties must complete a Designation form and submit to ELEXON. The Designation form will be contained in BSCP40.
1.2 Operational	ELEXON in its role as Modification Secretary will act as critical friend and support any Interested third party wishing to raise a Designation request and Modification proposal. Any advice must make it clear that once submitted the Designation and Modification Proposal cannot be changed.
1.3 Legal Subsidiary Documents	Parties when signing the Designation form must agree to be governed by English Law. This will be highlighted in a side letter in accordance with BSCP40
1.4 Legal Subsidiary Documents	Interested third parties must complete and submit a Modification Proposal form in relation to the Designation form. ELEXON must receive both of these forms by the submission deadline for Panel. If only one of these forms is received by submission deadline, either the Modification proposal will be refused or the Designation request will be refused.
1.5 Legal Subsidiary Documents	Interested third parties can apply for Designation to raise an Urgent Modification. ELEXON as Modification Secretary will assess the request for Urgency and request an Ad Hoc Panel Meeting if they deem it necessary. If it is deemed not necessary then the request will be heard at the next BSC Panel meeting. This decision cannot be appealed.
1.6 Operational	ELEXON shall email Industry after the Deadline for Panel papers, informing them that an Interested Third Party is seeking Designation and the date of the BSC Panel meeting in which it will be heard.

1.7 Legal Subsidiary Documents	A Designation process shall be established in BSCP40.
1.8 Legal Subsidiary Documents	If the Panel grants Designation, the 3 rd Party who have been granted designation will present the Modification to the Panel at the same Panel meeting.
1.9 Legal Subsidiary Documents	ELEXON will present the Initial Written Assessment (IWA) at the same meeting. ELEXON will not present IWA if the Designation request is refused by Panel.

Non BSC Parties can apply to the BSC Panel to become an Interested Third Party and thus be able to raise a BSC Modification. This will allow parties who are affected by the Code but not a Party to it, to propose changes to the Code.

3.2 Industry should be made fully aware of the decision and rationale

Industry should be made fully aware of when a decision has been made to allow an interested third party to raise a Modification. This will allow BSC Parties to appeal the decision in a timely manner. Industry will have sufficient information to know the basis on why the decision was made. This serves three purposes; to give BSC parties sufficient information on which to base their appeal; provide transparency and consistency; give other Non-BSC parties confidence in the process.

BR2	
ELEXON shall notify Industry of the Designation decision to allow a Non BSc Party to raise a Specific Modification	
2.1 Legal Subsidiary Documents	ELEXON shall publish the decision of the Panel within [5] Working Days via email. Within that email ELEXON shall make it clear that any decision to grant Designation, is for that particular Modification, and if that Party wishes to raise a separate Modification this must be done via a separate Designation request.
2.2 Legal Subsidiary Documents	If the Panel grants Designation for an Urgent Modification, the Panel must assess the following; When Industry should be informed of the Decision and the length of time a BSC Party has to appeal the decision to the Authority. This information shall be published via email in a timescale requested by the panel, but will be no later than [5] working days
2.3 Legal Subsidiary Documents	ELEXON shall publish the decision of the Panel on the BSC Website
2.4 Operational	Parties can request details of why the Designation was accepted following BR2.1 as well as relevant voting statements against the criteria. ELEXON will respond to any such request in a reasonable timescale with contact details within the Guidance Note
2.5	The Panel must provide its reasons for its Designation decision

Operational	
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3.3 BSC Parties shall be able to appeal to the Authority

It is important to allow BSC Parties to be able to appeal the Panel's decision to grant Designation to raise a Modification to a non-BSC Party. Following Designation, the Modification will be raised and will continue until an appeal is upheld. To avoid unnecessary work by Industry it is important that the appeal process happens in a timely manner. Work will not be put on hold whilst an appeal process is in progress.

BR3	
BSC Parties will be able to appeal the decision made by the BSC Panel to the Authority	
3.1 Legal BSC	Parties must lodge their appeal to the Authority and ELEXON within [15] working days of the email notification being sent (see 2.1) for Non urgent Modifications
3.2 Legal BSC Subsidiary	For Urgent Modifications a Party must lodge their appeal within the timescales prescribed in the email notification described in 2.2. Those timescales will not be longer than [15] working days from the date of notification
3.3 Operational	If ELEXON receive notice that a BSC Party has appealed, it will notify the Industry via email as soon as is reasonably practicable.
3.4 Operational	If ELEXON is made aware of an appeal, work will continue on the Modification relating to the Designation being appealed
3.5 Operational	ELEXON shall notify industry of the Authority's decision via email within [5] working days
3.6 Operational	If the Authority grants Designation to a non-BSC Party following an appeal, the Modification will be raised at the next available BSC Panel and ELEXON will present the relevant IWA
3.7 Legal BSC	If the Authority upholds an appeal from a BSC Party with regards to a non-BSC Party being granted Designation by the Panel the Modification ceases to exist
3.8 Legal BSC	A BSC Party can raise a new Modification with the same defect as the Original Modification from the party seeking Designation, as from a legal perspective the Modification never existed (BSC Section F)
3.9 Legal BSC	A Non BSC party can seek Designation with a Modification which has the same defect as the Original Modification from the party seeking Designation, as from a legal perspective the Modification never existed
3.10 Legal BSC	The Modification Secretary will assess any work already undertaken by the workgroup before the Appeal decision received from the Authority to not grant Designation thus stopping the

	Modification process, if a new Modification is raised with the same defect
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3.4 Non-BSC Parties are clear on the criteria and Designation process

Non-BSC Parties may not be familiar with the BSC change process. Therefore, it is important that the criteria on which a Designation is assessed and the whole process is made clear and transparent

BR4	
Criteria will be created and codified in the BSC. These will be used by the Panel to assess the Designation request	
4.1 Legal BSC	<p>The following Criteria will be used to assess the Designation request alongside the Proposed Modification:</p> <ul style="list-style-type: none"> the rationale of the Third Party Applicant for requesting Designation as an Third Party Proposer (including information on what other steps, if any, have been taken by the Third Party Applicant to have the Code issue or defect addressed); and the reasons why the Third Party Applicant believes that they have an interest in the Code. <p>The Criteria will be assessed against the Modification Proposal submitted at the same time as Designation Form</p>
Legal Subsidiary Documents	
4.2 Operational	A guidance note will be produced and published on ELEXON website detailing the change process, existing forums and their role and the criteria on what a Designation will be judged on. This will be in plain English (non-legal text)

3.5 Any Non BSC Party can raise an Issue or issue to amend the BSC or subsidiary documents

The Panel in the terms of reference for a standing workgroup can authorise a group to consider generally issues relating to the code. Currently only those parties who can raise a Modification can also raise an Issue. However, in practice where Non BSC parties have an Issue to be looked at ELEXON has sought to find a BSC Party to raise the Issue or failing that raise the Modification themselves.

As well as being able to raise Issues which look at possible future changes to the BSC, Non BSC Parties will in future also be able to raise an issue which will be looked at by the relevant BSC Panel committee. These may in future turn into a Modifications or Change Proposals. Allowing potential defects and solutions to be discussed as an Issue creates less risk to existing BSC Parties as actual code changes cannot be carried out and expenditure is limited.

BR5

Any Non BSC Party can raise an Issue or issue to amend the BSC or subsidiary documents

5.1 Legal BSC	Amend Section F of the BSC 2.4.23 a) so any interested person can propose an Issue to be looked at by a Standing Group
5.2 Legal Subsidiary Documents	Make it clear in BSCP40 that any Party can raise an issue for a draft change proposal to be assessed by a Standing Group

3.6 Cost of Change are recorded

For Modifications which are raised via the Designation process, ELEXON will record the costs and report back to the Panel.

BR6

Costs of Change are recorded by ELEXON.

6.1 Legal BSC	Costs of Modifications raised through the Designation process will be recorded and reported back to Panel.
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Although not part of this Modification, industry will need to determine how consequential modifications are dealt with. For example for CMP264/265 to be successfully implemented it required BSC Mods P348/349 also to be implemented. A Non BSC Party may be able to raise a Modification to amend the BSC by being made a Designated Party, but may not be able to enact complementary change in other codes.