

Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

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

P370 seeks to allow the BSC Panel, instead of Ofgem, to designate interested third parties to raise Modification Proposals and for Ofgem to become the appeals body.

This Assessment Procedure Consultation for P370 closes:

5pm on Monday, 12 November 2018.

The Workgroup may not be able to consider late responses.



The P370 Workgroup initially recommends **approval** of P370

This Modification is expected to impact:

- BSC Panel
- Ofgem
- ELEXON

Contents

1	Summary	3
2	Why Change?	5
3	Solution	7
4	Impacts & Costs	11
5	Implementation	14
6	Workgroup's Discussions	15
7	Workgroup's Initial Conclusions	31
	Appendix 1: Workgroup Details	33
	Appendix 2: Glossary & References	35
	Appendix 3: High-level Designation Process Map	37
	Appendix 4: Designation Processes in other industry codes	38

About This Document

The purpose of this P370 Assessment Procedure Consultation is to invite BSC Parties and other interested parties to provide their views on the merits of P370. The P370 Workgroup will then discuss the consultation responses, before making a recommendation to the BSC Panel at its meeting on 13 December 2018 on whether or not to approve P370.

There are six 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 P370 business requirements.
- Attachment B contains the draft redlined changes to the BSC for P370.
- Attachment C contains the draft redlined changes to BSCP40 'Change Management' for P370.
- Attachment D contains the draft Issue Group Term of Reference.
- Attachment E contains the specific questions on which the Workgroup seeks your views. Please use this form to provide your response to these questions, and to record any further views or comments you wish the Workgroup to consider.



Contact

Lawrence Jones

020 7380 4118

Lawrence.jones@elexon.co.uk



P370

Assessment Procedure
Consultation

23 October 2018

Version 1.0

Page 2 of 39

© ELEXON Limited 2018

Why Change?

The current designation process to allow non-Balancing and Settlement Code (BSC) Parties to raise Modifications is described in BSC Section F 'Modification Procedures'. Currently, Ofgem ('the Authority') can designate "such other bodies representative of interested third parties" to raise a Modification. This designation process was recently tested for the first time since the BSC was introduced and has been shown to be slow and opaque. It is also contrary to the direction of travel encouraged by Ofgem for Panels to become more Self-Governing.

Solution

P370 proposes to move the body responsible for designating non-BSC Parties to be able to raise Modification Proposals from Ofgem to the BSC Panel and for Ofgem to become the body to which designation appeals are made. The existing pre-change Issues process will also be opened up to non-Parties.

Impacts & Costs

P370 is a document only change that will directly impact the BSC Panel, Ofgem and ELEXON. They will need to implement new processes and products to operate the amended designation process. P370 is not expected to directly impact Parties or non-Parties.

There is a risk that P370 results in an increase in the number of Modifications (and Issues) progressed under the BSC, which would result in an increased demand for engagement from Industry, Ofgem and ELEXON to participate in the BSC change process. The Workgroup is keen to assess this risk through this Assessment Procedure Consultation (see consultation question 10).

ELEXON's costs to implement P370 are approximately £1,500. We do not anticipate any material costs for Parties to implement P370 but we seek confirmation via this consultation.

Implementation

P370 is proposed for implementation on 29 March 2019, as an ad-hoc BSC Release, if an Ofgem decision is received by 22 March 2019, or five Working Days after Ofgem approval, as a standalone BSC Release, if a decision is received after 22 March 2019.

Recommendation

The **majority** of the Workgroup initially believes that P370 **would better facilitate** Applicable BSC Objectives (c) and (d) compared to the current baseline, and so should be **approved**.

The **minority** of the Workgroup believes that P370 would be **detrimental** against Applicable BSC Objectives (c) and (d) compared to the current baseline, and so should be **rejected**.

Assessment Consultation Question

Do you agree with the Workgroup's initial majority view that P370 does better facilitate the Applicable BSC Objectives than the current baseline and so should be approved?

Please provide your rationale with reference to the Applicable BSC Objectives.

The Workgroup invites you to give your views using the response form in Attachment E

2 Why Change?

Background

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 therefore are not required to sign-up to the BSC. Often, the most cost-effective option for these generators is to find a Supplier to register the generators meters on its behalf. This means that they are indirectly bound by the Code but are not signatories. Consequently, this limits these non-BSC Parties’ privileges towards raising changes to the Code.

Additionally, the [Authorities Code Governance Review \(CGR\) projects](#) have sought to improve the governance arrangements of Industry Codes and reduce fragmentation. As part of this, Code governing bodies such as the BSC Panel have been encouraged to take on greater self-governance responsibilities.

Who can raise a BSC Modification Proposal?

[BSC Section F ‘Modification Procedures’](#) paragraph 2.1.1 details who can raise a BSC Modification Proposal. This includes Parties, the Panel and Ofgem under certain conditions. BSC Parties are the primary proposer of Modifications, having raised 66% of all Modifications (the Panel 19% and ESO 15%). Additionally, the BSC (F2.1.1 (c)) currently allows “such other bodies representative of interested third parties as may be designated in writing for this purpose by the Authority from time to time” to raise Modifications.

P362: Electricity Market Sandbox

This proposed Modification differs from the recently implemented P362 Modification ‘Introducing BSC arrangements to facilitate an electricity market sandbox’.

The P362 Modification allows industry participants that have pre-competitive innovative products or services but are facing barriers to entry, to seek a derogation from relevant BSC obligations, in order to test and develop a product or service for a fixed time period, rather than seek to modify the BSC through becoming a designated party.

What is the issue?

In March 2017, the Ofgem’s designation process was tested (the first time since the BSC was introduced in 2001) and proved to be overly time-consuming, adding almost 12 weeks to the front-end of the Modification Procedure.

The current designation process, to allow a non-BSC Party to raise a BSC Modification, has been shown to be slow and opaque. It is contrary to the direction of travel, encouraged by Ofgem, which is encouraging Panels to be more self-governing. The criteria and process

used to designate non-BSC Parties are unclear and as a result, could be seen to act as a barrier to innovation and change.

Proposed solution

The solution has been summarised below and detailed in Attachments A to D.

P370 proposes to move the designation process from Ofgem to the BSC Panel. This will be done by:

- Amending BSC section F2.1.1 (c) as follows: “such other ~~bodies representative of interested third parties~~ **Third Party Proposers** as may be designated in writing for this purpose by the ~~Authority~~ **Panel** from time to time...”.

For clarity and succinctness the term “bodies representative of interested third parties” has been replaced with the term “Third Party Proposer”, which has been defined as:

- “any interested third party or any body representative of interested third parties in each case designated by the Panel as being permitted to make a proposal to modify the Code...”.

P370 will additionally provide a route for Parties and non-Parties to appeal the Panel’s decisions to Ofgem.

Designation Criteria

In order for a designation request to be considered by the Panel, the applicant must submit:

- A valid (meets the existing requirements to submit a modification proposal in F2.1.2 of the BSC) modification proposal;
- The rationale for requesting designation as a 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;
- The reasons why the applicant believes that they have an interest in the Code.

If the above is not completed the Modification Secretary will not submit the Designation Request and will provide the reasons for not progressing the request to the applicant.

The applicant will also be required to sign and submit a letter to ELEXON confirming that they agree to be bound by relevant and limited provisions in the BSC. This is discussed further in section six.

Non-Parties wishing to be designated to raise a Modification Proposal must have a valid Modification Proposal to request designation. The designation is for that Modification Proposal only. The applicant cannot be designated as a standing entity to raise Modifications more generally or for a specific period of time.

Designation Process

The process is detailed in BSC Procedure 40 and summarised in a high-level process map in Appendix 3. At a high level, the applicant will submit its application to ELEXON for validation. Where invalid, the reasons will be provided to the applicant. Where valid, ELEXON will prepare a paper for the next available Panel meeting. ELEXON will also inform Industry via email (as they do when a new Modification Proposal is raised) that a non-BSC

Party is seeking designation at the next Panel meeting. This will allow other Parties to submit any concerns to the Panel before the meeting. The Panel will hear from the applicant at the Panel meeting and will decide whether to designate the non-Party or not.

Where the non-Party is designated, its modification proposal will be raised and progressed in accordance with the normal Modification Procedures. Similarly to a modification proposal raised by the Panel, a non-Party's modification proposal shall be raised on the day of the designation, and the paper and presentation of the modification proposal at the Panel meeting, where the designation request was heard, shall be treated as the Initial Written Assessment. Following the raising of the Modification Proposal, ELEXON will notify Industry, providing details of the Modification and the designation.

Where the Panel refuses the designation request, ELEXON will notify Industry, including the applicant, of the decision and the reasons for the Panel's refusal.

Appeals

Appeals by non-Parties

Where the Panel rejects a non-Party's request to be designated to raise a modification proposal they can appeal to Ofgem. Where Ofgem uphold the appeal, the non-Party will be designated and their Modification raised. Where the appeal is rejected, the same or a comparable Modification can be raised in future¹.

Appeals by Parties

Where the Panel designates a non-Party to raise a modification proposal, existing BSC Parties may appeal the Panel decision to Ofgem. Parties must appeal to Ofgem within 15 Working Days after ELEXON notifies the Industry that the Panel designated the non-Party. ELEXON will notify Industry of a Parties objection to a designation, and the subsequent Ofgem decision.

The Modification will continue to progress in accordance with its progression timetable until such time as Ofgem upholds the appeal. Where Ofgem do uphold the appeal, the Modification will be nullified, and not open for adoption by other Parties, as is the case for withdrawn Modification Proposals.

However, Parties would be able to raise a subsequent Modification which has substantially the same defect as the nullified Modification. The Panel can take on board any assessment, analysis and consultations already undertaken in respect of the nullified Modification Proposal when determining which procedure or phase the subsequent modification proposal should be submitted to and the timetable to be followed in progressing such proposal.

The role of the Panel

The Panel will decide whether to designate a non-Party's designation request, based on the information provided in the request, which includes the designation criteria described above as well as any Industry feedback received before the Panel meeting. The criteria include the submission of a valid modification proposal. However, it is important to note

¹ F2.1.4(b) allow the Panel to refuse to accept a Modification Proposal that is comparable to a Rejected Modification Proposal within the last two months. This provision does not apply to a proposal to modify the code under a rejected designation request, as the proposal was not raised and therefore not a Rejected Modification Proposal.

that the Panel is not making an assessment of the merits of the modification proposal at this stage, only the extent to which the non-Party should be designated for the purpose of raising that modification proposal.

Consultations and representations

When a valid designation request is submitted to the Panel (five Working Days before the Panel meeting), ELEXON will notify the Industry, as it does for new Modifications. This notification will explain that representations on the designation request can be made to the Panel for them to consider. These representations must be made in advance of the Panel meeting. The Panel may consult with Industry if it considers it necessary, before making its designation decision. However, it is expected that this will be the exception and not the norm.

Monitoring and remedies

The Panel shall keep under review:

- The volume of Modification Proposals being proposed by Third Party Proposers;
- The costs incurred by BSCCo in the administration of such Modification Procedures; and
- The costs incurred by BSCCo in supporting Workgroups involved in the consideration of issues.

Any findings that there has been a material increase in volume and cost shall be published on the BSC Website. The Panel has been given a new right to raise a modification proposal to address any published findings.

Issues

The existing Issues process has been opened up to non-Parties, including ELEXON. A new Issue Group Terms of Reference, based on the Modification Workgroup Terms of Reference, is proposed. An issues process has been defined and a number of minor clarifications made in BSCP40.

Alternative solution

At this stage, the Workgroup has not formally raised an Alternative Modification Proposal. However, the Workgroup is considering raising an Alternative Modification Proposal, which would be exactly the same as the Proposed, except the rights of Parties and non-Parties to appeal to Ofgem would be amended. For further details please see section six.

Legal text

The proposed redlined changes to the BSC to deliver P362 can be found in Attachment B.

Assessment Consultation Question

Do you agree with the Workgroup that the draft legal text in Attachment B delivers the intention of P370?

Please provide your rationale.

The Workgroup invites you to give your views using the response form in Attachment E

Other redlined documents

The proposed changes to BSCP40 can be found in Attachment C. The proposed Issue Group Terms of Reference can be found in Attachment D.

Assessment Consultation Question

Do you agree with the Workgroup that the draft redlining in Attachment C and D delivers the intention of P370?

Please provide your rationale.

The Workgroup invites you to give your views using the response form in Attachment E

Self-Governance

The Workgroup unanimously believes that this Modification does not meet the Self-Governance Criteria. P370 proposes to amend the Modification Procedures to change the decision body for designation requests to raise Modifications. It, therefore, has a material impact on the Code's governance and modification procedures (Self-Governance criteria (iv)).

Assessment Consultation Question

Do you agree that P370 does not meet the Self-Governance Criteria and so should not be progressed as a Self-Governance Modification?

Please provide your rationale.

The Workgroup invites you to give your views using the response form in Attachment E

Are there any (other) alternative solutions?

The Workgroup discussed a number of variations of the proposed solution. These discussions are detailed in section six below.

Assessment Consultation Question

Do you agree with the Workgroup that there are no other potential Alternative Modifications within the scope of P370 which would better facilitate the Applicable BSC Objectives?

Please provide your rationale and if 'No' please provide full details of your Alternative Modification(s) and your rationale as to why it/they would better facilitate the Applicable BSC Objectives than the Proposed Modification.

The Workgroup invites you to give your views using the response form in Attachment E



What are the Self-Governance criteria?

A proposal 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

4 Impacts & Costs

We invite participants to detail any impacts that the implementation of the P370 solution would have on their organisation, quantifying where possible the approximate lead time and estimated costs associated with the identified impacts.

Estimated central implementation costs of P370

ELEXON's costs to implement P370 are approximately £1,500. These costs are primarily driven by the need to amend internal processes and documents.

- 5 day's effort to implement new internal processes and documents; and
- 1 day's effort to implement document changes to the BSC and Code Subsidiary Documents (CSDs).

Indicative industry costs of P370

We do not expect P370 implementation to directly impact industry participants, but we seek clarification of this via this consultation. The Workgroup is also keen to understand any quantifiable costs and impacts related to on-going operations as a result of P370 being implemented. For example, from an increase in Modifications or Issues.

P370 impacts

Impact on BSC Parties and Party Agents

Party/Party Agent	Impact
Parties and Agents	No implementation impacts anticipated. Any increases in BSC changes, as a result of non-Parties raising changes, will increase demand on Parties and interested third parties to respond to consultations, participate in Workgroups and implement approved changes.

Impact on Transmission Company

No implementation impacts anticipated.

Impact on BSCCo

Area of ELEXON	Impact
ELEXON	Implement the P370 legal text and subsidiary documents. Update internal procedural documents. Update BSC Website. Update Change Register. Update guidance document, which is published on the BSC Website.

Impact on BSC Systems and process	
BSC System/Process	Impact
All	No implementation impacts anticipated

Impact on BSC Agent/service provider contractual arrangements	
BSC Agent/service provider contract	Impact
Insert name hereAll	No implementation impacts anticipated

Impact on Code	
Code Section	Impact
BSC Section F	Updated to move designation process from Ofgem to the Panel and include provisions to appeal to Ofgem.
BSC Section H	Updated to detail the rights of non-Parties under the BSC in relation to designation.
BSC Section Annex X-1	Updated to include newly defined terms.

Impact on Code Subsidiary Documents	
CSD	Impact
BSCP40	Updated with designation request form, Pro-forma letter for non-Party's rights under the BSC, designation process and Issues process. Please note that should P370 and CP1511 be approved, a minor presentational change will be needed to BSCP40 section 1.1.

Impact on other Configurable Items	
Configurable Item	Impact
BSC Change Process Guidance Document	Updated to reflect changes to designation and issues processes.

Impact on Core Industry Documents and other documents	
Document	Impact
All	None.

Impact on a Significant Code Review (SCR) or other significant industry change projects	
Ofgem classed P370 as an SCR exempt modification at the Panel meeting on 12 July 2018.	

Impact on Consumers

The Workgroup has not identified any material and direct impacts on consumers.

Impact on the Environment

The Workgroup has not identified any material and direct impacts on the environment.

Assessment Consultation Questions

Will the implementation of P370 impact your organisation?

If 'Yes', please provide a description of the impact(s) and any activities which you will need to undertake between Ofgem's approval of P370 and the P370 Implementation Date (including any necessary changes to your systems, documents and processes). Please provide details of any on-going operational impacts (post-implementation). Where applicable, please state any difference in impacts between the Workgroup's proposed solutions.

Will your organisation incur any costs in implementing P370?

If 'Yes', please provide details of these costs, how they arise and whether they are one-off or on-going costs. Please also state whether it makes any difference to these costs whether P370 is implemented as part of or outside of a normal BSC Systems Release. Where applicable, please state any difference in costs between the Workgroup's proposed solutions.

How long (from the point of Ofgem approval) would you need to implement P370?

Please provide an explanation of your required lead time, and which of the activities are the key drivers behind the timescale. Please also state whether it makes any difference to this lead time whether P370 is implemented as part of or outside of a normal BSC Systems Release. Where applicable, please state any difference in lead times between the Workgroup's proposed solutions.

The Workgroup invites you to give your views using the response form in Attachment E

5 Implementation

Recommended Implementation Date

The Workgroup recommends an Implementation Date for P370 of:

- 29 March 2019 if the Authority's decision is received on or before 22 March 2019; or
- Five Working Days after the Authority's decision if the Authority's decision is received after 22 March 2019.

The P370 Final Modification Report is scheduled to be with Ofgem by 17 January 2019. An Ofgem decision can be expected within one month of this and is therefore likely to miss the 28 February 2019 scheduled release. P370 is, therefore, targeting the next available release of 29 March 2019.

Assessment Consultation Question

Do you agree with the Workgroup's recommended Implementation Date?

Please provide your rationale.

The Workgroup invites you to give your views using the response form in Attachment E

General Workgroup Views

Arguments for P370

Requesting designation for the purpose of being able to raise a Modification is an existing right for non-Parties. P370 is not about deciding whether non-Parties should or should not be able to progress Modifications. P370 is about deciding who should decide whether to designate a non-Party to raise a Modification. There are good reasons why a non-Party should be able to raise Modification Proposals. For example, where a non-Party wants to correct a defect in the BSC arrangements that impact that non-Party.

Any Modification raised by a non-Party will still be subject to the normal change process of Workgroup assessment, industry consultation, Panel views and Ofgem decision (for not Self-Governance Modifications). These existing checks and balances will assess the merits of the Modification. A designation request is not an assessment of the Modification, rather it is an assessment of whether the non-Party has valid reasons for wanting to progress a Modification Proposal.

The Panel is better placed to make decisions on designation than Ofgem, as the Panel are experts on the BSC arrangements. This means the P370 solution is more efficient than the current baseline. Further, the P370 solution is more transparent than the current baseline, as Industry will be notified of designation requests, designation decisions and designation appeals (where aware). Ofgem can use its wider remit when assessing the Modification.

Arguments against P370

It is not appropriate for non-Parties to get the benefit of being able to raise a Modification without taking on the risks and costs that Parties are exposed to by being bound to the BSC. BSC Parties have a right to raise a Modification because they take on the risks and liabilities from acceding to the BSC and funding those arrangements. Parties accept that they are funding changes for all other Parties, even though they may not benefit from any changes, as they maintain a right to raise and engage with changes (a quid pro quo arrangement).

Non-Parties should not have a right to modify the BSC, a multi-party contract when they are not a Party to it. There is a perception that P370 will reduce the burden for non-Parties to request designation. This risks increasing the costs for Parties to fund the new designation process and the progression of additional Modifications, which is not fair for Parties.

Recognising that designation is an existing process, it is not appropriate to move the decision as to whether to designate from Ofgem to the Panel, as Ofgem are better placed to make the decision as they have a wider remit in making decisions than the Panel, for example in considering consumer benefits.

The Panel will default to approving designation requests, as they will not want to be seen to be discriminating. Part of the argument for approving P370 is it will lead to a faster designation. There is nothing about the new process that suggests it will be quicker.

Who should be able to request designation?

The Workgroup considered who should be able to request designation to raise a BSC Modification Proposal. The Workgroup was mindful that the term used could widen or narrow the scope of potential persons who can apply.

- Consumers: It is difficult to imagine why a consumer would want to raise a Modification Proposal (which is the reason to seek designation), as it requires significant commitment and is unlikely to have any direct benefits for them. A Workgroup Member suggested that constraints on who can request designation should not be introduced unless there are reasons to do so. As he could not identify any reasons to introduce constraints, he believed anyone, including consumers, should be able to request designation.
- Trade bodies: The problem with trade bodies is that persons wanting to request designation may not be a member of a trade body. The rules for establishing trade bodies and indeed the definition of a trade body are not clearly defined. Anyone could establish a trade body if they wanted. The Workgroup considered creating a list of trade bodies but rejected the idea as it would be difficult to maintain and would add further complexity. It would also require a trade body to be defined and how to validate them. The benefits of allowing trade bodies is that it could help with frivolous or spurious changes, as credible trade bodies should only be willing to request designation if they have a genuine issue for its members and would not want to risk reputational damage.
- Class of system user e.g. embedded generator: There was concern that with an evolving industry the roles may change and any list could become outdated. This option was not seen as future proof.
- Person vs. legal entity: the Workgroup discussed the difference between persons and legal entities. ELEXON legal confirmed that from a legal perspective they could be interpreted as one of the same, to mean any human or non-human (company, trade body, government agency) entity that is recognised as having privileges and obligations, such as being able to enter into contracts.
- Interested third party: the Workgroup agreed that this term was broad and could incorporate all of the other terms considered.

The Workgroup also considered the terms used in other Industry Codes. The majority of other codes have a designation process comparable to the existing BSC arrangements (request made to Ofgem with no right of appeal). Other codes used comparable terms such as 'any person or body' or '...who is representative of interested third parties' or 'any person or class of persons'. See appendix 4 for further details.

The Connection and Use of System Code (CUSC) uses 'materially affected party.' The Workgroup discussed the use of the term 'materially' and agreed this introduced a constraint /criteria into the definition of who can request designation. The Workgroups preference was to separate out the 'who can raise' from the criteria they would need to meet. 'Interested' was seen to be broader than 'materially.'

It was noted by a Workgroup Member that although the other Codes have the same route for Designation as the BSC, changing this for the BSC shouldn't be seen as a negative, as this is the direction of travel for the industry in giving Panels more responsibility so if this Modification is implemented other Codes should consider following suit.

One Workgroup Member strongly believed that the Panel and Ofgem may take a different view of who is an interested third party due to the respective difference in remits and objectives. Ofgem has wider statutory duties (detailed mainly in the Electricity Act 1989) than the Panel, for example in considering consumer benefits.

If a person was willing to commit time and effort in requesting designation (and subsequently progressing a Modification), it is unlikely they would do so unless they believed there were benefits to them. It was suggested that a University may have the funding to progress changes on a theoretical basis and are not necessarily driven by the same factors as profit-seeking companies.

The right to apply for designation should not be limited based on who you are, but rather on the merits of the designation request. The Workgroup believed other remedies, other than limiting who can apply, were more appropriate to address the risk of a significant increase in Modifications, including frivolous or spurious Modifications as a result of P370.

Who is most likely to request designation?

The Workgroup noted that there were two key groups of users most likely to want to seek changes to the BSC, who are not BSC Parties – Virtual Lead Parties and Supplier Agents. It was noted that following [P344 'Project TERRE'](#) implementation on 28 February 2019, Virtual Lead Parties will be BSC Parties and therefore able to raise BSC changes (Modifications, CPs and Issues). These Parties will be smaller embedded generators or aggregators e.g. for Demand Side Response. This will likely reduce the need for designations. Supplier Agents are less likely to want to raise Modifications and more likely to want to raise Change Proposals, as most of their requirements sit in the Code Subsidiary Documents.

Conclusion

The Workgroup concluded that the Panel should have broad discretion, as Ofgem currently do, to decide whether to designate a non-Party to raise a Modification. The Workgroup agreed that interested third party best met this view.

The Workgroup agreed that a new term 'Third Party proposer' should be defined to make it clear that interested third parties included bodies' representative of third parties (i.e. trade bodies). This would also make the legal text easier to read and would remain consistent with terms used in other Industry Codes. The Workgroup noted that it would be preferable for a consistent process and term to be used in all codes.

Third Party Proposer has been defined in the BSC as:

"means any interested third party or any body representative of interested third parties in each case designated by the Panel as being permitted to make a proposal to modify the Code pursuant to Section F2.1.1(c);"

Should a designation request be for a specific Modification Proposal?

The Workgroup considered whether non-Parties should be required to be designated for the purpose of raising a specific Modification Proposal or to raise Modifications more generally. For example, a standing list of designated parties could be established.

The Workgroup agreed that one of the designation criteria should be to provide a valid (as per the existing Section F2.1.2 requirements) Modification Proposal form along with its designation application.

Without a Modification Proposal, there is no need to seek designation. If a non-Party believes there is a case to be designated to raise Modifications more generally there is likely to be a strong case for becoming a BSC Party. The Workgroup believed allowing a non-Party to have the same rights as a Party to raise Modifications indefinitely was not proportionate to address the P370 issue and tipped the balance in favour of non-Parties over Parties.

When should the proposal form be submitted?

The Workgroup considered whether the Modification Proposal form should be submitted at the same time as the designation application, or whether it could follow within a given time period e.g. six months.

Whether designation is sought first and then a Modification Proposal drafted, or whether these two tasks are done in parallel, still requires that both tasks are completed before a Modification can be progressed. The amount of effort is, therefore, the same, but the overall timeline is likely to be quicker if done in parallel.

Further, the Workgroup determined that there are benefits to doing them in parallel as:

- It reduces the risk that designations are granted and never used i.e. it is more efficient to do them together;
- It provides some assurance to Parties that the non-Party does have legitimate reasons to seek designation.
- Circumstances may change, for example, industry change, where the non-Party is no longer an interested party. This risk increases the longer the gap between designation request and raising the associated Modification.
- Other Parties may seek to raise a Modification with the same defect. This may create governance issues for the Modification Secretary if there is a long gap between designation and raising a Modification.

There is a risk that ELEXON spends time working with a non-Party on a Modification Proposal as part of a designation application, that subsequently gets rejected. However, this should be the exception as ELEXON's critical friend role is well respected in advising and supporting parties to develop valid Modification Proposals.

Designation Criteria

The Workgroup believed it was important to establish designation criteria. The Panel would need to be satisfied that the criteria had been met in order to grant designation. Establishing designation criteria was seen as an important control to ensure only legitimate, credible and worthwhile requests came forward.

Ofgem shared with the Workgroup a list of items that they consider when deciding whether to designate. This formed the basis for the Workgroup assessing which criteria to use. The Workgroup agreed that aligning to the Ofgem list would help to keep some consistency across the codes. The items that Ofgem consider are:

1. Name of the person or organisation requesting designation and contact details.
2. If the person/organisation is acting for another party/parties (for example, a trade association acting for its members) this should be explained.
3. Reason for requesting the designation. This may include explaining why a party to the code will not raise or 'sponsor' this modification proposal, and/or any previous efforts to effect change (e.g. by raising the issue at appropriate forums).
4. An overview of the issue ('problem') and the solution to be proposed. If a proposal form has already been drafted, please provide this.
5. How the person or organisation requesting designation is an interested party or materially affected by the code/issue.
6. Any relevant details of industry discussions or previous forum discussions of this issue.

The Workgroup asked Ofgem to confirm what information they consider mandatory. Ofgem confirmed that they want to have all relevant information. For example, if the applicant had been to an industry forum to discuss the issue, Ofgem would want to know about it.

The Workgroup agreed that applicants must provide:

- The reasons for the requesting designation;
- The reasons why they have an interest in the Code;
- A valid Modification Proposal form - this was seen as the most efficient option, rather than granting the designation for a specific defect and then returning with a proposal.

The Workgroup agreed that applicants should provide details of the following, where available, but that this information should not be mandatory:

- Information on what other steps, if any, have been taken to have the issue or defect addressed. For example:
 - Why a Party has not / will not raise or sponsor the change;
 - Previous efforts to progress the change, such as raising the issue at appropriate forums; and
 - Relevant details of industry discussions or previous forum discussions of this issue.

This was on the basis that requiring a non-Party to raise their issue with an industry forum, whilst prudent, was creating an unnecessary barrier. Similarly, a non-Party should not be required to demonstrate that they have tried to get a Party to raise a change, as the non-Party may want to maintain control of the change, especially if it impacts them more than existing Parties.

The Workgroup believed the Panel should be able to reject frivolous or spurious requests, but that this could only be done in relation to the designation criteria. One Member believed it would be very difficult for the Panel to reject requests.

The Workgroup considered whether the non-Party should have to demonstrate that they are materially affected. One Member thought that this suggested they would have to

demonstrate that it impacts their finances, and so should be left out. Overall, the Workgroup did not believe it added anything and therefore did not include it as a criterion.

Where should the designation criteria be published?

One Member felt strongly that any criteria should be published in the Code as it was important that Parties and non-Parties are clear on what their rights and obligations are. The alternative suggested was to put them in BSCP40 with a 'hook' from the BSC.

The Workgroup agreed that the criteria should be included in the Code as they form a critical part of the designation rights and privileges. BSCP40 has been updated to detail the designation process and includes a form asking to provide information to satisfy the criteria.

How can the costs and impact of dealing with additional Modification Proposals be fair and consistent to BSC Parties and non-Parties?

The Workgroup discussed the risk that by clearly defining the designation process and setting clear criteria this may lead to a significant increase in the volume of Modifications raised by non-Parties, as it could be perceived to be a lower hurdle to clear than is currently the case.

A Member highlighted that there is currently no evidence for this. The Workgroup agreed that as part of the Assessment Consultation, non-Parties should be asked if they had any changes they wanted to raise, and if so how many. A Member believed it was less about the total costs and more about costs associated with rejected Modifications, which may suggest frivolous or spurious proposals. It is possible that Parties will let non-Parties sort out issues impacting them both.

Assessment Consultation Question

If you are a non-Party do you have any Modifications or Issues that you would like to raise, and if so, how many would you estimate you may raise within the first year?

Where you can, please provide details of what Modifications or Issues you may look to raise. Please provide details of the split between Modifications and Issues.

The Workgroup invites you to give your views using the response form in Attachment E

The Workgroup asked ELEXON to try and invite non-Parties, particularly embedded generators and aggregators (who may not already be on the ELEXON change distribution lists), to respond to the P370 Assessment Consultation by communicating in additional, relevant communication channels. ELEXON agreed it would ask the [Association of Decentralised Energy](#), the [Flexible Generation Group](#) and [Power Responsive](#) to circulate the P370 Assessment Consultation.

A Member believed it would be reasonable to assume you would see an initial increase in Modifications and then a new steady state (as was the case after New Electricity Trading Arrangements (NETA) go-live). The Workgroup believed that the designation criteria would act as a mitigating action against frivolous or spurious designation applications. The opening up of the issue process may also mitigate frivolous applications, as non-Parties have a new route to discuss defects which are better suited to an Issue Group rather than a Modification.

P370 builds the case that the ELEXON is going beyond a traditional code administrator, and becoming an organisation for the greater public good. Approval of P370 will, therefore, strengthen the case for amending the BSC funding arrangements.

Who should fund the designation process?

The Workgroup discussed whether Parties should be paying for ELEXON to support non-Parties. It was highlighted that ELEXON supported the P355 Proposer (the first designated party under the BSC) before they were designated. Further, a Member believed the cost concern, if there was one, should only apply from the point the designation application is received to the point the Panel make a decision. Any cost transfer arises from the Panel designating instead of Ofgem.

Some Members believed any costs involved would be immaterial for Parties, and the costs argument is, therefore, more a point of principle. It was suggested that ultimately consumers will pick up the bill, either via Parties charging its customers or via Ofgem from tax collection. However, these different routes can lead to different competition effects and so are important.

ELEXON has estimated that progressing an average designation application will take between 5 and 10 work days of effort (not duration). This is subject to the quality and complexity of the submission.

It was also highlighted that the vast majority of BSC Costs are paid by Parties with a Funding Share (i.e. they are a Trading Party), but they also tend to benefit the most from any changes. A Member believed that if P370 was approved, it could result in a Modification to amend the BSC funding arrangements for Modifications, as this is not what Parties signed up for. A user pay model would allow Parties to pay for what they use/want.

Setting a designation application fee

It was suggested there could be a fee for applicants that could be set to zero to start with. This would particularly act as a deterrent for any frivolous or spurious changes. It was highlighted this was the approach taken with the Sandbox Modification ([P362](#)). However, the key difference is that Ofgem is the final decision maker for Sandbox applications. It was suggested that if a fee was to be applied it should be applied to all parties and not just non-Parties.

A Member remained concerned that P370 will make the designation process more mechanistic and could be perceived to reduce the burden to seek designation, resulting in an increase in Modifications, especially if it remains a free service for non-Parties, which places increased costs on Parties.

A Member pointed out that there are costs for non-Parties to raise and progress changes, and without any evidence that there would be a big increase in the volume of changes it would seem pre-emptive to create barriers by setting a fee. If there was an increase, it could be argued that this is evidence that the current arrangements are a barrier to change and innovation. Further, any barriers would create different rules for Parties and non-Parties, although it could be argued this is appropriate. The Workgroup agreed that a fee should not be included at this stage as it would create a hurdle, when one may not be needed.

Australian Energy Market Commission

A Workgroup Member informed the Workgroup that the Australian market had opened its change process up to all participants and wondered if it would be a useful case study for P370. ELEXON subsequently contacted the Australian Energy Market Commission (AEMC) to seek further information.

AEMC is the rule maker for the National Electricity Rules, National Gas Rules and National Energy Retail Rules, which collectively would be equivalent to most of the codes in the United Kingdom energy industry. Anybody (other than the AEMC) can propose a rule change. Most rule changes go through an average six-month consultation process before the Commission makes a final determination.

In practice, the vast majority of rule changes come from a very small number of bodies – generally market participants, network businesses, other regulatory bodies or governments. Occasionally AEMC have had some proposals from private individuals, but most fall at the first hurdle: AEMC doesn't have to consider proposals that are "misconceived or lacking in substance". Generally, what happens is AEMC speak to the proposer, explain why what they've proposed wouldn't solve whatever problem or bugbear they have, and the proposer agrees to withdraw the proposal. Occasionally, if the proposer doesn't withdraw their proposal, AEMC have to write (and publish) a formal letter explaining why they are not progressing the proposal.

The Workgroup noted that the Modification Secretary can also reject Modification Proposals that do not meet the requirements in Section F of the BSC (F2.1.2). These requirements do not assess the merits of the proposal (it is more of a procedural validation rather than an assessment of the content), but rather validate that there is sufficient information to progress the proposal, for example, a description of the issue or defect in reasonable but not excessive detail. ELEXON's critical friend role plays a more significant role in the development of the content but cannot prevent a Party from progressing a Proposal. It was also noted that the Panel can only reject a Modification where there is or has recently been a similar Modification within the last two months.

AEMC have had a few proposals made by private individuals go to consultation and, perhaps one or two have succeeded – but very small numbers. The numbers have increased over time – energy is a hot political issue in Australia at the moment, and there is intense interest in some of AEMC's work – but they're still not significant enough to cause AEMC concern.

There is provision made in the laws that govern AEMC for them to charge proponents, but in practice, AEMC don't – and there is currently no discussion of doing so. AEMC rules are not codes – essentially they are a delegated form of lawmaking. As such they are jointly funded by the state governments – although they generally recoup those costs through licence fees levied on network businesses (and therefore, ultimately, consumers). This was considered a crucial point by a Workgroup Member in relation to previous points about who funds change.

The Workgroup concluded that the AEMC process gives some comfort that the number of designation applications under the BSC will be manageable, but is not a predictor of BSC designation applications. Further, the AEMC funding arrangements support the concerns that the BSC funding arrangements need to be considered outside of P370. ELEXON noted this can be [considered in an upcoming Issue](#).

Conclusion

The Workgroup agreed that there was a risk of additional Modifications being raised by non-Parties as a result of P370. In the absence of any evidence to suggest otherwise, the majority of the Workgroup agreed that the impact of this risk was low (but would be assessed as part of this Assessment Consultation). The Workgroup, therefore, agreed to require the Panel to keep under review:

- The volume of Modification Proposals being proposed by Third Party Proposers;
- The costs incurred by BSCCo in the administration of such Modification Procedures; and
- The costs incurred by BSCCo in supporting Workgroups involved in the consideration of Issues (see Issues section below).

The Workgroup also agreed the Panel should have powers to raise Modifications in order to address any concerns from a material increase in the volume and costs. The Workgroup agreed not to set a fee for designation applications for the reasons given above.

This approach was felt to be proportionate. Without knowing the scales of the risk the solution should not be designed to assume worse case. If there's not a problem to fix, time and money should not be spent trying to fix it. This approach allows for any surge in changes to be assessed before working out the best course of action. It was noted that in the worst case the Panel already has powers to prioritise change if needed. The Workgroup also agreed this should be avoided where at all possible and pointed to recent criticism of the CUSC Panel in prioritising changes.

Appeals

The Workgroup discussed the reasons why a Party or non-Party may want to appeal a Panel decision. It was suggested that an appeals process may not be needed, because if you didn't like a particular proposal you could join the Workgroup and participate in the Modifications process. However, the majority of the Workgroup agreed that having an appeals process was an improvement to the current process, which had no route of appeal.

ELEXON explained how the current appeals process works for Modifications, in an attempt to understand how appeals could work for designations. There are two forms of potential legal challenge to a BSC Modification decision:

- an appeal under the Energy Act 2004 where an Ofgem Modification decision does not align with the majority recommendation of the Panel. This right allows substantive appeals to the Competition and Markets Authority (CMA) on the grounds that the Authority has failed to have proper regard to the applicable code objectives, or to its statutory obligations, or failed to give the proper weight to one or more of those; that the decision was based on an error of fact and/or that the decision was wrong in law
- A judicial review. This is a judicial process that can be used to challenge the lawfulness or fairness of a decision made by a public authority. The scope of this review is narrower as it will be focussed on whether the decision was unlawful, irrational or procedurally unfair.

In both cases, the legal challenge must relate to a decision of a public authority. The CMA appeal process relates only to Modification decisions by the Authority. A judicial review would most likely also relate to a decision of the Authority, though it arguably applies to Panel decisions where the Panel acts as a public authority. A decision by a Party to adopt a Modification would not be reviewable in itself so any legal challenge would have to be in respect of a final Modification decision by the Panel or Ofgem.

Who should hear appeals?

The Workgroup agreed that Ofgem and not the Panel should hear appeals. This approach is more pluralistic and is believed to better facilitate good governance practice.

Third Party Proposer rights to appeal

The Workgroup believed where the Panel decides not to designate a non-Party, that non-Party should have the right to appeal. This was seen to add a benefit over the current process, where there is no appeals process. Given the wider statutory duties that Ofgem has, the right of appeal was seen as important as there may be occasions where the Panel would reject a designation request, but Ofgem having wider considerations would not.

A Workgroup Member believed this approach was less efficient than the current process. Given that Ofgem has a wider remit than the Panel, it would be more efficient to keep Ofgem as the decision body.

BSC Party rights to appeal

The Workgroup discussed whether, as a point of principle, if a non-Party has a right to appeal, a Party should also have the right to appeal a designation decision. The majority of the Workgroup agreed that this 'moral equivalence' argument meant both Parties and non-Parties should have a right to appeal, or neither should.

It was suggested that Parties do not need a right to appeal if they have an opportunity to provide any concerns or comments to the Panel, in advance of the Panel designation decision.

The Workgroup discussed whether the Panel should be required to consult in advance of making a decision. The Workgroup agreed that the Panel should not be required to consult, but should have the right to consult. This approach would give the Panel flexibility, and where a consultation was not needed (which is expected to be the majority of cases) it would result in a faster designation process.

ELEXON should notify Industry once a designation application has been submitted to the Panel (usually five Working Days before the Panel meeting). This notification would give Parties an opportunity to make representations to the Panel for the Panel to consider in its designation decision. This would include informing the panel whether a formal consultation is needed.

What are the risks from allowing the adoption of Modifications that have been withdrawn due to an upheld appeal of a designated interested third party?

The argument is that where:

- a Modification Proposal raised by a third party is designated as an interested third party by the Panel; and
- that designation is subsequently overruled by the Authority

then the effect is that the Modification is nullified and is therefore incapable of being adopted by a BSC Party. Consequently, if the BSC were to include provisions allowing BSC Parties to adopt a nullified Modification Proposal there could be a risk of challenge to that Modification.

It is arguable that there is a very low risk of a successful challenge on the basis that:

- The process for adopting a 'nullified' modification would be expressly set out in the Code; and
- Ofgem's decision would need to be lawful and procedurally fair but by the time the decision reached the regulator:
 - (i) Ofgem's decision would still be focussed on the substantive arguments regarding the applicable BSC objectives and Ofgem's wider statutory duties;
 - (ii) the Proposer, by that stage, would be one of the persons listed in F2.1.1 as entitled to raise a modification;
 - (iii) Industry would have had an opportunity to be involved in the modification process through workgroup membership and the consultation process;
 - (iv) the process followed by the Workgroup and Panel in making their recommendations would be the same.

Consequently, an application for a Judicial Review would be asking the Court to quash a decision by Ofgem that complied with the procedure set out in the Code as regards the adoption of nullified modifications and which in all other respects complied with the Code (so, to that extent at least, was lawful) and was procedurally fair.

The counter-argument would be that the Court may determine that the provision of the Code allowing Parties to adopt a nullified Modification is itself contrary to Statute or European law. ELEXON legal is not aware of any laws that would be relevant to this point.

The P370 Workgroup has currently adopted a solution whereby a nullified modification cannot be adopted. However, if, following nullification, another Party subsequently raises a modification on the same subject matter the Panel may allow the output of the nullified modification to be re-used. In practice, albeit via a lengthier process, this gets you to the same place of adopting a Modification. Whilst the nullification route will take longer, it is more flexible around timescales in so far as a Modification open to adoption must be adopted within five working Days. Whereas, the nullification route imposes no such time limit on Parties to raise new equivalent Modifications.

Do other codes allow designation decisions to be appealed?

Where other codes have an existing designation process that allows Ofgem to designate third parties to raise changes, there is not an appeals route. See Appendix 4 for details.

The Workgroup noted that the Master Registration Agreement (MRA) does not allow non-Parties to be designated. Instead, it allows Interested Industry Participants to raise a change where sponsored by a Party and the MRA Executive Committee (MEC – is responsible for key functions under the MRA) believe the non-Party has an interest in the Industry. Under this process, the non-Party can appeal decisions to the MRA Development Board (MDB – is responsible for the management of technical and commercial changes to the MRA and associated products).

How long should the appeals window be?

The Workgroup noted that non-Parties could not be bound to lodge an appeal within a certain time period, as they are not a Party to the Code. Whereas, BSC Parties can be required to lodge an appeal within a given timeframe.

The Workgroup agreed that the proposed 15 Working Day appeal window struck the right balance between not enough time and too much time. It also aligned with standard Assessment Procedure Consultation period and the appeal window for Panel's determination of Modifications as Self-Governance Modifications.

Similarly, the Workgroup noted that the BSC cannot bind Ofgem to specific timescales to respond to appeals. The Workgroup agreed that where ELEXON becomes aware of appeals or where Ofgem notifies ELEXON of its appeals decision, ELEXON must notify Industry. The Workgroup noted that it would expect Ofgem to inform the Panel, at the Panel meetings where an appeal had been raised, and ELEXON should also ask Ofgem at the Panel meeting whether any appeals had been raised. The Workgroup believed these notifications would lead to a more transparent designation process than the current baseline.

Conclusion

The Workgroup decided P370 should allow:

- A non-Party to appeal the Panel's rejection of its designation request; and
- Parties to appeal the Panel's decision to approve a designation request.

Appeals should be made on the basis that the Panel has not applied the designation criteria properly, rather than judging the merits of the associated Modification Proposal. This applies equally to both Parties and non-Parties.

Potential Alternative Modification Proposal

The Workgroup is considering raising an Alternative Modification Proposal that would either remove the right of appeal for both Parties and non-Parties or only allowing non-Parties the right of appeal.

A Member suggested the Panel could recommend designation to Ofgem, which would avoid the need for an appeals process. The Workgroup rejected this as they did not

believe this was the intent of P370 and would be a less efficient process than the current baseline.

The Workgroup also considered giving Ofgem a right to veto a designation decision, instead of being the appeals body. This would require Ofgem to consider the designation throughout. The Workgroup rejected this proposal as the appeals route was seen to be more efficient as it only requires Ofgem to consider the designation if appealed.

The Workgroup invite you to provide your views on whether one of these approaches would better facilitate the Applicable BSC Objectives compared to the currently proposed approach.

Assessment Consultation Question

Do you agree with the Workgroup that Parties should be able to appeal a Panel decision to designate a Third Party Proposer and a Third Party Applicant should be able to appeal a Panel decision not to designate them a Third Party Proposer?

Please provide your rationale.

The Workgroup invites you to give your views using the response form in Attachment E

Pre-Assessment of Changes via an Issue Group

It was suggested that allowing non-Parties to raise Issues may reduce the number of Modifications / designation requests it would allow non-Parties to discuss and validate defects in advance and may result in a BSC Party raising a consequential modification. This pre-assessment could help rule out or better shape any changes before they are raised.

The Workgroup believed that allowing non-Parties to socialise their issues with Industry would help inform any designation requests and associated Modification Proposals. Where an issue group agreed there was indeed an issue to resolve under the BSC it would help build a stronger case for designation. It would show that it is not just a problem faced by one company, but a genuine issue faced by Industry and that should be fixed. If issues are not opened up to non-Parties, it may lead to lower quality or unnecessary Modifications being requested for designation.

Standing Groups

The Workgroup considered whether a regular or interim forum could be established to consider potential changes.

ELEXON explained the BSC already allows the Panel to establish standing groups to consider issues. The BSC has a wide scope and most changes only interest certain roles or certain teams within Parties organisations. Instead, ELEXON establishes Issue Groups to consider changes on a case by case basis, rather than creating forums that would either have lots of business or very little business to discuss on a meeting by meeting basis. There is also a risk that these standing forums become a 'talking shop'.

Use of Existing Panel Committees

BSCP40 currently invites Parties to present their issues to the Panel Committees in order to seek guidance. The Panel Committees would then advise on any possible solution to the concern and how best to resolve the problem. It was noted that this is limited to BSC

Parties, but in practice, ELEXON would take any issues to the Panel Committees where it believed there was a valid BSC issue.

Using the Panel Committees as a control gate to filter potential changes was seen to have some benefits, such as ensuring only changes that have value and are genuine issues worth progressing are taken forward. The Workgroup believed Panel Committees are better placed to make this assessment than ELEXON. However, there is a cost to use Panel Committees.

Party Sponsorship

The Workgroup discussed the reasons why Parties do not always raise changes on behalf of non-Parties. Parties may agree in principle, but may not be willing to commit resource to progress a change where it has no impact or adds little value to a Party.

The Workgroup noted that there are occasions where Parties will sponsor and raise a change on behalf of a non-Party. There are also occasions, where ELEXON progresses Change Proposals on behalf of non-Parties, for example, changes that come from Unmetered Supplies User Group ([UMSUG](#)).

Conclusion

The Workgroup believed the raising and consideration of Issues should be widened to non-Parties and not restricted to Parties. Discussions and recommendations from issue groups could help inform non-Parties designation requests, providing evidence that the issue is genuine and needs to be resolved.

The Workgroup agreed that Issues from non-Parties will be raised and progressed by ELEXON, unless ELEXON believes it should not be progressed, for example, if the issue is misconceived or lacking in substance, in which case the relevant (the Committee who owns the impacted documents) Panel Committee will decide whether the Issue should be progressed.

The Workgroup agreed an Issue Group Terms of Reference should be established. This should be based on the Modification Workgroup Terms of Reference, which are robust. This will provide clarity to the governance and operation of Issues, including the role of an Issue Group in making recommendations and how any voting should work. Attachment D contains the draft Issue Group Terms of Reference.

If ELEXON was unable to get the quorate (five) number of Issue Group Members, the Workgroup believed this could be seen to be a barometer of interest from Industry. It was noted that availability is different to interest, and so any request for Issue Group Members should be considered carefully.

Opening up the Issues process will allow Supplier Agents to bring forward potential issues and improvements to the BSC for discussion. Where the majority of an Issue Group recommend that a Change Proposal should be raised to address an issue and no Party comes forward to raise it, ELEXON agreed it would raise and progress the Change Proposal.

Opening up the Issues process would also align with the Code Administrators Code of Practice principle 5 'Code Administrators shall support processes which enable users to access a 'pre-Modification' process to discuss and develop Modifications'. Members who were against P370, felt more comfortable with opening the issues process up, as it does

not result in any changes to the BSC or systems. Further, the costs associated with progressing Issues is lower than with Modifications. Issues typically have one meeting and submit one report to the Panel. Whereas Modifications typically hold 3-5 meetings and produce 6 reports.

Alternative approaches

The Workgroup discussed alternative ways of progressing Issues, which could reduce the costs of progressing Issues. For example, the proposer of an Issue could be responsible for chairing the meeting and doing the secretariat role. However, this could lead to an inconsistent service and whilst would reduce costs slightly, the wider industry costs of attending the meeting and reviewing documents would remain.

Process considerations

In practice, it is expected, that the designation request and the Modification Proposal will be presented at the same Panel meeting by ELEXON and the Proposer. Where the Panel designates the non-Party, the Modification will be raised following the Panel meeting and the paper presenting the Modification Proposal will be considered the Initial Written Assessment (IWA), as is done for Panel raised Modifications.

A Member asked how 'non-standard' Modifications such as Urgent or Fast Track Modifications should work under the designation process. The Workgroup agreed they would work the same way they currently do. Once a non-Party is designated they would be eligible to submit a Proposal in accordance with Section F, where all of the existing rights processes would apply.

Rights of Third Party Proposer's under the BSC

A Workgroup Member asked ELEXON to confirm what rights a Third Party Proposer would have under the BSC. ELEXON legal confirmed that this should be made clear in the P370 legal text and that there was probably an existing gap in the rights of Citizens Advice and Citizens Advice Scotland, who can raise Modifications but are not Parties to the Code.

Section H (added H9.4.4) of the BSC has therefore been updated to make it clear that anyone who is not a Party but who is permitted to propose a Modification Proposal pursuant to Section F shall have the rights, benefits, entitlements and privileges of a Proposer under Section F from the date when that Modification Proposal is accepted until the earlier of that Modification Proposal being nullified, withdrawn, rejected or approved.

Third Party Proposers will also be required to sign and return, as part of their designation request, a letter (which has been included in BSCP40) to:

- Ensure that the third party is legally bound by the procedural rules in Section F and BSCP40;
- Ensure they are similarly bound by the general provisions in Section H; and
- Ensure they accept that their only remedies are as set out in the BSC e.g. a right of appeal to Ofgem if the designation request is rejected.

European Balancing Guidelines (EBGL) Impact

ELEXON confirmed to the Workgroup that it was not aware of any EBGL provisions that would impact P370. A Workgroup Member was curious whether EBGL limited who could raise Modifications. ELEXON confirmed that EBGL did not go into this detail.

Prioritising Changes

The Workgroup noted that there may be a need to prioritise changes if there is a significant increase in the number of Modifications and Issues raised by non-Parties. The Workgroup touched on how this could be done but decided the monitoring requirements and the Panel's ability to raise a remedial Modification was sufficient at this time. Moreover, it would be for the Panel to agree on any prioritisation.

They noted that first come, first served, was probably not the best approach. A 'popularity vote' was another option. The example given was progressing European changes over storage changes has prioritised European law over storage, which could be seen to be a bigger and more popular priority. The Workgroup concluded that if prioritisation was needed, a set of criteria should be developed and there was a strong preference for the the Industry to have a say over the priority.

Smaller Party Engagement

The Workgroup considered what changes are needed to encourage engagement from smaller participant in the change process, given that P370 will most likely appeal to smaller participants.

ELEXON talked through two recent changes to the Workgroup Terms of Reference:

- Reduce the attendance threshold to 50%, in line with the CUSC, in order to maintain voting rights; and
- Allow Members to send an alternate, who will contribute and count towards the 50% threshold.

The Workgroup agreed this was a sensible change and could always be changed again if it did not work as intended.

Often, large Modifications will require changes to CSDs that impact Supplier Agents. This may only form a small part of the overall Modification. The Workgroup agreed that ELEXON should ensure that Supplier Agents are made aware of relevant Workgroup meetings which could impact Supplier Agents.

7 Workgroup's Initial Conclusions

At this stage, the **majority** of the Workgroup believes that P370 **would better facilitate** the Applicable BSC Objectives and so **should be approved**.

P370 was raised by the Panel (in accordance with Section F2.1.1(d)(i)), who appointed a BSCCo representative as the Proposer's representative. In this circumstance, the Proposer's representative is not allowed to vote (see Section F2.4.5C).

Applicable BSC Objective (c)

The **majority** of the Workgroup agree that P370 **would better facilitate** Applicable BSC Objective (c) as it will make it easier for non-BSC Parties to raise and progress BSC Modifications, resulting in a greater number of organisations offering an increased variety of solutions in serving customers within the electricity Industry and therefore increasing competition.

By making the designation process more transparent and better defined for non-Parties it will reduce the perceived hurdle for becoming a designated party. This coupled with the fact that the majority of Panel Members are made up of experts on the BSC, should result in a more efficient process that better enables more innovation and therefore better facilities competition. One Workgroup Member noted that the competition argument only holds if more designations (and therefore modification proposals) are brought forward.

The **minority** of the Workgroup believed that P370 would be marginally **detrimental** to Applicable BSC objective (c), as it will place additional costs on BSC Parties to fund the designation process. Holders of generation and supply Licences are required to be BSC Parties. Non-Parties can choose to sign up to the BSC, but many choose not to. This means that the majority of BSC Parties are required by their Licence to bear the [BSC] costs to progress Modifications for non-Parties.

Further, Ofgem is better placed to decide whether to designate a non-Party as it has wider statutory duties (detailed mainly in the Electricity Act 1989) than the Panel. The existing designation process is, therefore, more appropriate and P370 is consequentially worse than the current baseline.

Applicable BSC Objective (d)

The **majority** of the Workgroup agree that P370 **would better facilitate** Applicable BSC Objective (d) as it will improve the accessibility of the Modification Procedures to non-BSC Parties, would remove perceived barriers to innovation and change. Additionally, this would remove the perception that the BSC is a "closed shop" that is only accessible to BSC Parties and therefore improve the operation of the BSC.

By moving the designation responsibility from the Authority to the Panel, designation timescales are likely to be improved due to the reduced fragmentation of the process. This will also help to achieve the Authorities aim outlined in CGR of the governing code bodies taking on greater Self-Governance responsibilities.

The development and publication of the criteria to be used by the Panel to determine whether to designate non-BSC Parties would improve the transparency of the designation process. This would allow non-BSC Parties to make more relevant and effective applications for designation. In turn, this will improve the efficiency of both the

designation process and the quality through which non-BSC parties make applications to raise changes to the BSC.

The **minority** of the Workgroup believed that P370 would be **detrimental** against Applicable BSC Objective (d) as it is introducing new and additional obligations for the Panel and ELEXON, which must be funded by Parties. Further, by introducing an appeals route the arrangements are becoming more complex and less efficient.

The **minority** of the Workgroup was neutral against Applicable BSC Objective (d). They believed that any efficiencies gained from a more open and defined process were balanced out by the extra layers of complexity the new process was introducing over the existing one.

Applicable BSC Objectives (a), (b), (e), (f) and (g)

At this stage, all Workgroup Members believe that P370 is neutral against Applicable BSC Objectives (a), (b), (e), (f) and (g).

Does P370 better facilitate the Applicable BSC Objectives?		
Obj	Proposer's Views	Other Workgroup Members' Views ²
(a)	<ul style="list-style-type: none"> Neutral 	<ul style="list-style-type: none"> Neutral
(b)	<ul style="list-style-type: none"> Neutral 	<ul style="list-style-type: none"> Neutral
(c)	<ul style="list-style-type: none"> Positive – more efficient designation process and more modification proposals from a wider audience will facilitate competition. 	<ul style="list-style-type: none"> Majority positive – as per Proposer Minority detrimental – new process less efficient and increases costs
(d)	<ul style="list-style-type: none"> Positive – clearly defined process, where the Panel, made up of BSC experts, will decide whether to designate will be more efficient 	<ul style="list-style-type: none"> Majority positive – as per Proposer Minority detrimental – the new process is more complex and Panel has a narrower remit than Ofgem which will limit its ability to designate efficiently and effectively Minority neutral – efficiency gains balanced out by the additional complexity
(e)	<ul style="list-style-type: none"> Neutral 	<ul style="list-style-type: none"> Neutral
(f)	<ul style="list-style-type: none"> Neutral 	<ul style="list-style-type: none"> Neutral
(g)	<ul style="list-style-type: none"> Neutral 	<ul style="list-style-type: none"> Neutral



What are the Applicable BSC Objectives?

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

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

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

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

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

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

(g) Compliance with the Transmission Losses Principle

P370
Assessment Procedure
Consultation

23 October 2018

Version 1.0

Page 32 of 39

© ELEXON Limited 2018

² Shows the different views expressed by the other Workgroup members – not all members necessarily agree with all of these views.

Appendix 1: Workgroup Details

Workgroup's Terms of Reference

Specific areas set by the BSC Panel in the P370 Terms of Reference

- a) How should "bodies representative of interested third parties" be interpreted and should this term be amended?
- b) Should the Panel be able to nominate individual market participants, representative bodies, or either to represent the "interested third parties"?
- c) Should the Panel nominate the representative to raise Modifications in general or just a specific Modification they've requested to raise?
- d) Should non-BSC Parties be able to raise Change Proposals and Issues?
- e) What criteria (if any) should be established to ensure the efficiency and quality of the designation process?
 - i. How can transparency in the designation process be achieved?
 - ii. How can the costs and impact of dealing with additional Modification Proposals be fair and consistent to BSC Parties and non-Parties?
- f) Should these criteria be captured within the Code itself, in a subsidiary document or elsewhere?
- g) How should any criteria be publicised, e.g. published on the BSC Website or otherwise made available?
- h) What process, if any, should non-Parties go through prior to submitting a request to the Panel and how should ELEXON and the Panel run its designation process?
- i) How long should any appeals window be?
- j) Should Parties be able to appeal to Ofgem if they believe the Panel has designated an inappropriate representative?
- k) What changes are needed to BSC documents, systems and processes to support this proposed Modification and what are the related costs and lead times?
- l) Are there any Alternative Modifications?
- m) Should this proposed Modification be progressed as a Self-Governance Modification?
- n) Does this proposed Modification better facilitate the Applicable BSC Objectives than the current baseline?

Assessment Procedure timetable

P370 Assessment Timetable

Event	Date
Panel submits P370 to Assessment Procedure	12 Jul 18
Workgroup Meeting 1	3 Aug 18
Workgroup Meeting 2	28 Aug 18
Workgroup Meeting 3	4 Oct 18
Assessment Procedure Consultation & Industry Impact Assessment	23 Oct to 12 Nov 18 (15 WDs)
Workgroup Meeting 4	w/c 19 Nov 18

P370
Assessment Procedure
Consultation

23 October 2018

Version 1.0

Page 33 of 39

© ELEXON Limited 2018

P370 Assessment Timetable	
Event	Date
Panel considers Workgroup's Assessment Report	13 Dec 18

Workgroup membership and attendance

Name	Release Letter	Organisation	03/08/18	28/08/18	04/10/18	TBC
Non-voting members						
Lawrence Jones	n/a	ELEXON (<i>Chair, Proposer Representative & Lead Analyst</i>)	✓	✓	✓	
Cal Lynn	n/a	ELEXON (<i>Lead Analyst</i>)	x	✓	x	
Voting members						
Andy Colley	n/a	SSE	☎	☎	☎	
Clare Hanna		IMServ	✓	✓	✓	
David Barret		Lowri Beck	☎	x	✓	
James Anderson		Scottish Power	✓	✓	✓	
James Murphy		Stark Energy	✓	✓	x	
Jon Wisdom		National Grid (<i>ESO representative</i>)	✓	☎	x	
Adelle Wainwright		National Grid (<i>ESO representative</i>)	x	x	✓	
Lisa Waters		Waters Wye	x	✓	☎	
Matthew Tucker		Welsh Power	x	x	☎	
Rick Parfett		Association of Decentralised Energy	✓	x	x	
Tom Chevalier		Association of Meter Operators	✓	☎	x	
Caroline Bragg		Association of Decentralised Energy	x	✓	✓	
Non-voting participants						
Damian Clough	n/a	ELEXON (<i>Design Authority</i>)	✓	✓	✓	
Nicholas Brown	n/a	ELEXON (<i>Lead Lawyer</i>)	✓	✓	✓	
Nadir Hafeez	n/a	Ofgem	☎	✓	✓	

Appendix 2: Glossary & References

Acronyms

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

Acronyms	
Acronym	Definition
AEMC	Australian Energy Market Commission
BSC	Balancing and Settlement Code
BSCCo	Balancing and Settlement Code Company
CGR	Code Governance Review
CMA	Competition and Markets Authority
CSD	Code Subsidiary Document
CUSC	Connection and Use of System Code
DCUSA	Distribution Connection and Use of System Agreement
EBGL	Electricity Balancing Guideline
ESO	Electricity System Operator
IWA	Initial Written Assessment
MDB	MRA Development Board
MEC	MRA Executive Committee
MRA	Master Registration Agreement
NETA	New Electricity Trading Arrangements
SCR	Significant Code Review
SEC	Smart Energy Code
UK	United Kingdom
UMSUG	Unmetered Supplies User Group
WD	Working Day

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
	Authorities Code Governance Review (CGR) 5 projects	https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-code-governance/code-governance-review

P370
Assessment Procedure
Consultation

23 October 2018

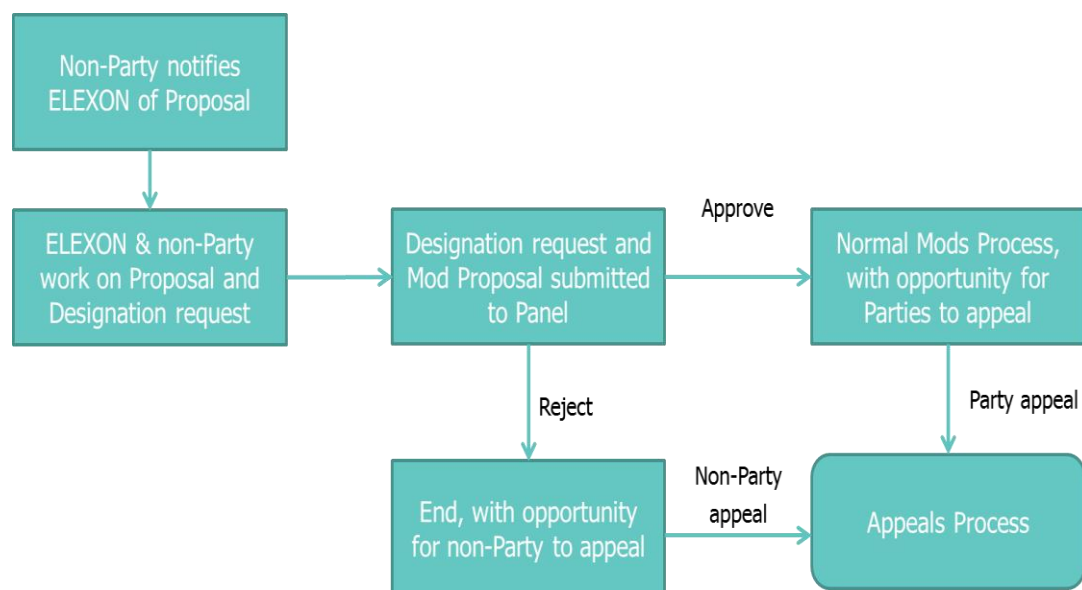
Version 1.0

Page 35 of 39

© ELEXON Limited 2018

External Links		
Page(s)	Description	URL
	BSC Section F 'Modification 5 Procedures'	https://www.elexon.co.uk/bsc-and-codes/balancing-settlement-code/bsc-sections/
	P344 'Project 17 TERRE'	https://www.elexon.co.uk/mod-proposal/p344/
	Association of Decentralised 20 Energy	https://www.theade.co.uk/
	Flexible Generation 20 Group	https://www.flexgengroup.com/
	Power 20 Responsive	http://powerresponsive.com/
	P362 'BSC 21 Sandbox'	https://www.elexon.co.uk/mod-proposal/p362/
	considered in an 22 upcoming Issue	https://www.elexon.co.uk/documents/groups/panel/2018-meetings/283-october/283-10-terms-of-reference-for-a-full-review-of-elexon-charges/
	28 UMSUG	https://www.elexon.co.uk/group/unmetered-supplies-user-group-umsug/
	Change Proposal 1511 'Clarification of BSCP40 definitions and 36 processes'	https://www.elexon.co.uk/change-proposal/cp1511/

Appendix 3: High-level Designation Process Map



Appendix 4: Designation Processes in other industry codes

Designation process in other key industry codes			
Code	Designation Process	Term Used	Designation Appeals Process
Distribution Connection and Use of System Agreement (DCUSA)	Yes	any person or body that may from time to time be designated in writing by the Authority	No
Smart Energy Code (SEC)	Yes	any person or body that may from time to time be designated in writing by the Authority	No
Joint Office of Gas Transporters	Yes	any person or body who is not a User but who is representative of interested third parties, as may be designated in writing for this purpose by the Authority, from time to time, and maintained on a register held by the Authority	No
MRA	No	an Interested Industry Participant may raise a change where sponsored by a Party and MEC believe they have an interest in the industry	No. Parties can appeal MEC decision to MDB
CUSC	Yes (limited)	by a Materially Affected Party, unless otherwise permitted by the Authority "Materially Affected Party" any person or class of persons designated by the Authority as such, in relation to the Charging Methodologies	No

Designation process in other key industry codes

Code	Designation Process	Term Used	Designation Appeals Process
Grid Code	No	<p>any Authorised Electricity Operator liable to be materially affected by such a proposal</p> <p>“authorised electricity operator” means any person (other than the licensee in its capacity as operator of the licensee’s transmission system or the national electricity transmission system) who is authorised to generate, participate in the transmission of, distribute, or supply electricity or participate in the operation of an interconnector and for the purposes of standard conditions C7 (Prohibition on discriminating between users) to C9 (Functions of the Authority) inclusive shall include any person who has made an application to be so authorised which application has not been refused and any person transferring electricity to or from the national electricity transmission system across any interconnector (or who has made an application for use of an interconnector which has not been refused).</p>	No