



March 2001

**INITIAL ASSESSMENT OF
MODIFICATION PROPOSAL P5**

**Extension of Indemnity Under
Section B2.9**

Prepared By ELEXON Limited

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A DOCUMENT CONTROL

B AUTHORITIES

Version	Date	Author	Signature	Change Reference
1.0	09/04/01	Gareth Forrester		Final version for Panel

Version	Date	Reviewer	Signature	Responsibility
1.0		Cathy Woods		Legal Department

C DISTRIBUTION

Name	Organisation
BSC Panel Members	

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1 INTRODUCTION

This Report has been prepared by ELEXON Ltd. on behalf of the Balancing and Settlement Code Panel ('the Panel'), in accordance with the terms of the Balancing and Settlement Code ('BSC'). The BSC is the legal document containing the rules of the balancing mechanism and imbalance settlement process and related governance provisions. ELEXON is the company that performs the role and functions of the BSCCo, as defined in the BSC.

An electronic copy of this document can be found on the BSC website, at www.elexon.co.uk

2 EXECUTIVE SUMMARY

An initial assessment of Modification Proposal P5 has identified that this proposal has no impact other than on sections B2.9.1 and B2.9.4 of the Code.

However, there are some issues that should be considered in progressing the modification, including the increased level of risk that may be faced by BSC Parties if the scope of the indemnity is extended.

3 PURPOSE AND SCOPE OF THE REPORT

Section F of the BSC sets out the procedures for progressing proposals to amend the BSC (known as 'Modification Proposals'). These include procedures for proposing, consulting on, developing, evaluating and reporting to the Authority on potential modifications.

The BSC Panel is charged with supervising and implementing the modification procedures. ELEXON provides the secretariat and other advice, support and resource required by the Panel for this purpose. In addition, if a modification to the Code is approved or directed by the Authority, ELEXON is responsible for overseeing the implementation of that amendment (including any consequential changes to systems, procedures and documentation).

When a new proposal to modify the BSC is made, it is the responsibility of the Panel to determine how it should be progressed. Options include submitting the proposal to a Definition Procedure¹, submitting it to an Assessment Procedure², amalgamating the proposal with another proposal³, or proceeding directly to the Report Phase⁴. With a view to assisting the Panel in taking this decision, ELEXON prepares this initial written assessment of the implications of the Modification Proposal as soon as reasonably practicable after the proposal is made⁵. ELEXON endeavours to complete this initial assessment such that it can be reviewed by the Panel at the Panel meeting at which the relevant Modification Proposal is first to be considered.

This initial assessment provides a preliminary view on the following:

- the potential impact of the proposed modification on BSC systems and processes;
- the potential impact of the proposed modification on other systems and processes used by Parties;

¹ see BSC F2.5

² see BSC F2.6

³ see BSC F2.3

⁴ see BSC F2.7

⁵ see BSC F2.1.8

- the potential impact of the proposed modification on the BSC, Code Subsidiary Documents and Core Industry Documents;
- the potential impact of the proposed modification on ELEXON;
- the potential impact of the proposed modification on BSC financial arrangements and budget;
- the potential impact of the proposed modification on BSC Agent contractual arrangements;
- The process and timetable that should be adopted for the progression of the Modification Proposal, in light of its complexity, importance and urgency; and
- Issues that will need to be considered and addressed in progressing the Modification Proposal (including the potential need for impact assessments, consultation and analyses).

It should be noted that, as this document only represents a preliminary assessment of the Modification Proposal, the information contained herein will, in most cases, be superseded by the subsequent analysis and reports produced by the Modification Group to which the Panel assigns the proposal for consideration.

4 DETAILS OF THE MODIFICATION PROPOSAL

A copy of the Modification Proposal form, as submitted by its proposer, can be found at Annex 1 to this report. The form contains the following information provided by the proposer in relation to the proposal⁶:

- the name of the Proposer;
- the name of the representative of the Proposer (and his alternate) who shall represent the Proposer in person;
- a description (in reasonable but not excessive detail) of the issue or defect which the proposed modification seeks to address;
- a description (in reasonable but not excessive detail) of the proposed modification and of its nature and purpose;
- where possible, an indication of those parts of the Code which would require amendment in order to give effect to (and/or would otherwise be affected by) the proposed modification and an indication of the nature of those amendments or effects;
- the reasons why the Proposer believes that the proposed modification would better facilitate achievement of the Applicable BSC Objective(s) as compared with the then current version of the Code;
- where possible, an indication of the impact of the proposed modification on Core Industry Documents; and
- where possible, an indication of the impact of the proposed modification on BSC Systems and on other relevant computer systems and processes used by Parties.

⁶ See BSC F2.1.2

5 IMPACT ON BSC SYSTEMS AND PROCESSES

BSC System / Process	Potential Impact of Proposed Modification
Registration	No impact.
Contract Notification	No impact.
Credit Checking	No impact.
Balancing Mechanism Activities	No impact.
Collection and Aggregation of Metered Data	No impact.
Supplier Volume Allocation	No impact.
Settlement	No impact.
Clearing, Invoicing and Payment	No impact.
Reporting	No impact.
Dispute Resolution	No impact.

6 IMPACT ON OTHER SYSTEMS AND PROCESSES USED BY PARTIES

System / Process	Potential Impact of Proposed Modification
All	No impact.

7 IMPACT ON DOCUMENTATION

7.1 Impact on Balancing and Settlement Code

BSC Section	Potential Impact of Proposed Modification
A: Parties and Participation	No impact.
B: The Panel	If this proposal were to be implemented, the words "or in the proper exercise of the powers.." in Section B 2.9.1 would be replaced with "or in the proper or good faith purported exercise of the powers.." The same change would also be required in section B2.9.4.
C: BSCCo and its Subsidiaries	No impact.
D: BSC Cost Recovery and Participation Charges	No impact.
E: BSC Agents	No impact.
F: Modification Procedures	No impact.
G: Contingencies	No impact.
H: General	No impact.
I: Not Used	No impact.
J: Party Agents	No impact.
K: Classification and Registration of Metering Systems and BM Units	No impact.
L: Metering	No impact.
M: Credit Cover and Credit Default	No impact.
N: Clearing, Invoicing and Payment	No impact.

BSC Section	Potential Impact of Proposed Modification
O: Communications	No impact.
P: Energy Contract Volumes and Metered Volume Reallocations	No impact.
Q: Balancing Mechanism Activities	No impact.
R: Collection and Aggregation of Metered Data from CVA Metering Systems	No impact.
S: Supplier Volume Allocation	No impact.
S: ANNEX S-1 Performance Levels and Supplier Charges	No impact.
S: ANNEX S-2 Supplier Volume Allocation Rules	No impact.
T: Settlement and Trading Charges	No impact.
U: Provisions Relating to Settlement	No impact.
V: Reporting	No impact.
W: Trading Queries and Trading Disputes	No impact.
X: Definitions and Interpretation	No impact.
X: ANNEX X-1 General Glossary	No impact.
X: ANNEX X-2 Technical Glossary	No impact.
Pool Supplement	No impact.

7.2 Impact on Code Subsidiary Documents

Code Subsidiary Document	Potential Impact of Proposed Modification
BSC Procedures	No impact.
Codes of Practice	No impact.
BSC Service Descriptions	No impact.
Party Service Lines	No impact.
Data Catalogues	No impact.
Communication Requirements Documents	No impact.
Reporting Catalogue	No impact.

7.3 Impact on Core Industry Documents

Core Industry Document	Potential Impact of Proposed Modification
Grid Code	No impact.
MCUSA	No impact.
Supplemental Agreements	No impact.
Ancillary Services Agreements	No impact.
Master Registration Agreement	No impact.
Data Transfer Services Agreement	No impact.
British Grid Systems Agreement	No impact.
Use of Interconnector Agreement	No impact.
Pooling and Settlement Agreement	No impact.
Settlement Agreement for Scotland	No impact.
Distribution Codes	No impact.
Distribution Use of System Agreements	No impact.
Distribution Connection Agreements	No impact.

8 IMPACT ON OTHER CONFIGURABLE ITEMS

Item	Potential Impact of Proposed Modification
All	No impact.

9 IMPACT ON ELEXON

Area of Business	Potential Impact of Proposed Modification
ELEXON Systems	No impact.
ELEXON Procedures	No impact.
ELEXON Contracts (Excluding BSC Agent Contracts)	No impact.
Other (e.g. costs, staffing, etc.)	No impact.

10 IMPACT ON FINANCIAL ARRANGEMENTS AND BUDGET

No impact.

11 IMPACT ON BSC AGENT CONTRACTUAL ARRANGEMENTS

BSC Agent Contract	Potential Impact of Proposed Modification
Logica (BMRA, CRA, CDCA, SAA, ECVAA, TAA(CVA))	No impact.
EPFAL (FAA)	No impact.
ESIS (TAA(SVA))	No impact.
Cap Gemini (SVAA)	No impact.
PwC (BSC Auditor, Certification Agent)	No impact.
EASL (Teleswitch Agent, Profile Administrator)	No impact.

12 PROCESS AND TIMETABLE FOR PROGRESSING THE PROPOSAL

If the Panel decides not to proceed directly to the Report Phase in respect of this proposal, it will be necessary to submit the proposal to the Assessment Procedure. ELEXON would invite representations on the proposal. The Panel would be required to establish an appropriate Modification Group to consider the proposal and any representations received on the issue. The group would be tasked with preparing an Assessment Report within timescales that allow it to be reviewed at the Panel meeting of 3 May. The Panel could then decide to proceed to the Report Phase, with the meeting of 31 May being targeted for consideration of the draft report. The report would then be finalised and submitted to the Authority for decision during the week commencing 4 June.

If the Panel agrees to proceed directly to the Report Phase in respect of this proposal, the Panel should make a provisional recommendation on whether the modification should or should not be made. The Panel should also propose an implementation date for the modification. ELEXON will then prepare a Draft Modification Report and issue this for consultation, within timescales that allow the Draft Modification Report and any representations received to be considered at the Panel meeting of 3 May. The Modification Report would then be finalised and submitted to the Authority for decision during the week commencing 7 May.

13 ISSUES

There are some issues that should be considered in progressing the modification, including the increased level of risk that may be faced by BSC Parties if the scope of the indemnity is extended.

ANNEX 1 – MODIFICATION PROPOSAL

Modification Proposal – F76/01	MP No: P5 <i>(mandatory by ELEXON)</i>
Title of Modification Proposal <i>(mandatory by originator):</i> Extension Of Indemnity Under Section B2.9	
Submission Date <i>(mandatory by originator):</i> 28 March 2001	
Description of Proposed Modification <i>(mandatory by originator):</i> Modification to Section B 2.9.1 to extend the indemnity to cover actions undertaken in good faith. The words "or in the proper exercise of the powers.." in Section B 2.9.1 should be replaced with "or in the proper or good faith purported exercise of the powers.."	
Description of Issue or Defect that Modification Proposal Seeks to Address <i>(mandatory by originator):</i> There are a number of reasons why the provisions of Clause 2 (A) of the indemnity should be cast in the way proposed above; a selection of which are captured below. ? The new governance model under the BSC is untested and untried. Consequently, there are no precedents and no case history available to Panel Members to test the interpretation of the role. Therefore, it is unreasonable for Panel Members to be exposed to personal risk for accidental failure to correctly interpret the precise boundaries of a role that is imprecisely defined (there are over 1300 references to Panel in the Code and Panel members do not have legal training). In addition, it has become apparent that ELEXON is also unable to ensure that the Panel is not presented with decisions outside the Panel's vires. This should not be taken to indicate that ELEXON is not undertaking an appropriate role, but rather to highlight the potential difficulties. This concern is exacerbated by the prospect that Panel decisions could be subject to Judicial Review. ? In the event that the wider form of the indemnity is not granted, and given the difficulties ELEXON has had in ensuring that matters presented to the Panel are within its vires, the Panel will need to draw on legal advice on a regular basis. This may lead to a need to have a legal advisor present at some, or all Panel meetings, and/or seek written confirmation from a legal advisor on whether papers and recommendations presented to the Panel are consistent with the Panel's vires under the Code. This is a bureaucratic, costly, and inefficient solution that would not be necessary if the indemnity is cast in the way proposed. The form of the indemnity that is being sought has been accepted by the industry as it mirrors that granted to members of the litigation committee whose remit was much narrower than that of Panel Members and, arguably, much more clearly defined. The BSC was finalised before Panel Members were appointed and none of those involved in the drafting were acting on behalf of Panel Members. Therefore, the views of Panel members (and their legal advisor) were not available to be taken into account when the indemnity was drafted. It is the view of Panel members, and their	

Modification Proposal – F76/01	MP No: P5 <i>(mandatory by ELEXON)</i>
<p>advisor, that this extension of the indemnity is essential for the efficient conduct of Panel business and the appropriate protection of those undertaking this role.</p>	
<p>Impact on Code <i>(optional by Originator):</i></p> <p>The words "or in the proper exercise of the powers.." in Section B 2.9.1 should be replaced with "or in the proper or good faith purported exercise of the powers.."</p>	
<p>Impact on Core Industry Documents <i>(optional by Originator):</i></p> <p>None</p>	
<p>Impact on BSC Systems and Other Relevant Systems and Processes Used by Parties <i>(optional by originator):</i></p> <p>None</p>	
<p>Impact on other Configurable Items <i>(optional by originator):</i></p> <p>None</p>	
<p>Justification for Proposed Modification with Reference to Applicable BSC Objectives <i>(mandatory by originator):</i></p> <p>The Modification better facilitates achievement of the Applicable BSC Objective set out in Transmission Licence Condition 7A(3)(d) - promoting efficiency in the implementation and administration of balancing and settlement arrangements.</p> <p>It will reduce the need for potentially costly and inefficient procedures to be developed to ENSURE that ALL decisions placed before Panel members are consistent with their vires under the Code (Panel members will still wish this to be the case but will be able to use their judgement in situations where ambiguities arise or where timescales are particularly tight and decisions are urgent, they will also be able to rely on the advice of ELEXON staff rather seeking formal legal advice from those trained in interpreting complex documents). This will reduce meeting times; reduce the burden on ELEXON in supporting the Panel and procuring legal advice; and improve the efficiency with which Panel business is managed and hence promote efficiency in the operation of the implementation and administration of balancing and settlement arrangements.</p> <p>There appears to be no impact on the Applicable BSC Objectives set out in Condition 7A(3) (a - c).</p>	

Modification Proposal – F76/01	MP No: P5 <i>(mandatory by ELEXON)</i>
Details of Proposer <i>(mandatory by originator):</i>	
Name: Paul Chesterman	
Organisation: London Electricity plc	
Telephone Number: 01454 452128	
Email Address: paul_chesterman@sweb.co.uk	
Details of Proposer's Representative <i>(mandatory by originator):</i>	
Name: Martyn Hunter	
Organisation: St Clements Services Ltd	
Telephone Number: 01327 310184	
Email Address: martyn.hunter@st-clements.co.uk	
Details of Representative's Alternate <i>(mandatory by originator):</i>	
Name: Paul Chesterman	
Organisation: London Electricity plc	
Telephone Number: 01454 452128	
Email Address: paul_chesterman@sweb.co.uk	
Attachments <i>(mandatory by originator):</i> NO	
If Yes, Title and No. of Pages of Each Attachment:	