Final Modification Report

P385 'Improving the efficacy and efficiency of the Section H Default provisions'

This Modification proposes amendments to the Default arrangements in order to increase visibility to industry of Parties at risk and enable earlier remedial action by the BSC Panel.

The Self-Governance Appeal Window for P385 closes:

5pm on **Wednesday 4 December 2019**

If no appeals are notified by this time, the Panel's decision is final.

The BSC Panel has **approved** P385 under Self-Governance

This Modification is expected to impact:

- The BSC Panel
- BSC Parties
- ELEXON as the Balancing and Settlement Code Company (BSCCo)

Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

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About This Document

This is the P385 Final Modification Report, which ELEXON has submitted to the Authority the Transmission Company and all BSC Parties. As P385 is a Self-Governance Modification, it does not get submitted to the Authority for decision. Instead, the Panel approved P385 under Self-Governance. Parties have until 5pm, 4 December 2019 to object the Panel's decision, stating why they do not believe P385 meets the Self-Governance criteria (in accordance with BSC Section F Paragraph 6.4). If no objection is received by this time, the Panel's decision is final.

There are seven 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 approved redlined changes to the BSC for P385.
- Attachment B-C contains the approved redlined changes to the Code Subsidiary Documents for P385.
- Attachment D contains the Business Requirements for P385.
- Attachment E contains the full responses received to the Workgroup's Assessment Procedure Consultation.
- Attachment F contains the full responses received to the Panel's Report Phase Consultation.

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1 Summary

Why Change?

The BSC Panel has the ability to take mitigating action and provide financial protection to Parties when an Event of Default is triggered. The current arrangements are overly complex and prolong the period before an Event of Default (EoD) is declared until it is often too late.

The frequency of BSC Parties failing to pay their debts and, as a consequence defaulting on the BSC, has increased in 2018. This results in unpaid Trading Charges being mutualised across other BSC Parties. After a period of 10 years without a Supplier of Last Resort event, there was a single occurrence in 2016 followed by seven events in 2018 and over five in 2019 so far.

Approved Solution

P385 will introduce two new Events of Default and change two existing Events of Default, with the aim of reducing the time between a Party failing and potential remedial action by the BSC Panel.

- A new EoD for Parties failing to pay Trading Charges on time on three or more occasions in rolling 30 day calendar period.
- A new EoD for Parties who have publically announced they are ceasing to trade.
- Reduction to parameters in so that a Relevant Credit Default Series is reduced to three occasions in six months, on any Level 1 or 2 Credit Default with no cooling off period.
- Reduction to parameters in Section H.3.1.1(b) (iii) for failure to pay BSCCo charges from fifteen to five Working Days, with an additional trigger if a Party defaults on BSCCo charges three times in a rolling twelve month period.

Parameters for certain EoDs will be removed from Section H and place them under BSC Panel control, giving the Panel the power to approve changes to rates and timescales that trigger certain Events of Default, subject to industry consultation.

The Workgroup recommended and the Panel approved that the EoD within scope of P385 are removed from Section H and published on the BSC Website.

Impacts & Costs

P385 is a change that will directly impact ELEXON and the BSC Panel, who will be required to amend their processes. Parties who are compliant with the BSC will not be impacted by P385. P385 will only impact Parties who trigger an EoD. Section 6 of this paper provides analysis on the impact of applying the proposed changes to the EoD to 2018/19. Parties who breach the BSC may trigger an EoD that they would not have done pre-P385. Parties may need to make procedural updates to implement P385.

No BSC Central Systems impacts have been identified, although a process-only impact on the Fund Administration Agent (FAA) to monitor and report non-payment of Trading Charges has been identified. ELEXON's costs, including the FAA costs to implement P385 are approximately £12,000.

Implementation

P385 will be implemented on **27 February 2020** as part of the February 2020 BSC release.

Recommendation

The BSC Panel **unanimously** agreed that P385 **would** better facilitate Applicable BSC Objective (c) and (d) compared to the current baseline, and so **approved** P385. Their recommendation is that P385 should be implemented as a Self-Governance Modification.

Background

Why is Credit Cover required?

Under the BSC arrangements, payments by Trading Parties for Trading Charges arising on any particular Settlement Day are typically made 29 calendar days later, due to the availability of metering data from Settlement Runs.

Thus, at any given time, Parties may have debts (or be due payments) for Trading Charges incurred 29 days earlier plus all intervening days.

Each Party is therefore required to lodge Credit Cover to cover this period, to ensure that, should it default, there is sufficient collateral available to pay off its debts.

Without sufficient Credit Cover these debts will be recovered from all other BSC (non-Defaulting) Parties in accordance with their market share using the Default Funding Share.

ELEXON perform a half hourly credit check process to ensure that each Party's accumulated debt (their Energy Indebtedness) over the 29 day period does not exceed 80% of the amount of Credit Cover they have provided.

What is a Supplier of Last Resort (SoLR) event?

Supplier of Last Resort occurs when the Authority revokes a failing Supplier's Supply Licence and appoints a SoLR to take over its customers. Where a Party has not been able to transfer its customer base beforehand, the Authority can appoint a Supplier of Last Resort so a failed Supplier's customers will continue to take their supply from a licensed Supplier.

When does Credit Default occur?

The Credit Default process occurs when a Party's Credit Cover Percentage (CCP) exceeds 80%, at which point it receives a default notice by phone and email, and a 24 hour Query Period commences. This Query Period gives the Party an opportunity to investigate the default.

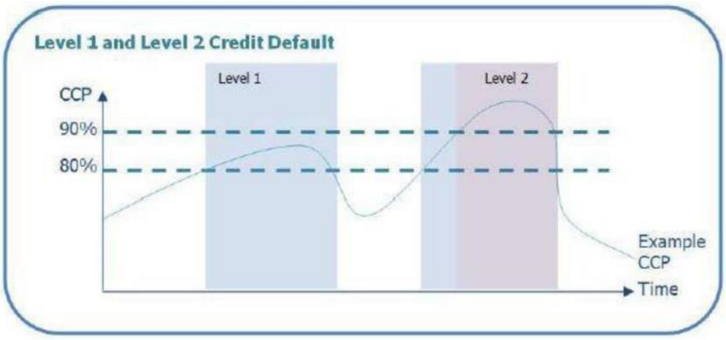
The next step depends on the Party's CCP at the end of the Query Period:

- If the CCP is subsequently below 80%, the Party exits the process and no further action is taken.
- If the CCP remains above 80%, the Party will be given a Level 1 Cure Period, whereby it must ensure its CCP falls below 75% for at least one Settlement Period before the end of the next Working Day. If this does not happen, the Party will enter Level 1 Credit Default.
- If the CCP is above 90%, the Party will immediately enter Level 2 Credit Default.

The Level 1 and Level 2 processes run concurrently. It is therefore possible for a Party to enter Level 2 Credit Default while they are still working through a Level 1 Cure Period.

What is Credit Cover Percentage?

Credit Cover Percentage (CCP) represents a Party's yet-to-be-paid Trading Charges as a percentage of the collateral it has lodged as Credit Cover.



Once a Party enters Credit Default, it can exit Level 2 Credit Default by reducing the CCP below 90% and will exit Level 1 Credit Default processes when its CCP falls below 75%.

What is the impact of being in Credit Default?

When a Party has a Credit Default that is authorised by ELEXON, it enters either Level 1 or Level 2 Credit Default and a notification is published on the Balancing Mechanism Reporting Service (BMRS) to this effect, and this information is also reported to all Parties in the ECVAA-I014 'Notification Report' flow.

Additionally, if a Party is in Level 2 Credit Default, any Energy Contract Volumes Notifications (ECVNs) or Meter Volume Reallocation Notifications (MVRNs) increasing Energy Indebtedness that are submitted will be refused, with any existing ECVNs or MVRNs that would have the same effect rejected on a Settlement Period by Settlement Period basis.

In each case the counterparty to the notification will be informed of the rejection.

A Party in Level 1 Credit Default whose CCP subsequently exceeds 90% can also have ECVNs and MVRNs rejected or refused in the same way.

When a Party exits Credit Default, the relevant notice(s) will be updated on the BMRS. For Parties in Level 2 Credit Default their contracts will stop being refused and/or rejected.

Payment Default and BSCCo Charges

Trading Charges

The Payment Default processes related to BSC Trading Charges are described in BSC Section N 'Clearing, Invoicing & Payment' and this specifies the conditions for Payment Default. In the event of non-payment for a particular Payment Date, a BSC Party is notified of Payment Default at day+1 . If the Payment Default is not resolved by day+2 the Credit Cover is used to clear the Payment Default.

In the event of insufficient Credit Cover being available the Payment Default becomes an Event of Default. Any defaulted amounts are then mutualised across non-Defaulting Parties in accordance to their market share.

BSCCo Charges

"BSCCo Charges" means amounts payable by Parties by way of Specified BSC Charges (the costs of operating the BSC).

All costs, expenses and other outgoings of BSCCo are referred to as BSC Costs. These costs are recovered from BSC Parties. BSC Parties pay a proportion of the BSC Costs every month, known as BSC Charges. Section D of the BSC details the BSC Charges and their recovery.

Occasionally a Party defaults on its payments. A default notice is issued and the Party is allowed until the fifteenth Business Day following the notice to resolve the default. If the charge remains unpaid this is an Event of Default.

If the charges are not paid the 'bad debt', or Default Costs, is reallocated among the other Parties according to market share using a Default Funding Share.

Advice Note

An Advice Note is the note issued by the Funds Administration Agent (FAA) showing the amount that Parties need to pay to the BSC Clearer, or that the BSC Clearer needs to pay to Parties. It can cover charges for several calendar Payment Dates and must be paid in full by the Payment Date on that Advice Note.

The Advice Note Threshold Limit is currently set at £500 (payable or receivable). The FAA will send you an Advice Note when the total of the Trading Charges, Default Charges and/or ad-hoc charges that Parties owe (or are owed) is equal to, or exceeds, this Threshold Limit.

Triggering an Event of Default

The BSC currently triggers Events of Default for seven scenarios. Once an Event of Default is triggered the BSC Panel is able to apply the Consequences of Default, often referred to as 'Panel Resolutions'. Until an Event of Default is triggered, the BSC Panel are unable to take action.

Where an Event of Default has occurred, it is resolved immediately on remedy of the Credit or Payment Default.

Where a Level 1 or Level 2 Credit Default occurs the BSC allows this to persist for a number of consecutive or intermittent days before an Event of Default is triggered.

- Level 1 Credit Default can persist for a continuous period of 90 days or an intermittent period of 120 days out of 180 days.
- Level 2 Credit Default can persist for a continuous period of 60 days or an intermittent period of 75 days out of 120 days.
- Currently, a Party that is in Level 2 Credit Default with a Credit Cover Percentage that has exceeded 100% for 2 Working Days will trigger an Event of Default.

Recurrent events of Credit Default are described as a Relevant Credit Default Series which is an Event of Default under BSC Section H 3.1.1. (c) (iv). The Party must be in Level 2 Credit Default with a Credit Cover Percentage exceeding 100% on 5 occasions in 6 months with a cooling off period of 2 Working Days between events.

Consequences of Default

Consequences of Default are special measures available to the Panel when an Event of Default is triggered.

It is important to note that Consequences of Default are not automatically triggered by an Event of Default but are options available to use at the Panel's discretion.

After the Panel has considered the case, it may take one or more of these steps, detailed in Section H 3.2 'Consequences of Default'. It may apply these resolutions in part or completely, effective from the Settlement Period it chooses.

The Panel may:

- notify other Parties of the Default;
- suspend the Party's right to submit contracts and/or disapply existing contracts. The Panel may only disapply contracts that place the Party in further debt;
- suspend the Party's right to be allocated Metered Volumes to its Interconnector BM Units;
- suspend the Party's right to submit Bid-Offer Pairs. ELEXON will consult with National Grid on this action;
- suspend the Party's right to register further Metering Systems and BM Units;
- suspend the Party's right to vote in BSC Panel elections and/or the right to receive reports and data. ELEXON can provide reports where appropriate;
- require the Defaulting Party to de-energise Apparatus associated with their BM Units. The Authority will approve these actions; and/or
- expel the Defaulting Party from the BSC.

When a Default occurs, the Panel will meet to discuss it – sometimes at short notice.

The Panel has a duty of care to protect other Parties from the Default and will try to minimise the potential debt. It will consider information that ELEXON provides and consider the impact on the contracted counter Parties, and on the Defaulting Party.

For instance, it may not be in the interests of the industry as a whole, or individual counter Parties, to stop the Defaulting Party from trading immediately.

What is the issue?

The BSC Panel has the ability to take mitigating action and provide financial protection when an Event of Default is triggered, but the current arrangements are overly complex and prolong the period before an Event of Default is declared until it is often too late.

The frequency of BSC Parties failing to pay their debts and, as a consequence defaulting on the BSC, has increased in 2018. This results in greater exposure to unpaid Trading Charges which are then mutualised across other BSC Parties. After a period of 10 years without a Supplier of Last Resort event, there was a single occurrence in 2016 followed by seven events in 2018 and by three in 2019 at the time of writing.

The current timescales for escalating a Party to the point where an Event of Default is triggered means that mitigating action by the Panel is delayed. It is important to take action promptly to minimise costs to industry through Default Funding Shares which are ultimately passed on to the consumer.

Therefore, when a Party in financial difficulty has been identified, the BSC Panel should have the opportunity to apply Consequences of Default as early as possible. This will allow failing Parties be promptly identified to the BSC Panel and the wider Industry, potentially allowing the Panel to reduce the risks to counterparties and other Parties.

Events of Default

The current payment rules allow a Party to exhaust its Credit Cover through non-payment before an Event of Default is triggered.

This can delay action until the Credit Cover is exhausted. Running down the Credit Cover can also lead to Credit Default but both Payment Default and Credit Default have a lag time to trigger an Event of Default and there is an opportunity to identify them earlier.

In the event of Payment Default, a Party can fail to pay over a number of days as the Credit Cover is used to clear unpaid charges and thus resolving the Payment Default.

By amending and simplifying the criteria for what triggers Events of Default this will more promptly identify failing Parties to the BSC Panel and facilitate appropriate mitigating action.

Relevant Credit Default Series

Recurrent events of Credit Default are described as an Event of Default under a Relevant Credit Default Series under BSC Section H 3.1.1 (c) (iv). However the complexities of the current provisions for meeting the conditions for triggering this scenario make it difficult for Parties to understand what is expected from them.

Recent Credit Defaults have shown that the triggering of Level 2 Credit Default in cases where the Party has also exceeded 100% Credit Cover Percentage is a reliable indication that a Party is experiencing financial difficulty. However, the complexity of applying the rules to Parties who are already in the process of failing delays remedial action until the opportunity to apply the Consequences of Default and take protective action on behalf of BSC Parties has passed.

Non-payment of BSSCo Charges

Under current arrangements, there is a 15 day notice period following non-payment of BSCCo charges before an Event of Default is triggered. This 15 day period provides an unnecessarily generous window in which Parties can delay payment of BSCCo Charges before triggering an Event of Default.

Parties entering Administration

There have been several recent instances of Parties publicly stating a notice to cease trading. However, as these Parties had not explicitly admitted that they would be unable to pay their debts to ELEXON and had not triggered Events of Default, the Panel have been limited in what actions can be taken, thus allowing the Party to potentially increase its debt to the detriment of other BSC Parties.

Where an Administrator is due to be appointed to a failing Party, the Party is subject to a 14 day notice Period prior to the formal appointment. The BSC does not recognise an Event of Default until the appointment of an Administrator.

By also simplifying the arrangements, BSC Parties will be clearer about how, why and when an Event of Default is triggered and the consequences of doing so.

Approved solution

This Modification proposes to amend BSC Section H in such a manner as to introduce new Events of Default and reduce the periods after which certain Events of Default are triggered.

The proposed solution will promote visibility of a Party in financial difficulty to the BSC Panel at an earlier opportunity, thereby informing the wider industry and potentially protecting it from increasing amounts of bad debt.

Placing Event of Default Parameters under Panel Control

The parameters for certain Events of Default will be removed from Section H, while retaining existing high-level obligations and necessary process detail. Instead, the Panel will decide on changes to these parameters, consult with the industry to ascertain impacts and lead times, and publish the parameters on the BSC Website.

The parameters for EoD1, EoD3, EoD4 and EoD5 will be removed from Section H, governed by the Panel and communicated to BSC Parties in this manner.

Any changes to the parameters, including the effective date, must be subject to a minimum 15 Working Day consultation by the Panel prior to being changed, with the proposed changes and notice period communicated to BSC Parties.

The Panel shall conduct reviews as appropriate and from time-to-time, with an initial review after a year.

First new Event of Default – EoD1

BSC Section H will be amended to introduce a new Event of Default that will trigger in the event that a BSC Party fails to pay Trading Charges in full by 9am on the second business day on 3 or more occasions within a 30 calendar day rolling period. Amounts below the Advice Note Threshold will not be considered as an occasion contributing towards the new Event of Default.

Second new Event of Default –EoD2

BSC Section H will be amended to introduce a second new Event of Default for Parties who have publically announced they are ceasing to trade.

Removal of parameters for 'Credit Default' Events of Default – EoD3

The parameters for Events of Default in Section H 3.1.1 (c) (i) and (ii) will be removed from the BSC and placed under Panel control.

Simplification of Relevant Credit Default Series - EoD 4

A Relevant Credit Default Series currently occurs when a Party has breached 100% Credit Cover Percentage six times within a rolling period of six months on separate days with a cooling off period of two days in which Credit Defaults are no longer counted as a result of separate instances.

Upon any Level 1 or 2 Credit Default event the Relevant Credit Default Series will occur i.e. Level 1 or Level 2 with any Credit Cover Percentage. In the event that a Party clears the Credit Default there will be no cooling off period. The number of occurrences will be reduced to three occasions in a six months rolling period.

Addition of frequency trigger and reduction to 'BSSCo Charges' Event of Default– EoD5

As described in BSC section H 3.1.1 (b) (iii) a Party is currently allowed to default on BSSCo charges for a period of 15 Business days before an Event of Default is triggered.

This Event of Default will be amended to reduce the number of days a Party may default on payment of BSCCo Charges from 15 to five and introduce an additional trigger if the Party has not paid such amount on three occasions within a rolling 12 month period.

Expected benefits of P385

P385 aims to minimise exposure to bad debt to non-defaulting parties, and therefore minimise the impact on consumers from defaulting Parties.

It will also enable earlier remedial action by the BSC Panel, potentially allowing them greater visibility of a Party in financial difficulty.

Self-Governance

The BSC Panel unanimously believe that this Modification **does** meet the Self-Governance Criteria due to it having no material impact on the Self-Governance criteria for the reasons given by the Workgroup.

The Workgroup believed that Events of Default affect Parties who are not compliant with the BSC, therefore Parties acting 'within the rules' will not be impacted as a result of this Modification and as such will have no material impact on competition (Self-Governance criteria (a) (ii)). Moreover, it will positively benefit competition, for the reasons given against Applicable BSC Objective (c) above.

4 Impacts & Costs

This Modification will remove detail from Section H and place control of the parameters for certain Events of Default with the BSC Panel.

No BSC Central Systems impacts have been identified.

P385 estimated central implementation costs

ELEXON's costs to implement P385 are approximately £12,000. This is made up of £8,000 to update an FAA process and £4,000 to update ELEXON processes and documents.

The FAA will be need to develop a process for the monitoring and reporting of non-payment data to facilitate a new Event of Default.

ELEXON will need to amend internal processes and documents and ensure that parameters removed by the Code are published on the ELEXON website.

- 25 Working Days effort to implement new internal processes and documents; and
- 2 Working Days effort to implement document changes to the BSC and Code Subsidiary Documents (CSDs).

Ongoing impacts

Ongoing impacts on ELEXON resource will be demand-led and expected to be minimal. These have been estimated at an additional 1.5 Working Days per month to manage a potential increase in BSC Panel papers, Panel presentations, default notices, monitoring and closing circulars incurred by an initial increase in Section H Defaults. It is expected that this initial increase will fall once Parties understand the rules and make efforts to avoid the consequences.

Indicative industry costs of P385

No implementation costs have been identified. Responses to the P385 Assessment Procedure Consultation identified no impacts or costs resulting from implementation of P385.

P385 does not propose to alter the amount of money that Parties have to put up as Credit Cover, therefore it is expected that Parties will not be affected unless they are non-compliant with the BSC.

P385 impacts

Impact on BSC Parties and Party Agents	
Party/Party Agent	Potential Impact
BSC Parties	No material impact is anticipated upon implementation of this Modification. However, BSC Parties will be indirectly impacted as a result of the changes to Events of Default, should they breach the amended EoD. Parties may need to update their internal processes.

Impact on Transmission Company
No impacts identified.

Impact on BSCCo	
Area of ELEXON	Potential Impact
Credit Arrangements	ELEXON will need to manage the new timescales and triggers for future Defaults under Section H. ELEXON will need to manage a potential increase in BSC Panel papers, Panel presentations, default notices, monitoring and closing circulars incurred by an initial increase in Section H Defaults.
Finance Department	ELEXON will need to manage the new timescales and triggers for future Defaults under Section H.
Publication of Eod Parameters	ELEXON will need to create and maintain a webpage that publishes the parameters for EoDs removed from Section H

Impact on BSC Systems and processes
No BSC Central System impacts have been identified.

Impact on BSC Agent/service provider contractual arrangements	
BSC Agent	Potential Impact
FAA	To facilitate the new EoD that will trigger in the event that a BSC Party fails to pay Trading Charges in full by 9am on the second business day on 3 or more occasions within a 30 calendar day rolling period, FAA will be required to monitor and report non-payment of Trading Charges.

Impact on Code	
Code Section	Potential Impact
BSC Section H 'General'	Changes to Section 3.1 will be required to implement the proposed solution.

Impact on Code Subsidiary Documents	
CSD	Potential Impact
FAA URS	Changes will be required to implement the proposed solution.
FAA SD	Changes will be required to implement the proposed solution.

Impact on other Configurable Items
None anticipated.

Impact on Core Industry Documents and other documents
None anticipated.

Impact on a Significant Code Review (SCR) or other significant industry change projects
Ofgem as the Authority confirmed to ELEXON that P385 doesn't interact with any ongoing SCR on 10 April 2019. Further, the Workgroup didn't identify any interactions with ongoing SCRs.

Impact on Consumers
P385 aims to minimise exposure to bad debt to non-defaulting parties, and therefore minimise the impact on consumers from defaulting Parties.

5 Implementation

Recommended Implementation Date

The Panel has approved an Implementation Date for P385 of:

- 27 February 2020 as part of the February 2020 BSC release

Targeting a standard BSC Release aims to unlock potential savings in cost and effort resulting from management efficiencies versus an ad-hoc implementation approach for this Modification.

6 Workgroup's Discussions

P385 Workgroup meetings were held on 17 June 2019 and 15 July 2019, with the Workgroup's final meeting occurring on 30 September 2019 where the responses to the Assessment Procedure Consultation were considered and final views provided (detailed in Section 7: Workgroup Conclusions)

Throughout assessment of P385 discussions focused on balancing the need for flexible effective and efficient EoDs to reduce the risk of mutualised bad debt for BSC Parties and the value in promoting good performance versus pragmatic considerations of the behaviours driving poor performance.

Avoiding undue barriers to entry

At the beginning of the first meeting, one member noted that the Workgroup predominately featured representation from larger, established Parties and stated they there were mindful that the group should avoid creating barriers to entry, remarking that the Authority would be likely to take issue with the solution, should that be the case.

ELEXON stated that the purpose of P385 is to primarily ensure compliance with the BSC for Parties regardless of size. The solution would be a successful one by promoting adherence with the BSC, rather than penalising smaller Parties on the basis of their financial power or size.

One member noted that the existence of a barrier to entry is not always exclusively negative and can provide protection to Parties from increased bad debt and risk, desiring a recognition of a distinction to between an "undue barrier" in contrast to appropriate one.

Outcome:

It was agreed that, as a principle, any amendments to the rules must not present an undue barrier to entry to smaller market participants.

First New Event of Default (EoD1) for Parties failing to pay Trading Charges

Analysis:

A new Event of Default (EoD) was proposed for Parties fail to pay Trading Charges in full by 9am on the second business day on 3 or more occasions in a rolling 30 day calendar period.

Ahead of the first Workgroup, ELEXON undertook analysis to determine the retrospective impact of the proposed new Event of Default for Parties failing to pay Trading Charges on time on three or more occasions in rolling 30 day calendar period.

Outcomes of the analysis undertaken by ELEXON for the first Workgroup were presented to the group.

Historic Payment Default data was analysed from 1 Jan 2017 - 31 Mar 2019, this retrospectively resulted in 64 additional EoDs from 44 different Parties. 12 events were triggered by Parties that later entered Section H Default for other reasons.

It was noted by the group that, as shown by the analysis, one BSC Party would have entered Section H Default and been made open to remedial action by the BSC Panel six days earlier under the new EoD rules.

Data that excluded payments under the Advice Note Threshold of £500 (Underpayment, Quarterly Advice Notes) was presented and shown to result in 57 Events from 37 Different Parties.

Workgroup Discussions:

The Proposer queried whether the proposed solution would have picked up 2018's Parties who entered SoLR. ELEXON responded affirmatively, but noted that Events of Default happen for multiple reasons and that the Parties in question had triggered multiple EoDs concurrently.

ELEXON highlighted that, under the proposed solution, one Party who later entered administration would have been made open to the Consequences of Default at an earlier date.

One member asked whether this approach to payment of Trading Charges with Credit Cover in this manner is a growing trend. ELEXON noted that this approach was indeed becoming more common among Parties.

The group considered whether this new EoD might present an undue barrier to entry but concluded that a failure to pay bills owed could not be viewed as such a barrier.

The material impact of the bad debt mutualised as a result of SoLRs in the past year (approximately £3.5 million) was clarified for the Workgroup. One member expressed their support of the general principle of reducing risk where appropriate but questioned how much less of this mutualised debt this new Event of Default would have resulted in.

ELEXON responded that this figure would be small (potentially around £6000) but noted that the process of reducing the amount of Credit Cover a Party lodged with the Funds Administration Agent (FAA) is a defined process known as a Credit Cover Minimum Eligible Amount (MEA) request.

By using Credit Cover to clear Trading Charges on a regular basis it was highlighted that this effectively breaks the rules of the MEA, but under current provisions they are not punished for doing so.

Furthermore, the value of this new Event of Default as a means to promote good behaviour and good performance under the BSC was emphasised and members agreed with this sentiment.

One member stated that the use of collateral to cover Trading Charges on a regular basis is a reliable indication of financial difficulty. The group noted how the current provisions had resulted in some extreme cases, including several 'repeat offenders' who had used Credit Cover to pay Trading Charges on a frequent basis.

While clearly an extreme case, the value of presenting the outlier as an example of what could happen under current provisions was recognised to be of value in the Workgroup's deliberations, especially if the practice becomes more common.

Clarifications:

At the second P385 Workgroup meeting, ELEXON explained that previous analysis was based on notice of late payments on D+1. ELEXON proposed to establish a payment deadline of 9am on D+2 for checking whether a Payment Default counts towards the new EoD. This is because a clear and definite measure needed to be used in this process when the operational practice was considered. There could be no doubt with the defined measure as the banking system can be checked for payment at 09:00.

ELEXON then presented follow-up analysis that showed the amended proposal would have led to 23 Events of Default from 20 different Parties between January 2017 and March 2019.

The Workgroup noted that this approach resulted in less EoDs overall but was more efficient in catching repeat offenders and failing Suppliers and were satisfied with the clarifications and amended proposal. The Workgroup therefore adopted the payment deadline of 9am on D+2 for checking if a Payment Default counts towards the new EoD.

Advice Note Threshold

In consideration of the appropriateness of the proposed new Event of Default, the group considered whether the operational cost to ELEXON of implementing and progressing newly triggered EoDs resulting from the P385 solution would be in proportion to the amount of protection from bad debt if offered.

The group discussed the results of the analysis that showed a decrease in retrospective Events of Default when the Advice Note Threshold was applied.

The Advice Note Threshold Limit is described under Section D, currently set to £500 with the "minimum invoice amount" under the control of the BSC Panel, who review the amount from time to time.

It was noted that the Advice Note Threshold can play a valuable role as a method for ensuring that the operational costs of progressing an Event of Default did not rise above the debt that Parties would otherwise be exposed to.

An example where a Party would have to make representation to the Panel over the non-payment of a £5 bill was presented to the group to clarify and contextualise this concern.

Members agreed that the application of the Advice Note Threshold was reasonable. However it was noted that the current £500 rate of the Advice Note Threshold is defined in the BSC and had not been changed in over 5 years, despite a rapidly changing market with more players than ever before.

Outcome:

Members agreed with the new EoD that will trigger in the event that a BSC Party uses Credit Cover to pay Trading Charges on 3 or more occasions within a 30 calendar day rolling period.

Members agreed that the application of the Advice Note Threshold was reasonable but that a review of the Advice Note Threshold, out of scope of P385, should be fed into the next review of Specified Charges by ELEXON, to be presented to the BSC Panel in March 2020.

It was agreed to reference calendar days rather than working days, as use of calendar days is a simpler approach for Parties to follow due to occasional discrepancies in English, Scottish (and European) Bank Holidays leading to contrasting amounts of Working Days per month.

Workgroup members noted that responses to this question were either positive or neutral, and agreed that this is an appropriate parameter to set.

Second New Event of Default (EoD2) for Parties Ceasing to Trade

Analysis:

A new Event of Default was proposed for Parties who have publically announced they are ceasing to trade.

It was explained to the Workgroup that the Consequences of Default allow the Funds Administration Agent (FAA) to withhold payments to a Defaulting Party and that there is an opportunity for this to be applied earlier under a new EoD.

To clarify the impact of this Event of Default, a theoretical scenario of what a Party can do under current arrangements was presented to the group. In this scenario, if a Party has a long position (paid for surplus at SF), this money would continue to be paid until the FAA resolution is applied. The Party then stops trading, with a negative indebtedness meaning this Party will not enter Credit Default processes for a number of days. The Party would only enter Section H at this stage if it meets other Section H criteria (e.g. entering administration).

Following this, the theoretical scenario was presented as amended by the solution. In this hypothetical, the Party stops trading and triggers the new Event of Default, thus becoming open to the Consequences of Default at an earlier stage.

Further analysis of two SoLRs in 2019 found that this new EoD would have put both Parties in Section H Default one or two days earlier, with a day of Trading Charges identified as being around £10k.

Workgroup Discussions:

The Workgroup discussed the processes for Parties who cease to trade without explicitly informing BSCCo and then enter administration.

It was clarified for the group that, under current provisions, BSCCo needs written confirmation directly from a Party (as opposed to a generalised letter posted on a website, for example) that they would be ceasing to trade, and that this is rarely done in practice.

Under the Energy Act, Parties must give 14 days notice before entering administration so that, in effect, a Party can post a written notice on their website or social media accounts with a 14 day gap before actually entering administration.

Members noted the frustrating delays this could cause and viewed the proposed EoD as a viable route for reducing unnecessary blockers to action by the Panel.

A member queried how ELEXON would monitor the proposed solution and whether it would require significant increases to service levels as a result. ELEXON responded that market monitoring already forms part of existing operational processes. As a result

ELEXON already has a naturally high awareness of situation of Parties in financial difficulty within the business.

It was further explained that routes within ELEXON for this market monitoring could come from anyone within the organisation, particularly Operational Support Managers, who would quickly alert others as to the status of a Party who had posted a public statement stating a notice of ceasing to trade.

Workgroup members were satisfied that the proposed solution would not result in an onerous addition to ELEXON's operational costs. It was later confirmed via internal impact assessment that any changes to ELEXON processes would be minimal to support the proposal.

Outcomes:

Members agreed with the proposed new EoD for Parties who have publically announced that they are ceasing to trade, noting that the proposal seemed sensible and logical in its approach as a means of avoiding frustrating delays to Panel action during events where a Party has ceased trading.

Considering the parameters for Level 1 and 2 Credit Default Events of Default (EoD3)

Analysis:

ELEXON presented the results of analysis examining the historical impact of reducing the period after which Level 1 and 2 Credit Defaults trigger an Event of Default, described in BSC Section H 3.1.1 (c) (i) and (ii).

Parties are currently able to remain in Level 1 Credit Default for 90 days or any intermittent period of 120 days out of 180 before triggering an Event of Default. Level 2 Credit Defaults are permitted to remain for 60 days or any intermittent period of 75 days out of 120.

There were 535 Credit Default events in this time period, with 44 total instances of BSC Parties having at least an authorised Level 1 or Level 2 Default.

For the results of the analysis, triggers were reduced to 10 Working Days for Level 1 Credit Default and 5 Working Days for Level 2 Credit Default, with no intermittent periods.

It was found that one new Level 1 Section H Default would have occurred for a Party who were in authorised Level 1 Default for 10 Working Days.

No new Level 2 Section H Defaults occurred, however it was highlighted how Parties in Level 2 (CCP >90%), tend to also exceed 100% and therefore trigger the EoD described Section H 3.1.1(c)(iii).

Workgroup Discussions:

The group noted that the current thresholds for triggering this Event of Default were more stringent than they had been since the implementation of P188 'Revision of Credit Default Provisions' in September 2005.

One P385 member had attended the Workgroup for P118 and recalled that the core argument for the Modification had centred around whether it is appropriate to penalise and potentially withdraw trading options for Parties if they have not used up the entirety of their Credit Cover.

This resulted in the creation of two levels of Credit Default, levels 1 and 2 to differentiate between these situations and apply different rules to each.

Members sought clarity on what drove the discussion around P118 and it was agreed that an analysis of the principles behind the P118 solution would assist the Workgroup in making an informed decision.

P188 Principles:

At the first P385 Workgroup meeting ELEXON took an action to review the principles that drove the development of the P188 'Revision of Credit Default Provisions' solution and consider these in recommending an approach to the number of days a Level 1 or 2 Credit Default can persist, as well as how these relate to P385 in general.

It was noted by the group that the principles behind P118 should be recognised as being developed during a very different time for the industry. Principally, a time with much fewer market participants than before and a much lower instance of Defaults than is currently seen.

P188 Analysis:

ELEXON presented the results of this analysis and interpretation of the principles at the second Workgroup meeting.

The P188 Workgroup referenced discussions as recorded in 1.4.2 of the Assessment Report:

"It was also agreed that 100% CCP was an appropriate level to trigger any new provisions, since this is the point at which a Trading Party poses a risk to the market, due to the amount of Credit Cover not exceeding the estimated liabilities."

Although Level 1 and Level 2 Credit Defaults may persist, and during this period are notified on the BMRS, it is not until 100% of the Credit Cover is utilised that urgent action is recommended.

Therefore, it was found that proposals to reduce duration for Level 1 and Level 2 Event of Default triggers do not align with the P188 principles which still remain relevant. The current rule for 100% CCP to trigger an Event of Default after two Working Days remains appropriate and, operationally, is the Event of Default that triggers the most frequently of the EoDs under the scope of P385.

The Workgroup agreed with ELEXON's interpretation and that the P188 principles remain relevant in the current market. They agreed that it would not be appropriate to amend Level 1 and Level 2 Event of Default triggers.

Outcome:

Regarding the proposed reductions to the period after which Level 1 and 2 Credit Defaults trigger an Event of Default to 10 and 5 Working Days respectively, with no intermittent periods, Workgroup members agreed that it would not be appropriate to amend these parameters following the review of the principles behind the P188 solution. Members agreed, however, that the parameters for EoD3 should be removed from the Code and placed under Panel control, despite no change to those numbers resulting from the proposed P385 solution.

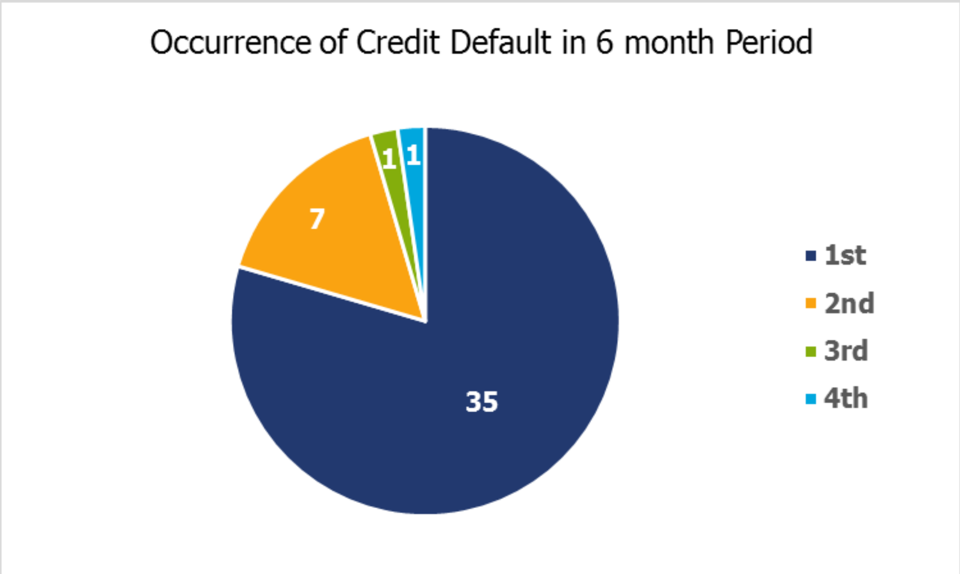
Amendments to the Relevant Credit Default Series Event of Default (EoD4)

Analysis:

A Relevant Credit Default Series currently occurs when a Party has breached 100% Credit Cover Percentage 6 times within a rolling period of 6 months on separate days with a cooling off period of 2 days in which Credit Defaults are no longer counted as separate instances.

ELEXON provided analysis that retrospectively assessed the impact of the proposed amendment so that Relevant Credit Default Series occur upon any Level 1 or 2 Credit Default (i.e. Level 1 or Level 2 with any Credit Cover Percentage). Additionally, in the event that a Party cleared the Credit Default there was no cooling off period applied and the number of occurrences was reduced to 3 in a 6 month rolling period.

Historical Credit Default data was analysed from 1 Jan 2017 – 31 Mar 2019, with analysis indicating that there were 44 total instances of BSC Parties having at least an authorised Level 1 or Level 2 Default during that time.



The analysis concluded that one Party would have triggered Section H under the proposed solution. This Party was not currently in Section H Default at the time, but entered two weeks later.

Workgroup Discussions:

Members believed that the existing 'cooling off period' within Relevant Credit Default Series presented a barrier to effective and efficient application of this Event of Default and agreed with its removal.

The Workgroup noted that the retrospective solution would have made one Party who later defaulted on the BSC open to Panel Resolutions two weeks earlier and felt that this presented a more effective threshold than the current arrangements.

The Workgroup were comfortable with the impacts shown by the analysis and felt that counting any authorised Level 1 or Level 2 Credit Default simplified the conditions for triggering the Event of Default. Noting that an authorised Credit Default occurs after a Query Period and where applicable Level 1 Cure Period. In all cases there is a minimum of five consecutive business hours to resolve a Credit Default before it is authorised by BSCCo and published to the Balancing Mechanism Reporting Service website.

Outcome:

Regarding the proposed reduction to the Relevant Credit Default Series so that it occurs upon any authorised Level 1 or 2 Credit Default, members agreed that the solution simplifies the arrangements given the multiple clauses required for a relevant Credit Default.

It was agreed that H 3.1.1 (c) (iv) should be amended so that Relevant Credit Default Series occur upon any authorised Level 1 or 2 Credit Default (i.e. Level 1 or Level 2 with any Credit Cover Percentage) with no cooling off period and the number of occasions reduced to 3 in 6 months.

Workgroup members noted that responses to this question were either positive or neutral, and agreed that this is an appropriate parameter to set.

Amendments to Event of Default for non-payment of BSCCo Charges (EoD5)

Analysis:

For BSCCo monthly charges, a Party is given 12 business days to make payment. Following non payment a Party is currently given a Default Notice which specifies a period of 15 Business days before an Event of Default is triggered.

In line with the proposed solution that Parties who default on payment of BSCCo charges trigger an Event of Default following 5 days of non-payment, BSCCo Charge payment data was analysed for BSC Year 2018/19.

Analysis showed that 385 BSCCo Charges invoices were paid late in 2018/19 (9.1%).

Under current arrangements where Parties have 15 Working Days until an EoD is triggered, 34 Parties have been in Section H Default under 3.1.1(b)(iii). Based on the proposed reduction to 5 Working Days, this would increase to 139 EoDs.

It was additionally noted that it would be unlikely that all the retrospective 139 EoD's would occur under the proposed solution, as it is believed Parties would change their behaviour to avoid the repercussions of triggering an Event of Default.

Workgroup Discussions:

Members discussed the increased costs borne by administration that current arrangements levy on ELEXON.

Members noted that, while desirable, incentivising good payment performance when it comes to BSCCo charges must not unintentionally penalise smaller BSC Parties with less developed financial and administrative capabilities than larger, more established incumbents.

The group explored situations and came up with hypothetical examples of delays to the payment of BSC Charges that are caused by poor administration rather than being a reliable indication of financial difficulty.

It was noted at this point that some smaller Parties require sign off at a senior level for relatively small payments such as BSCCo charges.

The group questioned whether the proposed change would actually remove a substantial risk and wondered whether there was an alternate way to drive better payment performance.

The Workgroup concluded that it had not seen enough evidence to justify a reduction from 15 to 5 Working days, and ELEXON agreed to conduct additional analysis and develop an amended proposal for Workgroup consideration.

Clarifications:

ELEXON agreed to conduct further analysis and bring back an amended proposal for the 2nd Workgroup meeting.

The timescales for triggering this Event of Default were also clarified for the group, principally that Parties actually have 27 Working Days to pay outstanding BSCCo Charges before triggering this EoD rather than the 15 Working Days referenced in Section H 3.1.1(b) (iii).

This is because, under Section N, the due date of each invoice for BSCCo Charges is the 10th Working Day after the date of receipt of the invoice, with the notice deemed to have been received on the second day after ELEXON sends it, cumulatively adding up to 12 Working Days before the provisions in Section H 3.1 apply. Once the Section H provisions (15 Working Days currently) are applied, Parties actually have 27 Working Days to pay outstanding BSCCo Charges before an Event of Default occurs (12 + 15Working Days).

Members were satisfied that this clarification lessened the perceived impact on smaller Parties and addressed concerns over the impact this change would have.

ELEXON also clarified the business need for reducing this EoD at the second meeting, explaining that if every Party made use of the 15 Working Day window then ELEXON would not have enough money to pay outsourced suppliers. As such the current 15 Working Day allowance can be seen as a loophole that is able to be exploited to the detriment of BSCCo and BSC Parties by extension. ELEXON believes there is an increasing risk that more Parties will use this loophole because of increasing financial pressure in the market.

Members were satisfied this clarification justified the reduction from 15 to 5 Working Days for this EoD.

Amended proposal:

ELEXON conducted further analysis and presented an alternative proposal which would add in a clause to 3.1.1(b) (iii) where 3 late payments in a rolling 12 month period would constitute an EoD.

It was noted that 47 Parties had 3 or more late payments in the 2016/17 year and 60 Parties had 3 or more late payments in 2017/18, but the Workgroup agreed with the suggestion that, going forward, Parties would change their behaviour to avoid triggering this EoD and that the actual number of EoDs resulting from this change would be much smaller.

Members agreed that this new clause constituted a sensible approach to catching 'repeat offenders' who fail to pay BSCCo Charges multiple times within a year.

Outcomes:

It was agreed that 3.1.1(b) (iii) should be amended so that an Event of Default occurs following 5 days of non-payment of BSCCo Charges, or following 3 late payments in a rolling 12 month period.

The Workgroup requested that a specific question be included in its Assessment Procedure Consultation as it was keen to hear feedback to ensure the value was set appropriately. The Workgroup also noted that P385 proposes to put these parameters under Panel control and so can be changed subsequently if needed.

Workgroup members noted that responses to this question were either positive or neutral, and agreed that this is an appropriate parameter to set.

Placing Parameters for Events of Default under Panel Control

Workgroup Discussions:

The Workgroup considered the value of having the parameters for certain Events of Default codified in the BSC and questioned whether an alternative, more flexible approach might be more suitable. A Member noted that the parameters were originally included in the Code to create certainty for Parties, but agreed that the world had moved on now, and other approaches should be considered.

The group discussed the idea of removing the exact thresholds for Triggering an Event of Default from BSC Section H, and instead referencing parameters that would be set by the BSC Panel and published on the BSC website.

The group weighed up the pros and cons of this approach, noting that this would make changes to the rates much quicker to progress as they would not require a Modification in order to change. One potential downside noted was the ease to find the parameters, which if not done in a user friendly manner could be detrimental to transparency.

It was noted that the timescales for progressing a Modification can be lengthy and that there is a an opportunity to make the information related to the thresholds for triggering existing Events of Default more readily available in a more timely and accessible manner by removing these parameters from the Code, and having changes progressed via the Panel instead.

It was agreed that moving this detail out of Section H would enable a more agile and responsive process to set rates for Events of Default, allowing them to consult with industry and set appropriate rates without the need for a Modification in order ensure that Section H Default provisions remain an efficient and effective mechanism.

Members were comfortable with the Panel deciding these rates, and noted that they have sufficient expertise and oversight in order to do so. It was noted that this approach would be similar to the manner in which Section D charges are decided on, published and communicated to Parties.

It was also agreed that any changes to the parameters, including the effective date, must be subject to industry consultation prior to being changed, with Parties allowed sufficient notice once any change was agreed.

Workgroup members were comfortable with an initial review of the arrangements after a year, with a time-to-time approach following this. A Member also noted that if Parties were not happy with the new arrangements they could raise a challenge to the Panel, who would ask ELEXON to conduct a review on its behalf.

It was noted that this approach promotes self-governance and flexibility in areas of particular value and interest to the BSC Panel and fits with the Ofgem's direction of travel for Code governance procedures.

Workgroup 2:

In the second meeting, the Workgroup emphasised that the solution should provide Parties with enough time to respond and prepare for any changes to the parameters by the Panel.

It was agreed that there should be a minimum implementation period, along the lines of 'not less than 30 calendar days' or words to that effect.

The Workgroup agreed not to set a specific consultation period, on the basis the Panel would adopt a similar approach to Modifications. Specific timescales are not set for Modifications, but in practice a 15 Working Day consultation is issued for Modifications in the Assessment Procedure. The Workgroup commented this would be reasonable.

It was pointed out that, due to the operational timelines of the Panel, there would usually be at least a minimum 1 month period in between the Panel's consultation and subsequent decision on whether to amend a parameter. One member replied that adding a minimum period would offer value as a way of preventing the fast-tracking of decisions.

In principle, Members agreed that Parties would need to know when a change would be implemented as well as the lead times that they have to adapt to any change in the rates for EoDs.

The need for an easily visible, transparent and accessible locations for parameters removed from Section H was emphasised. It was noted that Parties require this information for forward management of their businesses. Clear instruction and signposting would also be required for new entrants to the BSC.

It was felt that a single webpage on the BSC Website containing all the parameters for EoDs would be a suitable, accessible and visible location for the parameters. ELEXON agreed this should be established regardless of P385.

Members were supportive of the idea and stated that the idea of removing exact details supported a principle of code rationalisation and simplification.

Outcomes:

The parameters for certain Events of Default will be removed from Section H, while retaining existing high-level obligations and necessary process detail. Instead, the Panel will decide on changes to these parameters, consult with the industry to ascertain impacts and lead times (minimum 30 days), and publish the parameters on the BSC Website.

The parameters for EoD1, EoD3 and EoD4 will be removed from Section H, governed by the Panel and communicated to BSC Parties in this manner.

The Panel shall conduct reviews as appropriate and from time-to-time, with an initial review after a year to evaluate whether the P385 changes have had the desired effect.

References to parameter for EoDs will be replaced with appropriate text to place the relevant parameters for applicable Events of Default rates under Panel control.

Workgroup members noted that responses to this question were either positive or neutral, and agreed that parameters for Events of Default within scope of P385 should be removed from the Code and placed under Panel control.

Cross Code Credit Arrangements

Workgroup discussion:

The group noted that there are a number of wider pieces of work by the Authority related to credit and questioned whether Ofgem would be informed about the work of P385.

ELEXON noted that the work of P385 was concerned exclusively with current restrictions on the BSC Panel. Given that Ofgem have representation on the Panel and as such would be aware.

ELEXON confirmed that Ofgem would be informed, and that a representative from Ofgem had been appointed although they were unable to attend the Workgroups.

Outcome:

The Workgroup considered Term of Reference F 'How Credit Default provisions under the BSC compare with other industry Codes' and concluded that, while in principle there is value in 'joined up thinking' concerning credit arrangements among the various code bodies when it comes to credit arrangements, the P385 scope is limited to triggers for Events of Default under Section H 3.1 and as such does not change the amount that Parties have to put up in Credit Cover, for example, so the impact on other codes is minimal. In addition Credit Cover under the BSC is designed to cover defaults on Trading Charges, whereas credit cover under other Codes is for different payment types.

7 Workgroup's Conclusions

The Workgroup **unanimously** believe that P385 **will** better facilitate the Applicable BSC Objectives (c) and (d) and so should be **approved**.

At the final Workgroup meeting on 30 September 2019, Members confirmed that the Assessment Procedure Consultation response had put no new arguments forward and had not altered their initial views against the Applicable BSC Objectives.

There were 3 responses from Suppliers, all of whom are supportive of the proposal and its recommendation as a Self-Governance Modification.

Implementation approach

ELEXON explained that since the Assessment Procedure Consultation was issued, the FAA had confirmed it required a 5 week lead time to implement P385. This meant that the originally-agreed approach of 10 Working Days following approval would be impossible to meet.

With impacts accounted for, ELEXON noted that this would result in the earliest implementation being mid-January 2020, very close to the date for the February 2020 BSC Release.

It was suggested that a new implementation approach of 27 February 2020 as part of the scheduled BSC Release would be suitable for a change of this type. This could offer potential savings in cost and effort resulting from management efficiencies when compared to an ad-hoc release approach.

Members agreed with the revised implementation approach, noting that it seemed sensible.

One member noted that the associated cost for the FAA to amend their process to monitor and report non-payment seemed high. ELEXON responded that this process change incorporated new reporting, which required testing and included project management overheads, which should be reduced by including in a scheduled Release.

Response rate

The Workgroup noted the support for the P385 solution and the lack of impacts identified via the Consultation.

A Workgroup Member asked about the number of responses to the P385 Assessment Procedure Consultation and asked whether this was normal, given that this was the Member's first experience as a Workgroup Member for a BSC Modification.

ELEXON responded that the low response rate could indicate that industry are comfortable with the P385 solution and do not feel it necessary to spend time and resources providing a rebuttal or response via a consultation response where it was believed not to directly impact them.

It was noted that no small Parties had responded to the consultation, which was a viewpoint that Workgroup members had wanted to gain feedback on.

ELEXON noted that several notices, reminders and email communications to encourage smaller market participant engagement with the Consultation but that this had not been successful. This had included utilising ELEXONs network of Operational Service Managers (OSMs) to reach out to smaller Parties in an attempt to engage them with the P385 solution and seek a response.

It was pointed out that the Report Phase Consultation gives smaller Parties another 15 working day opportunity to provide their views on P385 before the Panel provide their final recommendations. ELEXON confirmed it would utilise its different communication channels for P385 Report Phase Consultation (Newscasts, Change email, OSMs, Twitter etc.). A Workgroup Member also commented that Parties have a responsibility to monitor changes and engage with ELEXON's notifications, which he believed were better than most in the industry.

Ongoing communication

One member voiced the importance of ensuring thorough and effective communication of changes to the parameters for Events of Default under the P385 solution, in particular for smaller Parties.

Another Workgroup member did not share these concerns regarding communication, noting that Parties had been made sufficiently aware of, for example, changes to the Credit Assessment Price in the past which the member noted had been communicated effectively via existing channels.

ELEXON responded that there were many available channels by which ELEXON's financial and operational departments communicate with Parties, and that all could be utilised to ensure that Parties were well informed. Examples given included the use of circulars, social media, BSC Change distribution channels and OSMs.

It was agreed that ELEXON should use all know standard methods and communication channels to ensure that Parties are given sufficient notification.

Workgroup's final recommendations

Members' views against each of the Applicable BSC Objectives are summarised below.

Does P385 better facilitate the Applicable BSC Objectives?		
Obj	Proposer's Views	Other Workgroup Members' Views
(a)	• Neutral	• Neutral
(b)	• Neutral	• Neutral
(c)	• **Positive**	• **Positive** (unanimous)
(d)	• **Positive**	• **Positive** (unanimous)
(e)	• Neutral	• Neutral
(f)	• Neutral	• Neutral
(g)	• Neutral	• 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 administrating 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

Applicable BSC Objective (c)

The Proposer believes that there are numerous reasons why BSC Parties may go into default and ultimately fail. However when Parties gain a competitive advantage over their competitors by adopting riskier business models, those more conservative Parties shouldn't then be additionally penalised by picking up the cost of failure.

This Modification would not prevent failure from happening but may help to protect BSC Parties from an increasing debt burden that has the effect of stunting competition, especially for those Parties who cannot easily alter tariffs to cover the shortfall resulting from the mutualisation of bad debt.

The Workgroup **unanimously** agreed that the P385 solution better facilitates Applicable BSC Objective (c) for the same reasons as the Proposer.

Applicable BSC Objective (d)

The Proposer believes that this Modification would have a positive impact on the efficiency of the implementation of the Balancing and Settlement arrangements as it would reduce unnecessary delays in the defaults process and promote compliance with the BSC.

The Workgroup **unanimously** agreed that the P385 solution better facilitates Applicable BSC Objective (d) for the same reasons as the Proposer.

The respondents to the Assessment Procedure Consultation agreed with the views of the Workgroup.

Legal Text

Following the Assessment Procedure Consultation, the Workgroup did not identify any changes to the existing legal text and CSDs that need to be made.

Any alternatives

Following the Assessment Procedure Consultation, the Workgroup did not identify any alternative Modifications that would better meet the BSC Objectives.

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 administrating 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

Panel Discussion on P385

The P385 Assessment Report was presented to the Panel on 10 October 2019 (295/06). Panel Members were supportive of the intent behind the P385 solution and the principle of removing EoD parameters from the BSC for publication on the BSC Website.

One Member queried whether recent examples of failing Parties had been analysed to assist the Workgroup's discussions. ELEXON clarified that they had undertaken retrospective analysis from the period of January 2017 to March 2019 to retroactively apply the P385 solution and aid the Workgroup's discussions (described in further detail in Section 6 of this paper).

Clarification on implementation

One Panel Member sought clarification on whether P385 was retrospective (counting instances of non-payment before implementation towards the new or amended Events of Default) or forward-looking (applying only from the point of implementation) and ELEXON clarified that it was forward-looking. This means, for example, any counts used to trigger an EoD will count forward from the Implementation Date only.

Post-implementation ongoing efforts

ELEXON confirmed for the Panel that there would be an initial review of the effects of P385 on the market after a period of one year following implementation.

One Panel Member questioned whether there would be any significant ongoing impacts for ELEXON to process, monitor and report any increase in EoDs following implementation.

ELEXON responded that the ongoing impact resulting from P385 had been accounted for, though cautioned that it predicts an initial increase in Section H Defaults in the first year of operation until a behavioural change (once Parties understand the rules and make efforts to avoid the consequences) causes the number of Section H Defaults to fall back to more familiar levels.

Following the meeting, ELEXON confirmed that ongoing effort has been estimated as 1.5 Working Days per month. Additional events that may be required under increased EoDs include Panel papers, Panel presentations, default notices, monitoring and closing circulars. It is estimated that the cost of this additional administration will be outweighed by the benefit of the Panel being able to take action earlier than it otherwise would have been able to, and potentially reducing the amount of bad-debt that is mutualised across Parties.

It was additionally noted that any increase would be demand driven in nature and therefore difficult to quantify.

Cross-Code communication and triggers for EoD

Panel Members discussed whether the Workgroup had discussed any new processes or ways of ensuring cross-Code communication regarding Parties in financial difficulty. For example, if a Party was defaulting under another Code, whether this could trigger an EoD under the BSC?

ELEXON responded that the Workgroup had discussed whether a cross-Code approach could benefit P385 but decided that, as P385 is exclusively concerned with the BSC, the scope was limited to the BSC only and therefore limited these discussions.

The Workgroup did not believe it appropriate to take action for non-payment of non-BSC charges and that there were issues with Codes being able to share this information that was not in the public domain. A Panel Member believed Ofgem were the only one that held all of the information across the Codes and were best placed to take action. Further, Ofgem should consider, given the on-going codes review, whether it could be given new powers to take action or direct action in response to a defaulting party.

9 Report Phase Consultation Responses

This section summarises the responses to the Panel's Report Phase Consultation on its initial recommendations. You can find the full responses in Attachment F.

There were four responses to the P385 Report Phase Consultation with all respondents representing Suppliers and one additionally representing a Supplier Agent, a Generator and a Non Physical Trader.

One respondent had also replied to the Assessment Procedure Consultation and confirmed their support for P385, reaffirming that they believed the Modification would better facilitate Applicable BSC Objectives (c) and (d).

Two responses were received by organisations that had not responded previously but who also recommended approval with reference to the same Applicable BSC Objectives.

One response was received from the P385 Proposer who reconfirmed their support for the Modification and the Panel's recommended approach.

Respondents added no further commentary but unanimously agreed with the Panel that P385 should be approved, that the redlined changes to the BSC and CSDs deliver the intent, that the Modification should be implemented as per the Panel's recommendation and, finally, that P385 should be progressed as a Self-Governance Modification Proposal.

10 Panel's Final Discussions

The Draft Modification Report for P385 was presented to the BSC Panel at its meeting on 14 November 2019 (Panel 296/06).

Panel's final discussions

Approval of changes to P385 suggested parameters

ELEXON presented an additional recommendation for Panel decision, asking the Panel to approve changes to the rates for Events of Default that will fall under their control as part of the P385 Solution.

This was for efficiency's sake as the P385 solution involves removing detail from the Code that will be published instead on the BSC Website and sit under Panel control. Therefore ELEXON would need Panel approval (distinct from Panel approval of the Modification) to make the changes recommended by the P385 solution. To avoid an additional paper in February 2020, ELEXON identified an opportunity to wrap this up in the recommendations for P385, to which the Panel agreed.

Ofgem view

The Ofgem representative confirmed that, though the representative wasn't able to attend every Workgroup, they had kept up to date with the P385 Modification Reports and discussions had been held between ELEXON and Ofgem. Ofgem confirmed that they saw no problems with the P385 solution or the application of a Self-Governance approach to implementation.

A Panel Member questioned whether P385 could have gone further in introducing more stringent provisions than those proposed by P385. He noted the Workgroup's understandable concerns that might have prevented them suggesting or agreeing to lesser parameters and asked the Ofgem representative whether this is something they should have been pushing for instead. The Ofgem representative agreed to take away the suggestion for consideration.

Ongoing communication and reporting

One Member noted the need for effective ongoing communication regarding any changes to parameters for Events of Default made by the Panel following the P385 solution, citing potential concerns about changing EoD requirements quickly and without sufficient notice. ELEXON confirmed that the P385 solution includes provisions for a mandatory consultation period in which Parties will be made aware of a proposed change to these parameters prior to any decision being made.

The same Member also commented that they did not believe an annual presentation into the effectiveness of Events of Default would be efficient and suggested an ad-hoc and need-driven approach instead.

The Panel views remained unchanged since providing its initial views. The Panel **unanimously** agreed with all recommendations as set out in Section 11 of this report and made no other comments.

11 Recommendations

The BSC Panel:

- **AGREED** that P385:
  - **DOES** better facilitate Applicable BSC Objectives (c) and (d);
- **DETERMINED** (in the absence of any Authority direction) that P385 is a Self-Governance Modification Proposal;
- **APPROVED** P385;
- **APPROVED** an Implementation Date of:
  - **27 February 2020** as part of the February 2020 BSC Release;
- **APPROVED** the draft legal text;
- **APPROVED** the draft redlined changes to the Code Subsidiary Documents;
- **APPROVED** the changes to parameters for EoD1, EoD3, EoD4 and EoD5 for publication on the BSC Website; and
- **APPROVED** the P385 Modification Report.

Appendix 1: Workgroup Details

Workgroup's Terms of Reference

Specific areas set by the BSC Panel in the P385 Terms of Reference
The impact on Parties of reducing the thresholds for triggering an Event of Default.
The effect that increased visibility of Parties in financial difficulty will have on the wider market.
Will the proposed solution have an effect on consumers?
The associated risk of delivering the solution for P385 as part of a non-standard adhoc release.
The amount of time that Parties need to amend letters of credit and put up more Credit Cover.
How Credit Default provisions under the BSC compare with other industry Codes?

Assessment Procedure timetable

P385 Assessment Timetable	
Event	Date
Panel submits P385 to Assessment Procedure	11 April 2019
Workgroup Meeting 1	17 June 2019
Workgroup Meeting 2	15 July 2019
Assessment Procedure Consultation	1 Aug – 21 Aug 2019
Workgroup Meeting 3	30 September 2019
Panel considers Workgroup's Assessment Report	10 October 2019

Workgroup membership and attendance

P385 Workgroup Attendance				
Name	Organisation	17/06/19	15/07/19	30/09/19
Members				
Lawrence Jones	ELEXON *(Chair)*	✓	✓	✓
Ivar Macsween	ELEXON *(Lead Analyst)*	✓	✓	✓
Kevin Woollard	Centrica (Proposer)	✓	✓	☎
Andy Colley	SSE	☎	☎	☎
Joshua Logan	Drax	✓	✓	☎
David Holland	Scottish Power	☎	☎	☎
Rob Johnston	Total Gas and Power	✓	☎	☎
Attendees				
Damian Clough	ELEXON *(Design Authority)*	✓	✓	✓
Nicholas Brown	ELEXON *(Lead Lawyer)*	✓	✗	✓
Roger Harris	ELEXON *(Subject Matter Expert)*	✓	✓	✓
Nick Baker	ELEXON *(Subject Matter Expert)*	✓	✓	✓
Richard Adams	Ofgem (Representative)	✗	✗	✗

Appendix 2: Glossary & References

Acronyms

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

Acronym	
Acronym	Definition
BSC	Balancing and Settlement Code
BSCCo	Balancing and Settlement Code Company
BSCP	Balancing and Settlement Code Procedure
BM Units	Balancing Mechanism Units
BMRS	Balancing Mechanism Reporting Service
CCP	Credit Cover Percentage
ECVAA	Energy Contract Volume Aggregation Agent
ECVN	Energy Contract Volumes Notifications
EI	Energy Indebtedness
EoD	Event of Default
FAA	Funds Administration Agent
MVRN	Meter Volume Reallocation Notifications
SCR	Significant Code Review
SD	Service Description
SF	Settlement Final Run
SoLR	Supplier of Last Resort
URS	User Requirements Specification

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
3	BSC Section H – General	https://www.elexon.co.uk/the-bsc/bsc-section-h-general/
6	BSC Section N – Clearing, Invoicing and Payment	https://www.elexon.co.uk/the-bsc/bsc-section-n-clearing-invoicing-and-payment/
7	BSC Section D - BSC Cost Recovery and Participation Charges	https://www.elexon.co.uk/the-bsc/bsc-section-d-bsc-cost-recovery-and-participation-charges/

External Links		
Page(s)	Description	URL
21	P188 'Revision of Credit Default Provisions'	https://www.elexon.co.uk/mod-proposal/p188-revision-of-credit-default-provisions/
30	BSC Panel meeting 295	https://www.elexon.co.uk/meeting/bsc-panel-295/
33	BSC Panel meeting 296	https://www.elexon.co.uk/meeting/bsc-panel-296/