



Making a positive difference
for energy consumers

Michael Gibbons
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Email: Grendon.Thompson@ofgem.gov.uk

Date: 20 April 2022

Dear Michael,

Decision on the request to treat BSC Modification P438 'Amending the BSC to address sanction orders' as an Urgent Modification Proposal

On 29 March 2022 the BSC Panel requested to Ofgem that P428 should be treated as an Urgent Modification Proposal. This request followed an Urgent Panel Meeting on 29 March 2022, when the BSC Panel unanimously agreed to this recommendation.

We have decided that BSC Modification P438 should be progressed on an urgent basis for the reasons set out in this letter.

The proposal

The current wording of the BSC includes no reference to sanctions. Given this, if UK Government sanctions were applied to a BSC Party and BSCCo was required to comply with a sanctions order, there is no clear mechanism to allow it to do so within the terms of the BSC. This could place BSCCo in breach of the BSC and open BSCCo up to potential claims from any entity subject to sanctions, or from other BSC Parties, if steps were taken that were not authorised by the BSC.

BSC Modification P438 seeks to mitigate these risks by introducing the concept of sanctions into the BSC through adding a new event of default where a BSC Party becomes a designated person under the Sanctions and Anti-Money Laundering Act 2018 or Regulations made under that Act.

Request for urgency

The Office of Gas and Electricity Markets

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At the Urgent Panel Meeting on 29 March 2022, the BSC Panel unanimously requested to Ofgem that P438 should be treated as an Urgent Modification Proposal. Based on Elexon's legal advice it is believed currently that there is a high risk of inadvertent contravention of the BSC as a result of the need to apply sanctions. Mitigation of this risk should therefore be addressed urgently.

Our decision on the urgency of P438

In reaching our decision on the urgency of P438 we have considered the details within the P438 proposal form, the justification for urgency, the views of the Panel, and we have assessed the request against the urgency criteria set out in Ofgem's published guidance.¹

We are satisfied that progression of P438 is related to a current issue that if not urgently addressed may cause a party to be in breach of relevant legal requirements.² We therefore agree for the Panel to give urgent consideration to P438.

For the avoidance of doubt, in granting this request for urgency, we have made no assessment of the merits of the modification proposal and nothing in this letter in any way fetters our discretion in respect of this modification proposal.

Yours sincerely,

Grendon Thompson

Head of Domestic Market Management

Duly authorised on behalf of the Authority

¹ [Ofgem's guidance on Code Modification Urgency Criteria](#) is available on the Ofgem website.

² This is criterion c) of our urgency criteria – see link in previous footnote for further details.