

P416 'Introducing a route of appeal for the Annual Budget'

This Modification seeks to amend the BSC to include an appeals mechanism that BSC Parties could use to challenge items in the Annual Budget.



Elexon recommends P416 is progressed to the Assessment Procedure for an assessment by a Workgroup



Elexon does not consider it likely that P416 will impact the European Electricity Balancing Guideline (EBGL) Article 18 terms and conditions held within the BSC

This Modification is expected to impact:

- All BSC Parties
- Elexon
- Ofgem

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About This Document



Not sure where to start? We suggest reading the following sections:

- Have 5 mins? Read section 1
- Have 15 mins? Read sections 1, 4, 5 and 6
- Have 30 mins? Read all sections
- Have longer? Read all sections, the annexes and attachments

This document is an Initial Written Assessment (IWA), which Elexon will present to the Panel on 12 November 2020. The Panel will consider the recommendations and agree how to progress P416.

There are two parts to this document:

- This is the main document. It provides details of the Modification Proposal, an assessment of the potential impacts and a recommendation of how the Modification should progress, including the Workgroup's proposed membership and Terms of Reference.
- Attachment A contains the P416 Proposal Form.

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1 Summary

What is the issue?

There is currently no appeal mechanism by which BSC Parties can contest items contained within the Annual Budget. The Proposer contends that the current option available to Parties, where it is unsatisfied with an item in the Annual Budget, of raising a resolution to remove a BSC Director is inefficient and disproportionate.

What is the proposed solution?

This Modification seeks to amend the BSC to include an appeals mechanism that BSC Parties could use to challenge items in the Annual Budget.

The Modification includes a set of requirements that must be met for the appeal to be valid to prevent BSC Parties from raising appeals in a frivolous manner. The Modification also seeks to include a 10 Working Day (WD) appeal window from the point at which the Board communicates their approval of the Annual Budget to BSC Parties to ensure that challenges are promptly raised. The Modification seeks to allow the Authority to respond to appeals by referring individual items back to the Board for reconsideration as well as powers to change costings or remove individual items from the Annual Budget.

Impacts and costs

We expect P416 to potentially impact all BSC Parties as it will grant them an additional right under the BSC to raise appeals against the Annual Budget. We note that the Modification will only impact BSC Parties who choose to use the appeals process. BSC Parties that do not use the appeals process will not be impacted.

If this Modification is implemented BSC Parties will be eligible to contest items on the Annual Budget through a defined appeals procedure and Elexon may be required to adapt to changes to budget values or de-scope work as a result of a successful appeal. It will also impact Ofgem, as it will need to consider any appeals that are raised.

The costs for Elexon and industry to implement are expected to be low (£<1k), as a document only change.

Implementation

The Modification Proposal is a document-only change and the Proposer recommends that the Modification should be implemented prior to the 2022/2023 Annual Budget approval process which is expected to begin around July 2021. To ensure this deadline is met the Proposer is recommending an Implementation Date of 5WDs after Authority approval.

Recommendation

This Modification should be progressed to the Assessment Procedure for consideration by a Workgroup given the potential impacts on BSC Parties, including Elexon and the need to consider whether the proposed appeals process is sufficient or needs to be amended.

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2 Why Change?

What is the issue?

The Proposer contends that suppliers expect code bodies to be cost-efficient and actively manage their finances to minimise their burden while also ensuring the organisation has sufficient resources to meet their operational requirements. The Proposer believes that Appeals are an important tool to ensure plans are cost-efficient and fully justified.

There is currently no direct market mechanism by which BSC Parties can contest specific items contained within the Annual Budget. The Proposer contends that circumstances could arise in the process of drafting the Annual Budget whereby a BSC Party believes that their comments or concerns have not been sufficiently considered or addressed by the Board prior to budget approval, examples include but are not limited to:

- Lack of consultation on the Annual Budget;
- An item is not a legitimate item of expenditure; and
- The item could cause one or more Parties to be in breach of the BSC, Energy Licences or the Law.

The Proposer believes that a suitable, limited and proportionate process should be developed to address this process gap.

In the Modification Proposal Form (Attachment A) the Proposer recognises that there is currently an indirect means by which BSC Parties can contest items contained within the Annual Budget. This involves lobbying other BSC Parties and gaining sufficient support to appoint or remove BSCCo Board members. The Proposer believes that, in the majority of cases, this approach is disproportionate and inefficient, and an alternative mechanism is needed.

Background

Under BSC Section C '[BSCCo and its subsidiaries](#)' there is a requirement for BSCCo to have a Business Strategy which sets out amongst other requirements the principle activities to be undertaken by BSCCo for the upcoming year and an Annual Budget which sets out the expenditure that BSCCo considers reasonably necessary to carry out the activities listed in the Business Strategy.

The timeline below details the current process that is used to develop the Business Strategy and Annual Budget.

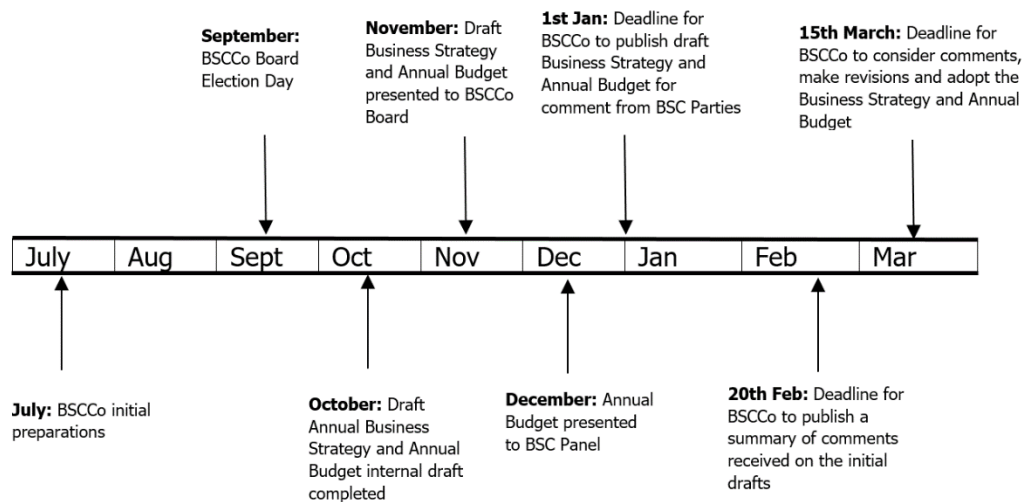


Figure 1: Business Strategy and Annual Budget Timeline

The deadlines for 1st Jan, 20th Feb and 15th March in figure 1 are the latest dates by which the detailed activities have to be carried out under the BSC. BSC Section C does allow Elexon to carry out these activities earlier than these specified deadlines. The activities detailed in September, October, November and December are internal deadlines developed by Elexon to ensure compliance with the BSC and to ensure that the Business Strategy and Annual Budget are both in place before the start of the next BSC Year that runs from 1st April to 31st March.

The above process ensures appropriate oversight by the BSCCo Board and Panel and that all BSC Parties can, but do not have the obligation to, comment on both the Business Strategy and the Annual Budget before they come into effect at the start of the relevant BSC Year on 1 April. These comments can be considered by the Board to help shape the relevant Business Strategy and Annual Budget.

As highlighted in the “why change” section, circumstances could arise in which BSC Parties would wish to appeal individual items in the Annual Budget. Some electricity and gas codes do allow appeals, whilst others do not (this will be researched as part of the Assessment Procedure). The Proposer has based this Modification Proposal on the [draft Retail Energy Code v1.1](#), which is currently under consultation.

Desired outcomes

This Modification seeks to introduce a proportionate and efficient direct mechanism by which BSC Parties can appeal or contest items within the Annual Budget.

Proposed solution

The Proposed solution has the following key features:

- The Modification seeks to amend the BSC to include an appeals mechanism that BSC Parties could use to challenge items in the Annual Budget.
- The Modification includes a set of criteria for an appeal to be valid, if any single criterion is met then the appeal would be valid. The criteria are:
 - The budget item was not consulted on in the drafting process;
 - The Board has failed to take reasonable regard to the comments submitted;
 - It is not a legitimate item of expenditure for the Board;
 - It is a manifestly inappropriate provision for the activity in question, and there are insufficient safeguards in place to ensure that the actual costs incurred will be efficient; and
 - The item will, or is likely to, prejudice unfairly the interests of one or more Parties, or cause them to be in breach of the BSC, the Energy Licences and/or Law.
- Any BSC Party may appeal an item directly to Ofgem within 10 WDs of Board approval of the Annual Budget being notified to Parties.
- The Modification allows Ofgem to respond to the appeals by:
 - Referring the item back to the Board for further consideration;
 - Revising the provision for that budget item to a figure which it reasonably considers to be a better forecast of the cost likely to be incurred, whether that is higher or lower than the originally budgeted figure; and
 - Directing the Board to remove that cost item entirely, and make suitable revision to its annual budget and strategy.

Details of the draft redlining is available in the Proposal Modification Form (Attachment A).

Benefits

The Proposer contends that this Modification would benefit BSC Parties by introducing an appeals mechanism for Annual Budget items and would be more proportionate and efficient than the current indirect means of challenging Annual Budget items.

Applicable BSC Objectives

There is currently no direct process by which BSC Parties can appeal Annual Budget items and the indirect method would require the removal or appointment of Board members which would be disproportionate and inefficient in most cases. The Proposer contends that this Modification would therefore better facilitate **Applicable BSC Objective (d)** 'Promoting efficiency in the implementation of the balancing and settlement arrangements'.



What are the Applicable BSC Objectives?

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

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

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

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

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

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

(g) Compliance with the Transmission Losses Principle

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Implementation approach

The Proposer intends for the Modification to be implemented in time for it to be applied to the 2022/2023 Annual Budget process and suggests implementation 5 WDs after Authority approval.

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4 Areas to Consider

In this section we highlight areas which we believe the Panel should consider when making its decision on how to progress this Modification Proposal, and which a Workgroup should consider as part of its assessment of P416. We recommend that the areas below form the basis of a Workgroup's Terms of Reference, supplemented with any further areas specified by the Panel.

Pre appeal Process

The current Modification Proposal allows any BSC Party to appeal any Annual Budget item to the Authority as long as the appeal meets the criteria and is sent to Ofgem within 10 WDs of the Board decision to approve the Annual Budget. It is not clear in the Modification whether there would be merit in including a Code mandated pre-appeal process. This could help ensure that appeals raised with Ofgem are suitable and ensure that Authority time is not expended managing inappropriate appeals. If a pre-appeals process is required for this Modification then care will need to be taken in its design to make sure that the process itself does not dissuade BSC Parties raising appeals due to the time taken to send a grievance through the process.

For example, the Workgroup could consider whether:

- Non-appealing Parties should be able to comment on the part of the budget that the appealing Party objects to – if all other Parties are content, how should the voice of a single Party be treated?;
- The Panel should have a role; or
- A senior level meeting between Elexon and the appealing Party should be given as a pre-appeal option.

Areas to consider

The table below summarises the areas we believe a Modification Workgroup should consider as part of its assessment of P416:

Areas to Consider
What controls would need to be in place to prevent frivolous and vexatious appeals or that would result in Elexon being unable to meet its obligations or duties?
Do the deadlines for draft publication, comment summary and BSCCo Board decision need to be changed to accommodate the appeals process?
What process (if any) is needed to resolve a disagreement before an appeal is raised?
How would the existing mechanisms handle such an appeal and are these sufficient?
How will P416 impact the BSC Settlement Risks?
What changes are needed to BSC documents, systems and processes to support P416 and what are the related costs and lead times? When will any required changes to subsidiary documents be developed and consulted on?
Are there any Alternative Modifications?
Should P416 be progressed as a Self-Governance Modification?

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Areas to Consider

Does P416 better facilitate the Applicable BSC Objectives than the current baseline?

Does P416 impact the EBGL provisions held within the BSC, and if so, what is the impact on the EBGL Objectives?

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Next steps

This Modification should be assessed by a Workgroup and submitted into the Assessment Procedure.

Self-Governance

This Modification Proposal should **not** be treated as Self-Governance as if approved, the Modification will materially impact the Code's governance procedures (i.e. Self-Governance criterion (a)(v)). Additionally, as the solution will place new requirements on Ofgem, it is therefore appropriate that Ofgem determine whether to approve this Modification or not.

Workgroup membership

We propose that membership should be drawn from participants with experience and expertise in BSC Governance and the Annual Strategy and Budget process.

Please note that we intend to invite an Elexon employee to act as a Workgroup attendee to represent the views of Elexon. This attendee will not have any voting rights in regards to the solution for P416.

Timetable

Proposed Progression Timetable for P416	
Event	Date
Present Initial Written Assessment to Panel	12 November 20
Workgroup Meeting	W/B 14 December 20
Workgroup Meeting	W/B 18 January 21
Assessment Procedure Consultation	15 February 20 – 05 March 21
Workgroup Meeting	W/B 15 March 21
Present Assessment Report to Panel	08 April 21
Report Phase Consultation	12 April 21 – 26 April 21
Present Draft Modification Report to Panel	13 May 21
Issue Final Modification Report to Authority	17 May 21

What is the Self-Governance Criteria?

A Modification that, if implemented:

- (a) does not involve any amendments whether in whole or in part to the EBGL Article 18 terms and conditions; except to the extent required to correct an error in the EBGL Article 18 terms and conditions or as a result of a factual change, including but not limited to:
 - (i) correcting minor typographical errors;
 - (ii) correcting formatting and consistency errors, such as paragraph numbering; or
 - (iii) updating out of date references to other documents or paragraphs;
- (b) is unlikely to have a material effect on:
 - (i) existing or future electricity consumers; and
 - (ii) competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
 - (iii) the operation of the national electricity transmission system; and
 - (iv) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
 - (v) the Code's governance procedures or modification procedures; and

(b) is unlikely to discriminate between different classes of Parties.

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6 Likely Impacts and costs

Costs

Elexon will be required to implement the new legal text changes and if a pre-approval process is developed, design and implement a new internal process. We anticipate the central implementation costs to be less than £1,000 for the current proposed solution and no more than £10,000 if a pre-approval process is required. However, a detailed assessment will be conducted as part of the Assessment Procedure.

Impacts

Impact on BSC Parties and Party Agents	
Party/Party Agent	Potential Impact
BSC Parties	This Modification will give BSC Parties a direct mechanism to formally raise a challenge to an item in the Annual Budget. If BSC Parties do not choose to use the appeals process then it would not be likely that those parties would be effected in anyway.

Impact on the NETSO	
Potential Impact	
As NETSO is a BSC Party this Modification could give NETSO the ability but not the obligation to raise appeals against Annual Budget items. Whether this would be appropriate will be an area of consideration by the Workgroup.	

Impact on BSCCo	
Area of ELEXON	Potential Impact
Operational Teams	If a pre-approval process is required, Elexon will need to administer this process. Under the terms of this Modification Elexon would be required to take suitable action on a direction given by Ofgem.

Impact on BSC Settlement Risks	
We do not envisage any impact on BSC Settlement Risks arising from this Modification, except where an appeal meant funds were not available for Elexon to provide core Settlement services.	

Impact on BSC Systems and processes	
No impacts identified.	

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Impact on BSC Agent/service provider contractual arrangements

No impacts identified.

Impact on Code

Code Section	Potential Impact
Section C	<p>This proposal will alter the provisions under paragraph 6. The proposed new sections 6.4.5 to 6.4.8 introduces the right of BSC Parties to appeal the criteria for the Authority to allow an appeal and the action that the Authority can take in relation to appeals.</p> <p>An amendment to section 6.5.2 in relation to budget overspend has also been added to clarify that the appeals process can be used to challenge budget overspend decisions.</p>

Impact on EBGL Article 18 terms and conditions

No impact anticipated.

Impact on Code Subsidiary Documents

No impacts anticipated.

Impact on other Configurable Items

No impact anticipated.

Impact on Core Industry Documents and other documents

Document	Potential Impact
Ancillary Services Agreements	No impact anticipated.
Connection and Use of System Code	
Data Transfer Services Agreement	
Distribution Code	
Distribution Connection and Use of System Agreement	
Grid Code	
Master Registration Agreement	
Supplemental Agreements	

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Impact on Core Industry Documents and other documents

Document	Potential Impact
System Operator- Transmission Owner Code	No impact anticipated.
Transmission Licence	
Use of Interconnector Agreement	

Impact on a Significant Code Review (SCR) or other significant industry change projects

No impacts identified. We have requested that Ofgem treat this Modification as a SCR Exempt Modification Proposal on 5 November 2020.

Impact on Consumers

No direct impacts identified. Where an appeal is upheld, there will could be nominal indirect cost reductions for consumers.

Impact on the Environment

This Modification is neutral with the net zero target.

7 Recommendations

We invite the Panel to:

- **AGREE** that P416 progresses to the Assessment Procedure;
- **AGREE** the proposed Assessment Procedure timetable;
- **AGREE** the proposed membership for the P416 Workgroup; and
- **AGREE** the Workgroup's Terms of Reference.

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Appendix 1: Glossary & References

Acronyms

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

Acronym	
Acronym	Definition
EBGL	Electricity Balancing Guideline (<i>EU Network Code</i>)
IWA	Initial Written Assessment
NETSO	National Electricity Transmission System Operator (<i>National Grid ESO</i>)
SCR	Significant Code Review
WD	Working Day

External links

A summary of all hyperlinks used in this document are listed in the table below.

All external documents and URL links listed are correct as of the date of this document.

External Links		
Page(s)	Description	URL
4	BSC Sections	https://www.elexon.co.uk/the-bsc/bsc-section-c-bscco-subsidiaries/
5	Retail Energy Code Consultation Redlining	https://www.ofgem.gov.uk/system/files/docs/2020/10/proposed_changes_to_rec_main_body_red_lined_text_0.pdf