

Urgent Modification Consultation Responses

P438 'Amending the BSC to address sanction orders'



This Urgent Modification Consultation was issued on 21 April 2022, with responses invited by 23 May 2022.

Phase

Proposal

Consultation

Draft Report

Final Report

Implementation

Consultation Respondents

Respondent	Role(s) Represented
ScottishPower	Supplier
National Grid ESO	NETSO

P438
Report Phase Consultation
Responses

23 May 2022

Version 1.0

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Question 1: Do you agree with the Panel's initial unanimous recommendation that P438 should be approved?

Summary

Yes	No	Neutral/No Comment	Other
2	0	0	0

Responses

Respondent	Response	Rationale
ScottishPower	Yes	-
National Grid ESO	Yes	Yes, we agree with the Panel's recommendation that the P438 solution should be approved. The current wording of the BSC includes no reference to sanctions and has no concept of force majeure type arrangements. Given this, there is a risk that implementing sanctions or complying with a sanctions order could put BSCCo in breach of the BSC and open BSCCo up to potential claims from the designated entity subject to any sanctions, or from other BSC Parties if steps were taken that were not authorised by the BSC. Therefore, we fully support the implementation of P438 as this will mitigate the risks mentioned above

Question 2: Do you agree with the Panel's view that the redlined changes to the BSC deliver the intent of P438?

Summary

Yes	No	Neutral/No Comment	Other
1	0	0	1

Responses

Respondent	Response	Rationale
ScottishPower	Comment	<p>SECTION N: CLEARING, INVOICING & PAYMENT – Reference 2.5.6</p> <p>Please see below highlighted in red changes we believe should be included in this section of the legal text.</p> <p>“Where the right of a Defaulting Party to receive payment has been suspended under Section H3.2.2(h), no amount becoming due and payable (pursuant to this Section N) to such Defaulting Party shall be paid by the BSC Clearer to such Defaulting Party or assignee through whom such amount would benefit a Defaulting Party.”</p>
National Grid ESO	Yes	We consider that the proposed legal text amendments fully reflect the intent of the modification as drafted.

Question 3: Do you agree with the Panel's recommended Implementation Date?

Summary

Yes	No	Neutral/No Comment	Other
2	0	0	0

Responses

Respondent	Response	Rationale
ScottishPower	Yes	We agree with one working day subject to Authority approval
National Grid ESO	Yes	We support the recommended implementation date, particularly given the risks and uncertainty that remain around any potential sanctions.

Question 4: Do you agree with the Panel's initial view that P438 should not be treated as a Self-Governance Modification?

Summary

Yes	No	Neutral/No Comment	Other
2	0	0	0

Responses

Respondent	Response	Rationale
ScottishPower	Yes	-
National Grid ESO	Yes	The P438 change will update the existing Event of Default processes to include an instance referencing sanction orders, and therefore materially impacts the Code's governance or modification procedures. As such, we agree that the P438 proposal should not be treated as a Self-Governance Modification.

Question 5: Do you agree with the Panel's initial view that P438 does impact the EBGL Article 18 Terms and Conditions related to balancing held within the BSC and that P438 is neutral and consistent with the EBGL objectives?

Summary

Yes	No	Neutral/No Comment	Other
2	0	0	0

Responses

Respondent	Response	Rationale
ScottishPower	Yes	-
National Grid ESO	Yes	We believe that the P438 modification proposes amendments to Sections H and N3, which therefore impact EBGL Article 18 terms and conditions related to Balancing.

Question 6: Do you have any comments on the impact of P438 on the EBGL objectives?

Summary

Yes	No	Neutral/No Comment	Other
0	2	0	0

Responses

Respondent	Response	Rationale
ScottishPower	No	-
National Grid ESO	No	-

Question 7: Do you agree with the Panel that the EBGL Change process should be reviewed to better facilitate the progression of Urgent Modifications?

Summary

Yes	No	Neutral/No Comment	Other
2	0	0	0

Responses

Respondent	Response	Rationale
ScottishPower	Yes	P438 provides a good example of EBGL constraints preventing UK from expediting necessary changes and propose that BEIS withdraws it from UK Retained Law. Scottishpower's view exposes BSSCo to the charge of not complying with the legal requirement of UK Sanctions.
National Grid ESO	Yes	We believe that at present there is the risk that changes may not be progressed as quickly as possible due to the limitations in GB law retained from EU.

Question 8: Will P438 impact your organisation?

Summary

Yes	No	Neutral/No Comment	Other
0	2	0	0

Responses

Respondent	Response	Rationale
ScottishPower	None	-
National Grid ESO	None	-

Question 9: How much will it cost your organisation to implement P438?

Summary

High	Medium	Low	None
0	0	0	2

Responses

Respondent	Response	Rationale
ScottishPower	None	-
National Grid ESO	None	-

Question 10: What will the ongoing cost of P438 be to your organisation?

Summary

High	Medium	Low	None
0	0	0	2

Responses

Respondent	Response	Rationale
ScottishPower	None	-
National Grid ESO	None	-

Question 11: How long (from the point of approval) would you need to implement P438?

Summary

Yes	No	Neutral/No Comment	Other
0	0	2	0

Responses

Respondent	Response	Rationale
ScottishPower	-	Agree as per our response to Question 3
National Grid ESO	N/A	-

Question 12: Do you think a Workgroup should be held after the implementation of P438 to review the implemented solution and consider if any further changes are required to address the defect?

Summary

Yes	No	Neutral/No Comment	Other
1	1	0	0

Responses

Respondent	Response	Rationale
ScottishPower	No	ScottishPower ensure the BSC panel retains oversight of the P438 solution for the use of Sanctions.
National Grid ESO	Yes	We consider that should a review of the P438 solution be required after implementation then it may be prudent to progress this via an Issue Group. We would envisage this group would further define the scope and progress any additional changes necessary to enhance the implemented changes.

Question 13: Do you have any further comments on P438?

Summary

Yes	No	Neutral/No Comment	Other
0	2	0	0

Responses

Respondent	Response	Rationale
ScottishPower	No	-
National Grid ESO	No	-