

## P431 'Post Brexit Agreement Updates'

As a result of the UK leaving the European Union (EU), Great Britain (GB) is no longer part of the Internal Energy Market and updates are required to the BSC to ensure that legal text appropriately reflects these changes.



The BSC Panel initially recommends **approval** of P431



The BSC Panel **does not** believe P431 impacts the European Electricity Balancing Guideline (EBGL) Article 18 terms and conditions held within the BSC

This Modification is not expected to impact BSC Parties

### Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

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### Contact

**Chris Arnold**

020 7380 4221

[BSC.change@elexon.co.uk](mailto:BSC.change@elexon.co.uk)

[Chris.arnold@elexon.co.uk](mailto:Chris.arnold@elexon.co.uk)



## 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, 6, 7 and 8
- Have 30 mins? Read all sections
- Have longer? Read all sections and the annexes and attachments

This is the P431 Draft Modification Report, which Elexon will present to the Panel at its meeting on 13 January 2022. It includes the responses received to the Report Phase Consultation on the Panel's initial recommendations. The Panel will consider all responses, and will agree a final recommendation to the Authority on whether the change should be made.

There are four parts to this document:

- This is the main document. It provides details of the solution, impacts, costs, benefits/drawbacks and proposed implementation approach.
- Attachment A contains the draft redlined changes to the BSC for P431.
- Attachment B contains the Proposal Form.
- Attachment C contains the full responses received to the Panel's Report Phase Consultation.

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## What is the issue?

The United Kingdom (UK) left the European Union (EU) on 31 January 2020, but the vast majority of energy-related issues remained unaffected until the end of the Implementation Period on 31 December 2020. As a result of leaving the EU, Great Britain (GB) is no longer part of the Internal Energy Market and updates are required to the BSC to ensure it appropriately reflects these changes.

P431 will not directly impact BSC Parties as these updates are only required to reflect changes that have already taken effect by the UK leaving the EU. None of the changes P431 proposes have an impact on the operation of the BSC – they are, essentially, administrative changes only. Due to the very minor impacts associated with this change, and the prioritisation of other Modifications in the change pipeline, this Modification has been raised at this stage rather than immediately after the UK withdrawal from the EU.

## What is the proposed solution?

The Solution seeks to update the BSC in light of the UK leaving the Internal Energy Market. The key amendments in this Modification include:

- Updates to the requirements in [Section F 'Modification Procedures'](#) as to the scenarios in which the Authority and National Grid Electricity System Operator (NETSO) can raise Modification Proposals.
- Removal of reference of Council Directive 77/388/EEC and replacement with part 3 of 'The Value Added Tax (Place of Supply of Goods) Order 2004 as amended by The Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019' in Section N 5.4.3.
- Changing the requirements in relation to the NETSO submitting data to the BMRA so that the data submission is required under the Transparency Regulation only. Direct references to ENTSO-E and EBGL Local Data are also removed.
- Removing Section V6 which relates to the submission of Transparency Regulation data by the BMRA to ENTSO-E.
- Updates and removals of relevant definitions in [Section X-1 'General Glossary'](#).

## Impacts & Costs

This Modification is not expected to impact BSC Parties as these updates are only required to reflect changes that have already taken effect and as such the Modification has minimal impacts. The implementation costs are only the costs associated with developing the BSC drafting sections. These implementation costs are low at less than £1k.

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| Costs Estimates |                     |               |  |
|-----------------|---------------------|---------------|--|
| Organisation    | Implementation (£k) | On-going (£k) | Impacts  |
| Elexon          | <1k                 | 0             | The implementation costs are associated with the development of the legal text in Sections F, N, Q, V and X-1. |
| NGESO           | 0                   | 0             |  |
| Industry        | 0                   | 0             |  |
| <b>Total</b>    | <1k                 | 0             |  |

## Implementation

The Panel recommends an Implementation Date of:

- **30 June 2022** as part of the June 2022.

This is the next available Release that this change can practicably be included in.

## Recommendation

The BSC Panel initially believe that P431 will better facilitate Applicable BSC Objectives (d) and (e) and should therefore **be approved**. The Panel unanimously do not believe that P431 impacts the EBGL Article 18 balancing terms and conditions. The Panel also believe that P431 should be progressed as a Self-Governance Modification.

## 2 Why Change?

### What is the issue?

The UK left the EU on 31 January 2020, but the vast majority of energy related issues remained unaffected until the end of the transition period at the end of 2020 when the energy related changes as a result of leaving the EU came into force. As a result of the UK leaving the EU, the UK is no longer part of the Internal Energy Market and updates are required to the BSC to ensure that legal text appropriately reflects these changes.

### Background

#### UK exiting the EU

When the UK left the EU on 31 January 2020 the [Withdrawal Act 2018](#) introduced a new legal concept of Retained EU Law. Retained EU Law is essentially a snapshot of EU Law as it applied to the UK as at the end of the Implementation Period (IP) i.e. at 23:00:01 GMT on 31 December 2020. Retained EU Law is regularly referenced in legislation relating to the withdrawal of the UK from the EU and updates are required to the BSC to ensure that historic references relating to EU Directives or Regulations are appropriately updated to reference Retained EU Law which forms part of UK Law.

## Proposed solution

The Solution seeks to update the BSC in light of the UK leaving the Internal Energy Market. A summary of all of the changes required are given in the table below:

| Solution Summary      |  |
|-----------------------|--|
| Section               | Change   |
| F 2.1.1 g), F 2.1.10A | To clarify that the Authority and NETSO (Sections F 2.1.1 g) and F 2.1.10A respectively) cannot raise Modifications to the BSC in relation to legally binding decisions of the European Commission where that decision does not impact Retained EU Law for standard modifications  |
| F8.2                  | To clarify that the Authority cannot raise Authority Directed Modifications Proposals to the BSC in relation to legally binding decisions of the European Commission where that decision does not impact Retained EU Law   |
| N 5.4.3               | Removal of reference of Council Directive 77/388/EEC and replacement with part 3 of 'The Value Added Tax (Place of Supply of Goods) Order 2004 as amended by The Value Added Tax (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019'  |
| N 10.1.1              | Changing 'European legislation' to 'legislation' in relation to the despatch of Confirmation Notices   |
| Q 6.1B.1              | In relation to the NETSO submitting data to the BMRA changing the requirements to that the data submission is that required under the Transparency Regulation and removing direct references to the NETSO, ENTSO-E and EBGL Local Data   |
| Q 6.1B.2              | In relation to Q 6.1B.1 removing the requirements relating to the Guideline on Electricity Balancing and any procedures specified by ENTSO-E.  |
| V 6                   | Removal of Section 6 which relates to the Submission of Transparency Regulation Data by the BMRA   |
| X-1                   | Removal of ENTSO-E Definition<br>Amendments to the Electricity Regulation definition<br>Amendments to the Regulation on Wholesale Energy Market Integrity and Transparency or REMIT definition<br>Amendments to the Transparency Regulation Data definition<br>Amendments to the Transparency Regulation definition<br>New Definition of Retained EU Law<br>New Definition of Withdrawal Act |

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## Benefits

The updates will remove any inaccuracies in the BSC that have arisen since leaving the EU. This will align the BSC with the Retained EU Law, removing any associated ambiguity that currently exists in the BSC.

## Applicable BSC Objectives – Proposer views

There is potential for confusion if the BSC contains defunct references to EU Legislation and bodies. This in turn could lead to reduced efficiency in implementing Balancing and Settlement arrangements. P431 will therefore better facilitate efficiency in the implementation of the BSC under Objective (d).

As this Modification makes updates to the BSC that relate to the Energy Regulation (e.g. references to Retained EU Law) the Proposer believes that this Modification better facilitates Applicable BSC Objective (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]

## Legal Text

The proposed redlined changes to the BSC to deliver P431 can be found in Attachment A.



### 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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## 4 Impacts & Costs

### Estimated implementation costs of P431

The costs to implement this Modification will be **low (<£1k)**. These costs are associated with the development of the legal drafting in Sections F, N, Q, V and X-1. No other costs have been identified.

| Implementation cost estimates |                     |                     |  |
|-------------------------------|---------------------|---------------------|--|
| Organisation                  | Item                | Implementation (£k) | Comment  |
| Elxon                         | Systems             | 0                   |  |
|                               | Documents           | <1k                 | The implementation costs are associated with the development of the legal text in Sections F, N, Q, V and X-1. |
|                               | Other               | 0                   |  |
| NGESO                         | Systems             | 0                   |  |
|                               | Other               | 0                   |  |
| Industry                      | Systems & processes | 0                   |  |
| <b>Total</b>                  |                     | <1k                 |  |

### Estimated on-going costs of P431

| On-going cost estimates |                     |                      |
|-------------------------|---------------------|----------------------|
| Organisation            | Implementation (£k) | Comment              |
| Elxon                   | 0                   | No impact identified |
| NGESO                   | 0                   | No impact identified |
| Industry                | 0                   | No impact identified |
| <b>Total</b>            | 0                   |                      |

No on-going costs are expected as a result of this Modification.

### P431 impacts

| Impact on BSC Parties and Party Agents |                      |                |
|--|----------------------|----------------|
| Party/Party Agent                      | Potential Impact     | Potential cost |
| N/A                                    | No impact identified | None           |

| Impact on the NETSO  |                |
|----------------------|----------------|
| Potential Impact     | Potential cost |
| No impact identified | None           |

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| Impact on BSCCo |                      |                |
|-----------------|----------------------|----------------|
| Area of Elexon  | Potential Impact     | Potential cost |
| N/A             | No impact identified | None           |

| Impact on BSC Settlement Risks |
|--------------------------------|
| No impact identified           |

| Impact on BSC Systems and processes |                      |
|-------------------------------------|----------------------|
| BSC System/Process                  | Potential Impact     |
| N/A                                 | No impact identified |

| Impact on BSC Agent/service provider contractual arrangements |                      |
|---|----------------------|
| BSC Agent/service provider contract                           | Potential Impact     |
| N/A   | No impact identified |

| Impact on Code  |  |
|-----------------|--|
| Code Section    | Potential Impact   |
| BSC Section F   | To be amended as per Attachment A to meet the solution requirements detailed in Section 3. |
| BSC Section N   |  |
| BSC Section Q   |  |
| BSC Section V   |  |
| BSC Section X-1 |  |

| Impact on EBGL Article 18 terms and conditions   |
|--|
| There are no EBGL impacts as a result of this Modification. The draft legal text does not make any change to any BSC Sections that constitute EBGL Article 18 Terms and Conditions as detailed in the Annex F-2 of the BSC, nor does it extend them. |

| Impact on Code Subsidiary Documents |                       |
|-------------------------------------|-----------------------|
| CSD                                 | Potential Impact      |
| N/A                                 | No impacts identified |

| Impact on other Configurable Items |                       |
|------------------------------------|-----------------------|
| Configurable Item                  | Potential Impact      |
| N/A                                | No impacts identified |

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| Impact on Core Industry Documents and other documents |                       |
|---|-----------------------|
| Document  | Potential Impact      |
| Ancillary Services Agreements                         | No impacts identified |
| Connection and Use of System Code                     |                       |
| Data Transfer Services Agreement                      |                       |
| Distribution Code                                     |                       |
| Grid Code   |                       |
| Retail Energy Code                                    |                       |
| Supplemental Agreements                               |                       |
| System Operator-Transmission Owner Code               |                       |
| Transmission Licence                                  |                       |
| Use of Interconnector Agreement                       |                       |



### What are the consumer benefit areas?

**1)** Will this change mean that the energy system can operate more safely and reliably now and in the future in a way that benefits end consumers?

**2)** Will this change lower consumers' bills by controlling, reducing, and optimising spend, for example on balancing and operating the system?

**3)** Will this proposal support:

- i) new providers and technologies?
- ii) a move to hydrogen or lower greenhouse gases?
- iii) the journey toward statutory net-zero targets?

iv) decarbonisation?

**4)** Will this change improve the quality of service for some or all end consumers. Improved service quality ultimately benefits the end consumer due to interactions in the value chains across the industry being more seamless, efficient and effective.

**5)** Are there any other identified changes to society, such as jobs or the economy.

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

No impacts identified. We requested that Ofgem treat this Modification as SCR exempt on 2 December 2021 and received confirmation from Ofgem that this Modification was SCR exempt on 9 December 2021.

| Impact of the Modification on the environment and consumer benefit areas: |                   |
|---|-------------------|
| Consumer benefit area   | Identified impact |
| 1) Improved safety and reliability  | Neutral           |
| 2) Lower bills than would otherwise be the case                           | Neutral           |
| 3) Reduced environmental damage   | Neutral           |
| 4) Improved quality of service  | Neutral           |
| 5) Benefits for society as a whole  | Neutral           |

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## 5 Implementation

### Recommended Implementation Date

The Panel recommends an Implementation Date for P431 of:

- **30 June 2022** as part of the standard June 2022 Release.

This is the next available Release that this change can practicably be included in.

## 6 Panel's Initial Discussions

The P431 Initial Written Assessment Report was presented to the Panel at its meeting on 9 December 2021 ([321/04](#)).

The Panel agreed unanimously that P431 would better facilitate Applicable BSC Objective (d) on the basis that the clarifications contained in this Modification would make it easier and quicker for market participants to understand their obligations under the BSC.

The majority of Panel members (8 for, 1 against) agreed that P431 would also better facilitate Applicable BSC Objective (e). These Panel Members agreed with the rationale given by the Proposer (as detailed in Section 3 of this report). Elexon clarified that Applicable BSC Objective (e) is still valid after the UK has left the EU on the basis that:

- The definition of 'Electricity Regulation' (contained within Applicable BSC Objective (e)) has been amended in Standard Condition A1 to ensure that references in the licence are to the Electricity Regulation as it forms part of retained UK law and is therefore still applicable.
- There are relevant legally binding decisions of the European Commission and/or the Agency that apply after the end of the Implementation Period and these are those that form part of retained EU law.

The Panel Member that did not believe that P431 better facilitated Applicable BSC Objective (e) noted the above but highlighted requirements within the BSC that require BSC Parties to comply with UK Law anyway making Applicable BSC Objective (e) redundant. They believed P431 was neutral against Objective (e).

The Panel therefore believed P431 should be approved as it better facilitates Objectives (d) and (e).

A Panel Member queried whether the removal of the references to EBGL Local Data in Section Q proposed under this Modification could lead to some data not being published that otherwise would be. Elexon advised that nothing has changed in respect of EBGL Local Data and the only thing that has changed is that data is no longer going to ACER or ENTSO-E.

The Panel agreed to send P431 directly to the Report Phase as a Self-Governance Modification. The Panel believed that this would be the most appropriate route to follow as the solution is self-evident, does not materially impact the Self-Governance Criteria and the Modification does not directly impact BSC Parties as these updates are only required to reflect changes that have already taken effect by the UK leaving the EU. The changes are non-material and do not amend the requirements of the BSC.

## 7 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 C.

| Summary of P431 Report Phase Consultation Responses   |     |     |                           |       |
|---|-----|-----|---------------------------|-------|
| Question  | Yes | No  | Neutral/<br>No<br>Comment | Other |
| Do you agree with the Panel's initial unanimous recommendation that P431 should be approved?  | 1   | 0   | 0                         | 0     |
| Do you agree with the Panel that the redlined changes to the BSC deliver the intent of P431?  | 1   | 0   | 0                         | 0     |
| Do you agree with the Panel's recommended Implementation Date?  | 1   | 0   | 0                         | 0     |
| Do you agree with the Panel's initial view that P431 should be treated as a Self-Governance Modification?   | 1   | 0   | 0                         | 0     |
| Do you agree with the Panel's initial view that P431 does not impact the EBGL Article 18 terms and conditions related to balancing held within the BSC? | 1   | 0   | 0                         | 0     |
| How much will it cost your organisation to implement and operate P431   | N/A | N/A | N/A                       | N/A   |
| Do you have any further comments on P431?   | 0   | 1   | 0                         | 0     |

The single response received in the Report Phase Consultation was from the Proposer. The Proposer highlighted that as the change is an administrative change there would be no costs to implement the change at National Grid Electricity System Operator (NGESO). The respondent agreed with the Panel initial recommendations.

## 8 Recommendations

We invite the Panel to:

- **AGREE** that P431:
  - **DOES** better facilitate Applicable BSC Objective (d); and
  - **DOES** better facilitate Applicable BSC Objective (e);
- **DETERMINE** (in the absence of any Authority direction) that P431 is a Self-Governance Modification Proposal;
- **APPROVE** P431;
- **AGREE** that P433 does not impact the EBGL Article 18 terms and conditions held within the BSC;
- **APPROVE** an Implementation Date of:
  - **30 June 2022** as part of the standard June 2022 Release.
- **APPROVE** the draft legal text; and
- **APPROVE** the P431 Modification Report.

## Appendix 1: Glossary & References

### Acronyms

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

| Acronym |   |
|---------|---|
| Acronym | Definition  |
| BMRA    | Balancing Mechanism Reporting Agent                               |
| BSC     | Balancing and Settlement Code                                     |
| CSD     | Code Subsidiary Document  |
| EBGL    | Electricity Balancing Guideline                                   |
| NGESO   | National Grid Electricity System Operator                         |
| ENTSO-E | European Network of Transmission System Operators for Electricity |
| EU      | European Union  |
| GB      | Great Britain   |
| GMT     | Greenwich Mean Time   |
| IP      | Implementation Period   |
| IWA     | Initial Written Assessment  |
| NETSO   | National Electricity Transmission System Operator                 |
| REMIT   | Regulation on Wholesale Energy Market Integrity and Transparency  |
| SCR     | Significant Code Review   |

### 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.

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|----------------|--|---|
| Page(s)        | Description                                | URL   |
| 3              | BSC Section F 'modification Procedures'    | <a href="https://www.elexon.co.uk/documents/bsc-codes/bsc-sections/bsc-section-f-modification-procedures/">https://www.elexon.co.uk/documents/bsc-codes/bsc-sections/bsc-section-f-modification-procedures/</a> |
| 3              | BSC Section X annex X-1 'General Glossary' | <a href="https://www.elexon.co.uk/the-bsc/bsc-section-x-annex-x-1-general-glossary/">https://www.elexon.co.uk/the-bsc/bsc-section-x-annex-x-1-general-glossary/</a>   |
| 5              | Withdrawal Act 2018                        | <a href="https://www.legislation.gov.uk/ukpga/2018/16/crossheading/retention-of-existing-eu-law/enacted">https://www.legislation.gov.uk/ukpga/2018/16/crossheading/retention-of-existing-eu-law/enacted</a>     |

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