

P416 Digital Meeting Etiquette

- Welcome to the P416 Workgroup meeting 3 – we'll start shortly
- No video please to conserve bandwidth
- Please stay on mute unless you need to talk – use IM if you can't break through
- Talk – pause – talk
- Lots of us are working remotely – be mindful of background noise and connection speeds

ELEXION

P416 Workgroup 3

Introducing a route of appeal for the Annual Budget in line with the proposals for the Retail Energy Code

15 March 2021

Meeting Outcomes

- Agree Proposed Solution and whether to progress an Alternative Modification
- Agree draft Legal Text for Proposed Solution
- Assess Proposed Solution (and any Alternative) against the Applicable BSC Objectives
- Review Terms of Reference questions
- Agree Assessment Consultation questions

Agenda

Agenda Item	Lead
1. Welcome and meeting objectives	Claire Kerr (<i>Chair</i>)
2. Summary of second Workgroup Meeting	Chris Arnold (<i>Lead Analyst</i>)
3. Annual Budget Approval Process	Nigel Smith (<i>Elexon Finance</i>)
4. Legal text walkthrough	Nicholas Brown (<i>Elexon Legal</i>)
5. Consider P416 Proposed Solution and any Potential Alternative Solutions	Workgroup
6. P416 Terms of Reference	Chris Arnold
7. Initial views on P416 with respect to the Applicable BSC Objectives	Workgroup
8. Agree Assessment Consultation questions	Workgroup
9. Summary and Next Steps	Chris Arnold
10. Meeting Close	Claire Kerr



SUMMARY OF SECOND WORKGROUP MEETING

P416 Second Workgroup Meeting Summary

Pre-appeals process

- Workgroup Members agreed that no formal pre-appeals process should be included
- Workgroup Members agreed that a 'duty to consult' provision should not be included

Budget Spending

- Current Proposed Modification would stop all Elexon spending if a BSC Party appeals a budget line item
- The Workgroup discussed whether including a de minimis support threshold ensuring appropriate support for any appeal to prevent Elexon spend.

Frivolous and Vexatious Appeals

- A right for Ofgem could be included to prevent frivolous and/or vexatious appeals.

Appeals Criteria

- Initial Workgroup view that the appeals process should not be used to frustrate the BSC Change process and that the draft legal text should include provisions to prevent this appeals process being used
- The 'reasonable regard' criterion was discussed and the Workgroup concluded that:
 - This should be interpreted as that the minimum BSC required Annual Budget process steps had been conducted and that the relevant bodies had considered the appeal; and
 - This should not be interpreted as being in any way contingent on the quality of response given by the BSCCo Board.

P416 Second Workgroup Meeting Actions

Actions

The Proposer to:

- Consider whether the Workgroup's suggested amendment should be incorporated into the Proposed Modification

Elexon to:

- Consider different ways of presenting the Annual Budget;
- Update proposed draft legal text to capture the points in 5.3;
- Contact Ofgem for feedback on appeal determination process step; and
- Update Modification timeline and circulate to Workgroup Members for comment.

P416 Progression Timetable

Milestone	Date
Workgroup Meeting 3	15 March 2021
Assessment Consultation	1 April 2021 – 16 April 2021
Workgroup Meeting 4	W/C 19 April 2021
Assessment Report Write Up and Review	19 April 2021 - 6 May 2021
Panel Meeting	13 May 2021
Report Phase Consultation	18 May 2021 – 1 June 2021
Panel Meeting	10 June 2021
Issue Final Modification Report to the Authority	16 June 2021

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 Working Days after Authority approval.



ANNUAL BUDGET APPROVAL PROCESS



LEGAL TEXT WALKTHROUGH

P416 Legal Text Walkthrough

Key Questions

- Are the criteria detailed in section 6.4.6 a) to d) sufficient and fit for purpose?
- Is there a need for a specific provision in section 6.4.6 for the Authority to dismiss appeals it determines are frivolous and/or vexatious or is proposed H8.1.1 drafting sufficient?
- In section 6.4.8:
 - Which approach to spending against appealed budget line items is most suitable?
 - If you believe that the approach that includes an Actual Voting Share threshold is most suitable is a 5% Voting Share threshold suitable?
- In section 6.4.9 which approach to excluding appeals that would prevent BSC Modifications from being progressed or implemented is most appropriate?



CONSIDER
PROPOSED
SOLUTION AND
ANY ALTERNATIVE
SOLUTIONS

De Minimis Threshold Level

Possible Threshold Levels

- 5% Voting Share threshold:
 - Aligns with special resolution and General Meeting Voting Share requirements.
 - A single larger BSC Party **could** meet the threshold without wider party support (Some larger BSC Parties have Voting Shares of c.8%)
- 5% Voting Share threshold with **[X]** number of parties in support:
 - A single larger BSC Party **could not** meet the threshold without wider party support.
 - Could block a single BSC party who is disproportionately impacted by a particular budget line item.
- 10% Voting Share threshold:
 - Voting Shares of any single BSC party can not exceed 10% meaning that at least 2 BSC Parties would need to support an appeal before it can be raised.
 - Could block a single BSC party who is disproportionately impacted by a particular budget line item.

Proposed Solution

Proposed Solution

The change will allow for an appeal to the Authority in the case that a BSC Party reasonably believes that an item in the Annual Budget:

- was not consulted upon as part of the draft Annual Budget process, or the Board failed to have reasonable regard to the comments submitted;
- is not a legitimate item of expenditure for the Board;
- is a manifestly inappropriate provision for the activity in question, and there are not insufficient safeguards in place to ensure that the actual costs incurred will be efficient; or
- will, or is likely to, prejudice unfairly the interests of one or more Parties, or cause them to be in breach of this Code, the Energy Licences and/or Law.

Sent by party directly to Ofgem within 10WD of BSCCo decision on budget to appeal.



P416 TERMS OF REFERENCE

P416 Terms of Reference Questions

What controls would need to be in place to prevent frivolous and vexatious appeals or appeals that would result in Elexon being unable to meet its obligations or duties?

The Proposed Modification contains the following provisions to prevent frivolous or appeals that would result in Elexon being unable to meet its obligations or duties?

- **Section H 8.1.1** – This section gives the Authority the powers to dismiss an appeal on the grounds that an appeal is vexatious and/or frivolous
- **Section C 6.4.9** – This section expressly prohibits appeals that would prevent Modifications from being progressed or implemented.

Do the current BSCCo Annual Budget deadlines for draft publication, comment summary and BSCCo Board decision need to be changed to accommodate the appeals process? – Do current timescales allow General Meetings to be convened in a timely manner if BSC Parties wish to raise concerns on the BSCCo Annual Budget?

The Workgroup believes that the nature and complexity of an appeal will have a significant impact on the timescales required for the Authority to make a determination on an appeal. Acknowledging this, the Proposed Modification does not assume that the Authority will make a determination on an appeal in any specified period of time and does not suggest amendments to any of the Annual Budget deadlines currently within the BSC. The Workgroup agreed that a key area of risk was how the spending against appealed budget items would be treated under the Proposed Modification if the appeal was not determined by the start of the relevant financial year. Section 6.4.9 contains provisions that... **[TBC after WG discussion]**.

The Special Resolution and General Meeting process can be used at anytime provided the minimum threshold criteria are met and depending. Whether these timescales are suitable is dependent on when the issue driving the appeal is identified.

What process (if any) is needed to resolve a disagreement before a formal appeal is raised?

The Workgroup agreed that a formal pre-appeal process would not be suitable to include in the Proposed Modification and highlighted that there would be an expectation for appealing parties to use the current consultation process as appropriate prior to appeal.

P416 Terms of Reference Questions

How would the existing mechanisms handle such an appeal and are these sufficient?

There is currently no specific formal appeal process within the BSC. BSC Parties can however raise special resolutions to discuss any issues with the BSCCo Board including the Annual Budget or ultimately remove Board members by calling a General Meeting.

What are the potential benefits/dis-benefits of this Modification?

Benefits

- Greater disclosure on line items in budget
- Increased stakeholder engagement.

Dis-benefits

- Creates risk for Elexon in their organisation e.g. recruitment, contract negotiations.
- Changing freedom of operation for the Elexon Board could skew decisions which could provide a barrier for doing what is best for industry.
- Risk of Ofgem being deemed to be a shadow director of Elexon in the event it makes decisions on budget items

How will P416 impact the BSC Settlement Risks?

No impacts identified

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?

The Proposed Modification makes amendments to BSC Sections C and H. P416 is a document only change that will not require any changes to BSC Central Systems.

Are there any Alternative Modifications?

TBC

P416 Terms of Reference Questions

Should P416 be progressed as a Self-Governance Modification?

The Workgroup does not believe that this Modification meets the Self-Governance criteria on the basis that P416 will likely have a material effect on the Code's Governance procedures.

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

TBC

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

TBC Once legal drafting is agreed – We do not believe that the current straw man redlining does not impact the EBGL Article 18 Terms and Conditions.



INITIAL VIEWS ON P416 WITH RESPECT TO THE APPLICABLE BSC OBJECTIVES

Applicable BSC Objectives

Applicable BSC Objectives

The Applicable BSC Objectives are:

- 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 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 and administration 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

Proposers View

Proposer's View

There is currently no direct route of appeal for any BSC Parties not in agreement with any items in the Annual Budget, and who feel their comments have not been addressed during the drafting phase of the Business Strategy/Annual Budget.

A Party who is sufficiently motivated could lobby other BSC Parties to support the removal of Elexon Board members, which would be both disproportionate and inefficient in most cases. Introducing a route to challenge items in the Annual Budget in a limited and specific way is therefore an improvement in efficiency in the implementation of the balancing and Settlement arrangements.

Applicable BSC Objectives

The Proposer believes that Proposed Modification better facilitates BSC Applicable Objective *d) Promoting efficiency in the implementation of the balancing and settlement arrangements.*



AGREE ASSESSMENT CONSULTATION QUESTIONS

Assessment Phase Consultation Questions

- 1) Do you agree with the Workgroup's initial unanimous view that P416 does better facilitate the Applicable BSC Objectives than the current baseline?
- 2) Do you agree with the Workgroup's proposed de minimis threshold criteria?
- 3) Do you agree with the Workgroup that the draft legal text in Attachment delivers the intention of P416?
- 4) Do you agree with the Workgroup's recommended Implementation Date?
- 5) Do you agree with the Workgroup that there are no other potential Alternative Modifications within the scope of P416 which would better facilitate the Applicable BSC Objectives?
- 6) Do you agree with the Workgroup's assessment of the impact on the BSC Settlement Risks?
- 7) Do you agree with the Workgroup's assessment that P416 does/does not impact the European Electricity Balancing Guideline (EBGL) Article 18 terms and conditions held within the BSC?
- 8) Will P416 impact your organisation?
- 9) Will your organisation incur any costs in implementing P416?
- 10) How long (from the point of approval) would you need to implement P416?
- 11) Do you have any further comments on P416?



NEXT STEPS



MEETING CLOSE

ELEXON