
Balancing and Settlement Code (BSC) P472: Amendment to provisions for Parties to bring claims against BSC Agents in BSC Section E

Decision	The Authority ¹ directs that this modification be made ²
Target audience	National Energy System Operator (NESO), Parties to the BSC, the BSC Panel and other interested parties
Date of publication:	31 January 2025
Implementation date:	27 February 2025

Background

The Balancing and Settlement Code (BSC) contains the rules and governance arrangements for electricity balancing and settlement in Great Britain. Section E of the BSC defines the roles, responsibilities and requirements of BSC Agents and states the responsibilities of Elexon³ in respect to BSC Agent contracts. Elexon procure parties to act as BSC Agents, agree a contract with the party and monitor the performance of the BSC Agent against agreed service levels. The Service Description section of the BSC code specifies the services provided by BSC Agents, the level of performance required and the Agents liability if it fails to achieve these levels of performance.

The 2001 New Electricity Trading Arrangements (NETA) established the provisions for the BSC Agent role, the nature of the BSC Agent role and responsibilities. The delivery model of BSC Agents has become more diverse over time due to developments in IT systems and the emergence of additional parties taking on or sharing roles which previously were assigned to BSC Agents.

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

³ Elexon act as the code administrator for the Balance and Settlement Code (BSC).

A previously implemented self-governance code modification P456 is highlighted in the P472 Final Modification Report due to the similar focus of removing barriers within BSC Section E which allowed Elexon to update BSC Agent contracts to enable the use of technology services. P456 was considered to promote efficiency, reduce costs and provide increased flexibility for BSC Agents.

The modification proposal

P472 : 'Amendment to provisions for Parties to bring claims against BSC Agents in BSC Section E' (the 'Proposal') was raised by Elexon (the 'Proposer') on 11 April 2024. The Proposer states that the traditional scope of the BSC Agent role has been eroded over time. The change in the BSC role means that the existing provisions place greater perceived commercial risk on potential BSC Agents than potential BSC Agents consider to be necessary, which in turn reduces the number of suppliers willing to enter or conclude negotiations to become a BSC Agent. This is limiting competition for and agreement to enter into the BSC Agent role and so preventing cost efficiencies in the BSC Agent role being realised. The proposal aims to allow the provisions to be amended in specific ways for specific time periods as needed.

The solution offered in the Proposal is that the BSC Section E 2.4.1 (and related provisions) be amended to allow the option to remove the requirement in the BSC Agent contract to allow BSC Parties to bring claims (via BSCCo) against the BSC Agent for breach of contract. This amendment would allow BSCCo on behalf of the BSC Agent to request to the BSC Panel (the Panel) an exemption from Third-Party Rights obligations. The process defined in the Proposal enables the BSCCo to submit a request for an exemption from BSC Section E detailing the business case to the BSC Panel. The Panel then assess if the exemption will be granted before the final terms of the BSC Agent contract are finalised. The Proposer highlights that the P472 solution is not retrospective and so only new BSC Agent contracts would be capable of benefitting from this exemption. Once granted any exemption would be specific to that particular BSC Agent contract for an agreed period.

The Proposer believes that the Proposal will better facilitate BSC Objective (d). The Proposer argues that the approach would provide greater flexibility in contract management when procuring parties to act as BSC Agents. The Proposal is also considered by the Proposer to encourage competition during the procurement process between parties bidding for BSC Agent contracts. This is due to the potential exemption provided attracting more parties to bid for BSC Agent contracts due to the reduced perception of financial risks which are currently associated with acting as a BSC Agent. The Proposer considers Objective (d) is better facilitated as these factors will contribute to a more efficient implementation of the balancing and settlement arrangements as increased competition tends to drive efficiency as service providers are motivated to deliver high-quality services at competitive prices. The Proposer considers that this would result in lower service costs, better service offerings and more innovative solutions from BSC Agents which would further improve efficiency.

BSC Panel⁴ recommendation

At the BSC Panel meeting on 10 October 2024, the BSC Panel unanimously considered that code modification P472 would better facilitate BSC Objective (d), and therefore recommended its approval. The BSC Panel considered that the Proposal has a neutral impact on the other applicable objectives.

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 14 October 2024. We have considered and taken into account the responses to the industry consultation(s) which are attached to the FMR.⁵ We have concluded that:

⁴ The BSC Panel is established and constituted pursuant to and in accordance with Section B of the BSC and Condition E1 of the Electricity System Operator Licence.

⁵ BSC modification proposals, modification reports and representations can be viewed on the [Flexon website](https://www.flexon.co.uk).

- implementation of the modification proposal will better facilitate the achievement of the applicable objectives of the BSC;⁶ and
- directing that the modification be made is consistent with our principal objective and statutory duties.⁷

Reasons for our decision

We consider this modification proposal will better facilitate BSC Objective D and has a neutral impact on the other applicable objectives.

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

Panel view

The BSC Panel unanimously agreed with the Proposer's assessment that the Proposal better facilitates BSC objective (d). The Proposal is seen to encourage greater efficiency in the implementation of the balancing and settlement arrangements. The implementation of the Proposal is considered to make the contracts and risks associated with acting as a BSC Agent more reflective. The Proposer states that this element of modernisation would improve the efficiency of procuring BSC Agents as new parties would bid for the contracts therefore which increasing competition in the procurement of BSC Agents.⁸ The capability of the Panel to grant exemption from BSC Section E should attract more parties to become BSC Agents. The Proposer believes that the flexibility provided by P472 could encourage BSC Agents to deliver high-quality services at better costs and potentially more innovative solutions. Overall the Panel's view is that BSC objective (d) is better facilitated by the Proposal.

⁶ As set out in [Standard Condition C3\(3\) of the Electricity Transmission Licence](#).

⁷ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989.

⁸ 'competition in the procurement of BSC Agents' refers to the competition within the procurement process of BSC Agents and does not refer to the wider concept of competition within the Market.

Our View

The Authority considers that the Proposal will better facilitate BSC Objective (d). The Proposal highlights that BSC Agent contracts are currently not reflective of the actual roles and responsibilities of BSC Agents. This is stated to create a barrier which prevents or discourages parties from bidding for BSC Agent contracts. We consider that the P472 option of an exemption from BSC Section E can remove or reduce the impact of this barrier of entry and provide an element of modernisation to BSC Agent contracts and the associated risks of that role. The exemption can be considered to act as an incentive for new or smaller parties to act as BSC Agents if they have an appropriate business case as they will be able to remove the initial barrier to entry. The notion of incentivising more parties to act as BSC Agents would drive competition between parties who are bidding to become a BSC Agent. An increased level of competition between bidding parties for BSC Agent roles create the conditions for greater efficiency as service providers are motivated to innovate and deliver high quality services at competitive prices, providing a more cost reflective and better standard of service for users.

Furthermore, we believe the solution proposed by P472, would provide a transparent process for requesting an exemption from BSC Section E. The Panel's role to consider exemption applications based on business need would restrict exemptions to be granted when necessary. This improves competition in procurement by ensuring potential agents do not withdrawn their bid to act as a BSC Agent when they encounter the existing provisions, and so make it more likely that good procurement options remain available. Overall, we consider that the Proposal better facilitates BSC Objective (d) by promoting efficiency in the BSC Agent procurement process through the creation of incentives, developing competition and providing a defined approach to requesting exemption from some of the more onerous provisions of Section E of the BSC.

Decision Notice

In accordance with Condition E1 of the Electricity System Operator Licence, the Authority hereby directs that modification proposal BSC P472: 'Amendment to provisions for Parties to bring claims against BSC Agents in BSC Section E' be made.

Andrew Malley

Head of Distribution and Residual Charging

Signed on behalf of the Authority and authorised for that purpose