

P332 Digital Meeting Etiquette

- Welcome to the P332 Workgroup Meeting 9 – 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

P332 Workgroup 9

Revisions to the Supplier Hub Principle

22 October 2020

Meeting Agenda & Objectives

- Review revised legal text and side letter
- Review Terms of Reference
- Agree Consultation questions
- Next steps

Agenda Item	Lead
1. Welcome and Meeting objectives	Lawrence Jones (Chair)
2. Recap and Actions	Paul Wheeler (Lead Analyst) and Matthew McKeon (Design Authority)
3. Legal text review – revised legal text and side letter	Nicholas Brown (Lead Lawyer)
4. Terms of Reference review	Paul Wheeler
5. Assessment Procedure Consultation questions	Paul Wheeler
6. Next steps	Paul Wheeler
7. Meeting close	Lawrence Jones



RECAP OF WORKGROUP MEETING 8

Recap of Workgroup Meeting 8 (1 of 2)

- Workgroup Meeting 8 was held on 25 September 2020
- The WG noted that Steven Bradford was the new Proposer representative, replacing Colin Prestwich
- The WG were informed that the Panel had granted a three-month extension to the P332 Assessment Procedure. The P332 Assessment Report is due to be presented at the January 2021 Panel meeting
- The WG discussed the draft legal text and side letter, which had been developed by Elexon, in conjunction with the Proposer, to require MOAs and DCs to comply with specific BSC/BSCP obligations

Recap of Workgroup Meeting 8 (2 of 2)

- The side letter would be a contract between BSCCo and the Agent, but would give Suppliers rights to enforce the side letter where a contract does not already exist between Supplier and Agent. The Supplier would remain responsible for BSC performance and obligations and the Supplier Hub principle would be maintained
- The WG agreed that the solution should apply to both NHH and HH SVA MOAs and DCs
- Agents would be required to sign the side letter within 6 months of the P332 approved implementation date
- If the side letter was not signed, then Elexon could initiate the Removal of Qualification process
- The WG were asked to consider which specific BSC sections or BSCPs should be referenced in the side letter, but noted that as existing contracts do not reference specific obligations, the WG preferred a high level approach

What's happened since the last Workgroup meeting?

- Elexon have prepared revised legal text and side letter following feedback from the WG
- A short meeting was held on 14 October 2020 to capture any questions and feedback from WG Members in advance of today's meeting
- WG Members who were not able to attend the meeting on 14 October 2020 were invited to provide questions and feedback by email
- A revised version of the side letter has been subsequently been drafted following feedback from the WG on 14 October 2020
- These amendments will be discussed during the Legal Text and Side Letter review section of this meeting



LEGAL TEXT AND SIDE LETTER

Side Letter and Legal Text – Background

- At the last WG meeting on 25 September 2020, Elexon presented the draft legal text and side letter based on previous WG discussions
- The approach developed was as follows:
 - MOPs and DCs are required to enter into a side letter
 - The draft side letter required MOPs and DCs to comply with specified BSC/BSCP obligations
 - The side letter gives the relevant Supplier rights under the Contracts (Rights of Third Parties) Act 1999 to enforce that side letter against CPAs (i.e. the side letter effectively becomes a proxy contract between the Supplier and the CPA)
 - The BSC, in addition to mandating this approach, recognises that although BSCCo has a side letter with MOP/DCs, the Supplier remains fully responsible for performance of that MOP/DC and BSCCo shall be under no expectation / obligation to enforce the side letter
- This approach maintained the Supplier Hub Principle but gives Suppliers contractual rights vis-à-vis MOPs and DCs where they do not otherwise have a direct contract

Side Letter and Legal Text – WG8 discussions – key features and scope

- At the last WG meeting on 25 September 2020, the WG discussed the draft legal text and side letter
- The key points of the discussion were:
 - The WG agreed that the solution should refer to SVA MOAs and DCs only
 - The WG agreed that the solution should apply to both NHH and HH Agents
 - There was discussion as to whether the side letter should apply to Customer Preferred Agents (CPAs) or to Contracted Agents. It was felt this may be difficult to monitor, so a better approach would be to apply to all SVA MOAs and DCs regardless of contract status

Side Letter and Legal Text – WG8 discussions – Re-Qualification

- The key points of the discussion were:
 - It was agreed that the obligation to sign the side letter would not be Re-Qualification (as defined in the BSC), but that it would be a requirement to sign to maintain Qualification status
 - The side letter as currently drafted would be effective from when it was signed. It was felt that this could be a disincentive to sign early, so a change will be made so that the effective date is aligned regardless of when the letter is signed
 - The Proposer was happy for the side letter to be effective from 6 months after the P332 implementation date

Side Letter and Legal Text – WG8 discussions – BSC / BSCP obligations

- The key points of the discussion were:
 - The WG considered which sections of the BSC and BSCPs should be mentioned in the square brackets of the side letter
 - (a) comply with, and perform the obligations of Meter Operator Agents and/or Data Collector in accordance with the BSC, including without limitation *[insert relevant Code provisions]* and BSC Procedure *[insert relevant BSCP sections]*, as amended, and as referred to in those aforementioned Sections and any other applicable BSC Procedure; and
 - The WG felt that the obligations should be at a higher level as existing contracts do no mention specific BSC sections or BSC Ps
 - The Proposer agreed to reference ‘all relevant BSC provisions’ or words to that effect

Revised Legal Text – key changes - scope

The revised legal text refers to all Agents, not just Customer Preferred or Contracted Agents

1.2.9 In respect of any Party Agent (a Customer Preferred Agent) which is appointed as Meter Operator Agent or Data Collector in respect of a Metering System pursuant to the requirement of the Customer where the Supplier which is registrant of that Metering System has no direct contract with such Party Agent in relation to that appointment, and in respect of that Supplier:

Replaced with:

1.2.9 In relation to a Metering System, in respect of which an SVA Meter Operator Agent or Data Collector has been appointed, and the Supplier that is the Registrant of such Metering System:

Revised Legal Text – key changes - Qualification

The revised legal text for Qualification refers to SVA Meter Operator Agents and Data Collectors

3.3.6A	In the case of an Applicant that is seeking Qualification as a Meter Operator Agent or Data Collector, such letter agreement (or one of such letter agreements) shall:
Replaced with:	
3.3.6A	In the case of an Applicant that is seeking Qualification as an SVA Meter Operator Agent or Data Collector, such letter agreement (or one of such letter agreements) shall:

Revised Legal Text – key changes – Re-Qualification

The revised legal text refer for Re-Qualification refers to SVA Meter Operator Agents and Data Collectors, requirement to sign within 6 months

3.3.6B Each Qualified Meter Operator Agent and Data Collector shall be required to re-Qualify within [x] months of the Relevant Implementation Date of Approved Modification P332 by submitting an executed letter agreement as required under paragraph 3.3.6A. In relation to any failure by a Meter Operator Agent and Data Collector to execute such letter agreement, and without prejudice to the rights of the Performance Assurance Board to apply Performance Assurance Techniques in respect thereof, such failure shall constitute a failure to comply with a requirement pursuant to paragraph 3.4.2.:

Replaced with:

3.3.6B **Each Qualified SVA Meter Operator Agent and Data Collector** shall be required to submit an executed letter agreement as required under paragraph 3.3.6A **within 6 months of the Relevant Implementation Date of Approved Modification P332**. In relation to any **failure by an SVA Meter Operator Agent and Data Collector to execute such letter agreement**, and without prejudice to the rights of the Performance Assurance Board to apply Performance Assurance Techniques in respect thereof, **such failure shall constitute a failure to comply** with a requirement pursuant to paragraph 3.4.2.

Revised Side Letter – key changes - scope

The revised side letter refers to all Agents, not just Customer Preferred or Contracted Agents

Unless otherwise stated or the context otherwise requires any capitalised term in this letter shall have the meaning given to it in the BSC, and references to the BSC are to the BSC as from time to time modified. ~~For the purposes of this Letter Agreement, a Customer Preferred Agent shall be a Meter Operator Agent or a Data Collector appointed (pursuant to the BSC) by a Supplier in relation to a Metering System pursuant to a requirement of the Customer and in respect of whom such Supplier has no direct contract in relation to that appointment.~~

We are writing this letter pursuant to the requirement in relation to **SVA Meter Operator Agents and Data Collectors** pursuant to paragraph 3.3.6A of Section J that as a condition of Qualification they enter into this Letter Agreement with BSCCo.

Revised Side Letter – key changes

The revised side letter does not refer to specific BSC Sections or BSCPs, as requested by the Workgroup, but all applicable obligations

- (a) comply with, and perform **all applicable** obligations of **SVA** Meter Operator Agents and/or Data Collector in accordance with the BSC, ~~including without limitation [insert relevant Code provisions] and BSC Procedure [insert relevant BSCP sections],~~ as amended, and as referred to in those aforementioned Sections and any other applicable BSC Procedure; and
- ((b) abide by the terms of Section C5, Sections H4 and H9 of the BSC as if we were a party to the BSC for the purposes of those Sections

Side Letter – Section C5, Sections H4 and H9

- **Section C5** - this is the BSC clause that limits Elexon's liability to BSC Parties. The reference here extends that limitation to the side letter which reflects the position that the side letter is a contract between Elexon and the agent (albeit one that Elexon will be hands-off). Although highly unlikely to ever be needed, this is necessary to protect the parties that fund Elexon
- **Section H4** - this covers confidentiality, IPR and ownership of BSC data and therefore just ensures that any BSC data that is transferred between the agent and the supplier under the side letter is subject to the rules set out in the BSC about confidentiality etc
- **Section H9** - these are the BSC boilerplate clauses - entire agreement, severance, jurisdiction etc. These are standard in all contracts so this reference incorporates them so we don't need to list them all out in the side letter

Revised Side Letter – remuneration

The revised side letter does not entitle the Agent to remuneration from BSCCo

We confirm that for each relevant Metering System ~~we are and will at all relevant times be party to an agreement with the Customer under which:~~

(a) ~~we are entitled to be remunerated for performing the obligations referred to above, and accordingly we require agree that no further compensation shall be payable by BSCCo under this letter in respect of our commitment under this letter; commitments herein; and~~

Revised Side Letter – necessary rights and obligations

The revised side letter includes a new paragraph for the Agent to notify the Registrant of the Metering System if they do not have the necessary rights and obligations to perform all applicable obligations

- (b) we have all necessary rights and authorisations to perform such obligations.
- (c) Without prejudice to paragraph (b) above, we confirm that we will promptly notify the Registrant of each relevant Metering System of any relevant arrangements for which we do not have the necessary rights and authorisations.

Revised Side Letter – direct contracts

The Workgroup noted that in some contracts, the Agent is only specified to perform certain tasks, so they shouldn't be 'on the hook' for obligations above and beyond a direct contract, so this paragraph has been added:

- (b) In the event of a conflict between the terms of this Letter Agreement and the terms of any direct contract between us and the Registrant, the terms of the direct contract shall prevail.

However, a concern has been raised after internal review as to whether the direct contract taking precedence over the Letter Agreement could undermine how the PAB and Elexon deliver assurance directly against Agents because although it recognises the commercial contract it might enable an Agent to use the side letter to avoid being held accountable by the PAB for a specific non-performance

Elexon have considered two possible options to address this concern and welcome the Workgroup's views:

- 1) We remove the wording (assuming the proposer is willing), with the possibility that the current wording is progressed as an alternative modification
- 2) We amend the wording in the letter to make clear, in effect, that the precedence wording applies just as between the Supplier and the Agent and is without prejudice to the Performance Assurance Framework under the BSC. This would mean that if a Supplier and an Agent entered into a contract that required less than full compliance with the BSC this would be a commercial matter for them but would in no way limit either the Supplier or the Agents obligations under the BSC



TERMS OF REFERENCE REVIEW

Terms of Reference

P332 Specific ToR

- a) What issues are caused by customers choosing Agents?
- b) What is the materiality of the issues?
- c) What means are presently available to address the issues?
- d) What is the best way in principle to address the issues?

Standard ToR

- e) What is the most appropriate Implementation Date?
- f) What changes are needed to BSC documents, systems and processes to support P332 and what are the related costs and lead times?
- g) Are there any Alternative Modifications?
- h) Does P332 better facilitate the Applicable BSC Objectives compared with the current baseline?
- i) Does P332 impact the EBGL provisions held within the BSC, and if so, what is the impact on the EBGL Objectives?

Terms of Reference Summary

Item	Status
P332 Specific Terms of Reference	Complete – subject to WG review today
Costs and impacts	Initial assessment, but require industry assessment via AC
Self-Governance?	Not considered yet
Any Alternative Modifications?	None raised yet
Views against Applicable BSC Objectives	Not given yet
EBGL Article 18 impacts	Yes

Costs and impacts

Costs:

- This is a document only change. No system changes are required for this Modification
- The cost of amending BSC Baseline items is £240 for the first BSC Baseline item and £120 for each additional BSC Baseline item
- Any ongoing operational costs will be identified in the Internal Impact Assessment

Likely impacts:

- BSC Section J 'Party Agents and Qualification Under the Code'
- Qualification side letter: Qualification Deed pursuant to BSC Section J3.3.6
- Suppliers, NHH and HH SVA MOAs and DCs

We will consult with industry to understand the potential costs and impacts on Suppliers and Agents

Implementation date

- The Proposer suggests that the implementation date is **5 WDs** after Ofgem's decision
- The Proposer suggests that Agents would then have **6 months** to sign the side letter
- The Final Modification Report is due to be sent to Ofgem by 15 April 2021
- Ofgem's KPI for decision is 25 days, so a decision could be received in May / June 2021 → side letter required to be signed around November / December 2021

Self-Governance criteria

A proposal that, if implemented

(a) 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.

The Proposer believes that P332 is **not suitable for Self-Governance** as it will have a material impact on competition (paragraph a) ii)) because it will enable Suppliers to better manage Agents with who they don't have a commercial contract.

Self-Governance criteria - EBGL Article 18 terms and conditions of balancing

In addition to the Self-Governance criteria, any Modification that seeks to amend BSC provisions constituting European Balancing Guideline (EBGL) Article 18 terms and conditions related to balancing cannot be progressed as Self-Governance. This is because the EBGL requires any Amendments to those terms and conditions to undergo a separate EBGL Amendment process, requiring the Modification to be approved by Ofgem.

Section J 3.3 is identified as impacted by P332. The relevant EBGL sections are:

- Section J:
 - Sub-Sections: **3.3**, 3.6, 3.7, 3.8
- P332 therefore impacts EBGL Article 18 terms and conditions on balancing



APPLICABLE BSC OBJECTIVES

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 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

Proposer Views: Applicable BSC Objectives

The Proposer initially believed that P332 would better facilitate Applicable BSC Objectives c) and d)

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

The Proposer contends that this Objective would be better facilitated because the Modification would ensure customers would receive comparable levels of service regardless of whether their Agent is customer appointed or Supplier appointed. In addition, the Proposer contends that P332 would mean that Suppliers are not disadvantaged commercially by the appointment of Agents by customers .

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

The Proposer contends that this Objective would be better facilitated because Agents who have signed the proposed side letter would lead to a more consistent level of performance by Agents.



EBGL ARTICLE 18 TERMS AND CONDITIONS

EBGL Article 18 Terms and Conditions

Does P332 impact the EBGL provisions held within the BSC, and if so, what is the impact on the EBGL Objectives?

- Some BSC provisions constitute EBGL Article 18 terms and conditions as approved by Ofgem
- BSC provisions became EBGL provisions too on 25 June 2020, alongside P392
- P392 included a new Annex F-2 in Section F - a table showing which BSC provisions also constitute Article 18 terms and conditions
- P392 amended the BSC Change process to also fulfil the EBGL change process and incorporate delegations from NGESO to Elexon and the BSC Panel
- Modifications that wholly or partially amend BSC provisions that also constitute EBGL Article 18 terms and conditions must follow the amended BSC Change process
- Modifications may add new BSC provisions that also constitute EBGL Article 18 terms and conditions held within the BSC – “extending” the mapping

EBGL Article 18 Terms and Conditions

The amended BSC Change Process

- Impact on the EBGL Objectives shall be considered by Elexon/Proposer/WG
- One calendar month Report Phase Consultation
- Reconvene WG to provide justification for including/not including consultation comments
- Panel agrees EBGL impacts and above justification
- Panel sends FMR to Ofgem to fulfil BSC and EBGL processes

EBGL Article 18 Terms and Conditions

Section J 3.3 is identified as impacted by P332. The relevant EBGL sections are:

- Section J:
 - Sub-Sections: **3.3**, 3.6, 3.7, 3.8
- P332 therefore impacts EBGL Article 18 terms and conditions on balancing

Elexon believes that P332 is consistent with EBGL objectives

Elexon believes that P332 fosters effective competition, non-discrimination and transparency in balancing markets

We welcome the Workgroup's views on this and also against other relevant EBGL Objectives



CONSULTATION QUESTIONS

Standard Consultation Questions

- Do you agree with the Workgroup's initial view that P332 [does/does not] better facilitate the Applicable BSC Objectives than the current baseline?
- Do you agree with the Workgroup that the draft legal text delivers the intention of P332?
- Do you agree with the Workgroup's recommended Implementation Date?
- Do you agree with the Workgroup that there are no other potential Alternative Modifications within the scope of P332 which would better facilitate the Applicable BSC Objectives?
- Do you agree with the Workgroup's assessment of the impact on the BSC Settlement Risks?
- Will P332 impact your organisation?
- Will your organisation incur any costs in implementing P332?
- How long (from the point of approval) would you need to implement P332, taking into consideration time given to sign the side letter?
- Do you have any further comments on P332?

Additional Consultation Questions

- What, if any, additional Assessment Consultation questions are needed?
- Do you agree with the Workgroup that the solution should apply to all SVA NHH and HH MOAs and DCs?
- Do you agree with the obligations that the Workgroup are placing on SVA MOAs and DCs in the side letter?
- We invite the Workgroup to suggest any further Consultation Questions



PROGRESSION PLAN & NEXT STEPS

Progression Plan and Next Steps

- Workgroup summary will be issued by 27 October 2020
- Workgroup to review Assessment Consultation w/c 16 November 2020
- Assessment Procedure Consultation 15 WD – from 30 November 2020 to 18 December 2020
- Workgroup meeting to review consultation responses w/c 11 January 2021
- Workgroup to review Assessment Report w/c 25 January 2021
- Assessment Report presented to BSC Panel on 11 February 2021
- Report Phase Consultation from 17 February 2021 to 17 March 2021 (needs to be one month due to EBGL)
- Possible WG within a week or so from end of RPC
- Draft Modification Report present to BSC Panel on 8 April 2021
- Final Modification Report submitted to Ofgem for decision by 15 April 2021

ELEXON

THANK YOU

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