

P457 ‘Replace the Electricity Arbitration Association with the London Court of International Arbitration’

To remove the Electricity Arbitration Association (EAA) from the BSC and replace with the London Court of International Arbitration (LCIA) to deliver better value for money and service.



The BSC Panel initially recommends **approval** of P457



The BSC Panel **does** believe P457 impacts the European Electricity Balancing Guideline (EBGL) Article 18 terms and conditions held within the BSC

This Modification is expected to impact:

- All BSC Parties

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About This Document

You can find the definitions of the terms and acronyms used in this document in the [BSC Glossary](#)¹.

This is the P457 Draft Modification Report, which Elexon will present to the Panel at its meeting on 14 September 2023. 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 P457 Proposal Form.
- Attachment B contains the draft redlined changes to the BSC for P457.
- Attachment C contains the full responses received to the Panel's Report Phase Consultation.



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Not sure where to start?

We suggest reading the following sections:

- Have 5 minutes? Read section 1
- Have 15 minutes? Read sections 1 and 6
- Have longer? Read all sections and the annexes and attachments.

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¹ <https://www.elexon.co.uk/glossary/?show=all>

Why Change?

BSC Section H 'General'² sets out dispute resolution procedures that allow Market Participants to undertake arbitration pursuant to the arbitration rules of the [Electricity Arbitration Association](#)³, if required. However, the EAA has not been used by a Market Participant since its inception in 1993. Moreover, the EAA is rarely used in commercial agreements, does not maintain its website and requires monthly payment, irrespective of whether their services are used. This therefore does not offer good value for money for BSC Parties.

Solution

This Modification proposes to replace the EAA within the BSC with the LCIA where applicable, including the removal of Elexon obligations to fund EAA overheads.

Impacts & Costs

We expect costs to implement this Modification to be low (<£1k) as it is a document only change. We also do not anticipate any costs or impacts for BSC Parties. Any possible further costs and impacts will be evaluated as part of the Report Phase Consultation Procedure.

Elexon stopped making payments to the EAA in 2020, under the Panel's instruction to do so. This Modification will therefore bring the Code in line with the operational practice. The Modification will therefore not bring cost savings for BSC Parties, as these have already been realised, but the Proposal will ensure clarity on which arbitration body would be used, were there to be a dispute.

Due to the proposed changes to BSC Section H 4.2 there is an impact on the provisions in the BSC that constitute EBGL Article 18 balancing terms and conditions. As a result of this a one month consultation period was factored into the Modification timetable.

Implementation

This Modification is anticipated to be a document only change and not incur any system or process changes for Elexon or Market Participants. As such it is recommended the Modification is implemented as soon as reasonably practical to provide clarity to all Market Participants on the chosen Arbitration service. Therefore, an Implementation Date of **5 Working Days following Authority decision** is recommended.

Recommendation

The BSC Panel recommends to the Authority:

- That P457 should be **approved**;
- That P457 **DOES** impact the EBGL Article 18 terms and conditions held within the BSC;
- That P457 is consistent and neutral with the EBGL objectives;

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² <https://bscdocs.elexon.co.uk/bsc/bsc-section-h-general>

³ <https://www.electricityarbitrationassociation.co.uk/>

- An Implementation Date for P457 of:
 - **5 Working Days** following Authority decision; and
- The Legal Text for P457.



What is the issue?

BSC Section H 'General' sets out dispute resolution procedures that allows Market Participants to undertake arbitration pursuant to the arbitration rules of the Electricity Arbitration Association if required. However, the EAA has not been used by a Market Participant since its inception in 1993 and does not provide good value for money for BSC Parties as monthly payments are required, irrespective of whether there are any disputes to consider.

Background

Elxon reviewed the EAA service in quarter four 2019 finding (at the time):

- EAA are paid £5833.33 every month for Arbitration Services;
- [Energy UK](https://www.energy-uk.org.uk/)⁴ are paid £10k per year (in a lump sum) for secretarial costs for EAA;
- The EAA website is not maintained and the details contained within it are inaccurate and out of date;
- Legal advice was sought from [Dentons](https://www.dentons.com/en/)⁵ who advised:
 - References to the EAA are rarely made in commercial agreements; and
 - They could not find any reference to that effect in any recent contracts they have been involved in.

Following this review the BSC Panel instructed Elxon to stop paying the EAA in early 2020 and therefore any references to them in the BSC are currently redundant.

Arbitration

Arbitration can be used in the BSC for General Disputes as well as Trading Disputes under [BSC Section W 'Trading Disputes'](#)⁶.

If there's a trading dispute, a party can take the matter to arbitration if:

- a) They don't agree with the Panel's decision as stated in section W 3.5; and
- b) It's decided in section W 3.5.3 that the dispute shouldn't go to the Panel.

Any decision to take the matter to arbitration must be made within 30 days of getting notified about the Panel's decision from a) above. If they don't do it in this timeframe, then the decision made by either the Trading Disputes Committee or the Panel (as applicable) becomes final and everyone has to accept it.

Dispute Resolution

Unless explicitly stated in the BSC or unless there is a contrary provision in the Act, any Licence, or any EMR Legal Requirement, any dispute arising under the BSC can be referred to arbitration. This does not apply, however, to any dispute with the Panel, any Panel Committee or any Workgroup. English law applies to the resolution of such disputes and in particular, the provisions of the Arbitration Act 1996 apply to any arbitration of the dispute.

BSC Section W 3.6 Arbitration

3.6.1 Subject to paragraph 3.6.2, a Party may refer a matter that is the subject of a Trading Dispute to arbitration in accordance with the provisions of Section H7: (a) where it disagrees with a decision of the Panel made under paragraph 3.5; (b) after a decision has been made under paragraph 3.5.3 that the Trading Dispute should not be referred to the Panel.

3.6.2 The reference of any matter to arbitration pursuant to this paragraph 3.6 shall be made no later than thirty days after the relevant decision referred to in paragraph 3.6.1(a) or (b) was notified to Parties, failing which the decision of the Trading Disputes Committee or the Panel (as the case may be) shall be final and binding on all Parties.

3.6.3 Not used.

3.6.4 The provisions of this paragraph 3.6 shall not apply to a decision of the Trading Disputes Committee (or the Panel, if applicable) pursuant to paragraph 3.2.4.

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⁴ <https://www.energy-uk.org.uk/>

⁵ <https://www.dentons.com/en/>

⁶ <https://bscdocs.elxon.co.uk/bsc/bsc-section-w-trading-disputes>

Where a dispute is referred to arbitration, the BSC Panel can instruct Elexon to participate in any arbitration proceedings for the purpose of representing the interests of any Party which is not participating in the proceedings.

A Party must notify Elexon promptly if it refers a dispute or difference to arbitration. The decision of the arbitrator is final and binding on all Parties but the arbitrator does not have the power to modify the BSC.

The arbitration provisions in Section H are subject to Section W.

Desired outcomes

To replace the EAA with an arbitration body that is only paid when used, has a good reputation and experience with the energy industry.

Proposed solution

This Modification proposes to replace the EAA within the BSC with the LCIA where applicable, including the removal of Elexon obligations to fund EAA overheads.

To replace the EAA with the LCIA, [BSC Section D 'BSC Cost Recovery and Participation Charges'](#)⁷, BSC Section H, [BSC Section X-1 'General Glossary'](#)⁸ and [BSC Section Z 'Performance Assurance'](#)⁹ will need updating.

Why London Court of International Arbitration?

- LCIA has a global reputation;
- Payment is only required if there is a dispute that requires arbitration; and
- LCIA have experience in UK Energy Code arbitration as they are used in the Retail Energy Code (REC).

Benefits

The following benefits should be realised by implementing this Modification:

- **Cost Efficiency:** By removing Elexon's obligation to fund the EAA, this change would eliminate unnecessary costs associated with the upkeep of an unused service. This aligns with the principle of efficiency in administration. We note that this benefit has already been realised following the Panel's instruction to stop paying the EAA, so this Modification will align the BSC to current operations;
- **Operational Efficiency:** The LCIA, with its global reputation and experience in energy code arbitration, is likely to offer more effective and efficient services than the EAA. This could simplify and streamline the arbitration process when necessary, thus enhancing the implementation of the balancing and Settlement arrangements;
- **Resource Efficiency:** Payment to the LCIA is required only if there's a dispute requiring arbitration. This implies a more efficient use of resources compared to the current system, where payments are made to the EAA irrespective of their services being utilized or not; and
- **Increased Relevance:** As the LCIA is also used in the REC, this change might bring more coherence and relevance to the arbitration process across different parts of the energy sector, further promoting efficiency.

Legal text

P457 proposes to update BSC Section D, BSC Section H, BSC Section X-1 and BSC Section Z in order to remove all references to the EAA and replace with the LCIA where appropriate. Full Legal Text amendments can be found in Attachment B.

BSC Section D

- Remove the obligation for the NETSO to pay BSCCo 10% of the amounts from time to time borne by BSCCo in respect of the overhead costs of the Electricity Arbitration Association.

⁷ <https://bscdocs.elexon.co.uk/bsc/bsc-section-d-bsc-cost-recovery-and-participation-charges>

⁸ <https://bscdocs.elexon.co.uk/bsc/bsc-section-x-1-general-glossary>

⁹ <https://bscdocs.elexon.co.uk/bsc/bsc-section-z-performance-assurance>

BSC Section H

- Remove EAA from Clauses 4.2.3 (f) (iv) and 4.4.2 (c) (v) and replace with LCIA.
- Update sub-clauses in 7.1 to reflect replacement of EAA with LCIA and removal of annual costs to EAA.

BSC Section X-1

- Remove EAA from the General Glossary and add LCIA.

BSC Section Z

- Remove EAA from Clause 2.3.3 (a) and replace with LCIA.

Estimated costs of P457

No costs were identified by respondents during the Report Phase Consultation and as such P457 will incur total implementation costs of a document only change of <£1k.

Implementation cost estimates			
Organisation	Item	Implementation (£)	Comment
Elexon	Systems	0	
	Documents	<1k	Document only change to BSC Sections
	Other	0	
NGESO	Systems	0	
	Other	0	
Industry	Systems & processes	0	
Total		<1k	

On-going cost estimates		
Organisation	Implementation (£)	Comment
Elexon	-	
NGESO	-	
Industry	-	
Total	-	No ongoing costs anticipated, rather we expect confirmation of cost savings.

Note that in the event of a dispute and an Arbitrator being required, LCIA would require payment including a one-off registration fee (currently £1250 - £1950) and hourly rates for their services – with costings provided on their [website](https://www.lcia.org/Dispute%20Resolution%20Services/schedule-of-costs.aspx)¹⁰. However, given an Arbitration service hasn't been used by a Market Participant to date, no costs are forecasted to be required.

¹⁰ [https://www.lcia.org/Dispute Resolution Services/schedule-of-costs.aspx](https://www.lcia.org/Dispute%20Resolution%20Services/schedule-of-costs.aspx)

P457 impacts

Impact on BSC Parties and Party Agents		
Party/Party Agent	Impact	Estimated cost
All BSC Parties	No implementation or on-going costs are anticipated for any Parties. It is anticipated this Modification will have a minor positive impact on all BSC Parties by clarifying the Arbitration service they can use if required.	N/A

Impact on the NETSO	
Impact	Estimated cost
No impacts anticipated	N/A

Impact on BSCCo		
Area of Elxon	Impact	Estimated cost
Elxon	Allow Elxon to use LCIA as an arbitrator in the event there is a dispute that requires arbitration	N/A

Impact on BSC Settlement Risks	
No impacts on Settlement Risks.	

Impact on BSC Systems and process	
BSC System/Process	Impact
None	N/A

Impact on BSC Agent/service provider contractual arrangements	
BSC Agent/service provider contract	Impact
None	N/A

Impact on Code	
Code Section	Impact
Section D	Remove the obligation for the NETSO to pay BSCCo 10% of the amounts from time to time borne by BSCCo in respect of the overhead costs of the Electricity Arbitration Association

Impact on Code	
Code Section	Impact
Section H	Remove EAA from Clauses 4.2.3 (f) (iv) and 4.4.2 (c) (v) and replace with LCIA. Update sub-clauses in 7.1 to reflect replacement of EAA with LCIA and removal of annual costs to EAA.
Section X-1	Remove EAA from the General Glossary and add LCIA.
Section Z	Remove EAA from Clause 2.3.3 (a) and replace with LCIA.

Impact on MHHS
No impacts on MHHS have been identified.

Impact on EBGL Article 18 terms and conditions
<p>Due to the proposed changes to BSC Section H 4.2 there is an impact on the provisions in the BSC that constitute EBGL Article 18 balancing terms and conditions. As a result of this a one month consultation period has been factored into the Modification timetable.</p> <p>However, we do not believe this proposal has a direct or material impact on the EBGL provisions and is therefore neutral and consistent against the EBGL objectives. The proposal is replacing one arbitration body with another and therefore does not directly impact balancing or the governance arrangements.</p>

Impact on Code Subsidiary Documents	
CSD	Impact
None	N/A

Impact on other Configurable Items	
Configurable Item	Impact
None	N/A

Impact on Core Industry Documents and other documents	
Document	Impact
Ancillary Services Agreements	No impact
Connection and Use of System Code	
Data Transfer Services Agreement	
Distribution Code	
Grid Code	
Retail Energy Code	

Impact on Core Industry Documents and other documents	
Document	Impact
Supplemental Agreements	
System Operator-Transmission Owner Code	
Transmission Licence	
Use of Interconnector Agreement	

Impact on a Significant Code Review (SCR) or other significant industry change projects
None

Impact of the Modification on the environment and consumer benefit areas:	
Consumer benefit area	Identified impact
1) Improved safety and reliability None identified	Neutral
2) Lower bills than would otherwise be the case None identified	Neutral
3) Reduced environmental damage None identified	Neutral
4) Improved quality of service None identified	Neutral
5) Benefits for society as a whole None identified	Neutral

Other Impacts	
Item impacted	Impact
N/A	N/A



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.

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Recommended Implementation Date

The Panel recommends an Implementation Date for P457 of:

- 5 Working Days following Authority decision, as part of a special BSC Release.

At its meeting on 13 July 2023 (340/03¹¹), BSC Panel members discussed if there was a requirement to name a replacement for the EAA or whether it could be mutually agreed between parties, and whether there was a requirement for an international arbitrator given the expanding geographic reach of BSC Parties. The Panel agreed that the arbitrator should be based in the UK, as the BSC arrangements were GB based, and that naming an arbitrator was a preferential solution, as this created certainty for the process and would avoid the risk of extending the timelines or the process e.g. to mutually agree an arbitrator. The Panel noted that as the service hadn't been to date it is unlikely to have a material impact on Parties either way.

A Panel member raised that there are potential costs to using LCIA and this should be reflected in the consultation document. A link has been provided to costs in the Impacts & Costs section of this document. However it has not been credited as an implementation or ongoing cost to industry at this stage as it is difficult to forecast the likelihood of the service being used in the future.

Elxon advised if the Panel agreed to raise the Modification Proposal, it should progress straight to Report Phase with a one month EBGL consultation period.

Given the EAA has not been used by a Market Participant since its inception in 1993 and Elxon no longer pay for their services the solution to remove references to them in the BSC is self-evident. This is supported by replacing them with LCIA to align arbitration services with the REC. Furthermore, BSC Parties will get a chance to comment on the suitability of the LCIA via the Report Phase Consultation.

Due to the impact on the EBGL Article 18 Terms and Conditions this Modification is not a candidate for Self-Governance. In the absence of EBGL impacts, we believe this could have been treated as Self-Governance, as it does not materially impact any of the other Self-Governance criteria as the proposal is to replace one arbitration body with another.

The BSC Panel unanimously:

- **RAISED** P457 in accordance with Section F2.1.1(d)(i);
- **AGREED** that P457 progresses directly to the Report Phase;
- **AGREE** that P457:
 - **DOES** better facilitate Applicable BSC Objective (d);
- **AGREED** that P457 **DOES** impact the EBGL Article 18 terms and conditions held within the BSC;
- **AGREED** the impact on the EBGL objectives;
- **AGREED** an initial view that P457 **should not** be treated as a Self-Governance Modification;
- **AGREED** an initial recommendation to the Authority that P457 should be **approved**;
- **AGREED** an initial Implementation Date of:

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¹¹ <https://www.elxon.co.uk/meeting/bsc-panel-340/>

- **5 Working Days** following Authority decision;
- **AGREED** the draft Legal Text; and
- **NOTED** that Elexon will issue the Draft Modification Report (including the draft Legal Text) for a one month consultation and will present the results to the Panel at its meeting on 14 September 2023.

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.

We received 1 response to the Consultation from a Distributor who was supportive of the Modification, they were not impacted by the solution.

Summary of P457 Report Phase Consultation Responses

Question	Yes	No	Neutral/ No Comment	Other
Do you agree with the Panel's initial unanimous recommendation that P457 should be approved?	1	0	0	0
Do you agree with the Panel that the redlined changes to the BSC deliver the intent of P457?	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 P457 should not be treated as a Self-Governance Modification?	1	0	0	0
Do you agree with the Panel's initial view that P457 does impact the EBGL Article 18 terms and conditions related to balancing held within the BSC?	1	0	0	0
Do you have any comments on the impact of P457 on the EBGL objectives?	0	1	0	0
Do you have any further comments on P457?	-	-		

Summary of P457 Report Phase Consultation Responses

Question	High	Med	Low	None	Other
Will P457 impact your organisation?	0	0	0	1	0
How much will it cost your organisation to implement P457?	-	-	-	-	-
What will the ongoing cost of P457 be to your organisation?	-	-	-	-	-

Summary of P457 Report Phase Consultation Responses

Question	0-6 Months	6-12 Months	>12 Months	Other
How long (from the point of approval) would you need to implement P457?	1	0	0	0

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8 Recommendations

We invite the Panel to recommend to the Authority:

- That P457 should be **approved**;
- That P457 **DOES** impact the EBGL Article 18 terms and conditions held within the BSC;
- That P457 is consistent and neutral with the EBGL objectives;
- An Implementation Date for P457 of:
 - **5 Working Days** following Authority decision; and
- The Legal Text for P457.