



Department for  
Business, Energy  
& Industrial Strategy

**ofgem**

Making a positive difference  
**for energy consumers**

# The future ownership of Elexon

Closing date: 22<sup>nd</sup> September 2022

July 2022



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# General information

## Why we are consulting

The Government and Ofgem response to the consultation on the Future System Operator set out our commitment to proceed with the creation of the Future System Operator (FSO). The FSO will be established in public ownership and will therefore require a transaction between government and National Grid plc (and any other relevant parties). Elexon is an independent entity, however it is wholly owned by National Grid Energy System Operator (NGESO). Given the creation and public ownership of the FSO, the ownership of Elexon will also change. Therefore, we are consulting to gather evidence and views to help us decide what the best ownership structure for Elexon would be. Elexon is widely considered to be an effective industry body. We are not consulting because we want to reform Elexon's roles or its day-to-day governance. We are consulting on how best to structure the ownership of Elexon to ensure its current successful work can continue.

## Consultation details

**Issued: 14th July 2022**

**Respond by: 22nd September 2022**

**Enquiries to:**

Electricity Systems Team  
Department for Business, Energy and Industrial Strategy  
Abbey 1, 3rd Floor,  
1 Victoria Street  
London  
SW1H 0ET

**and**

Future System Operation  
Office of Gas and Electricity Markets  
10, South Colonnade  
Canary Wharf London  
E14 4PU

**Email:** [futuresystemoperator@beis.gov.uk](mailto:futuresystemoperator@beis.gov.uk) and [SOreview@ofgem.gov.uk](mailto:SOreview@ofgem.gov.uk)

**Consultation reference:** The future ownership of Elexon

**Audiences:**

Energy suppliers, generators, interconnectors, distribution network operators, aggregators, non-physical Balancing and Settlement Code trading parties, notification agents, National Grid plc, National Electricity Transmission System Operator, Elexon, BSC Panel, organisations central to the Electricity Market Reform Settlement programme, trade associations, code administrators, consumer advocacy groups and any other organisations with a direct interest.

**Territorial extent:**

Great Britain

## How to respond

**Email to:** [futuresystemoperator@beis.gov.uk](mailto:futuresystemoperator@beis.gov.uk) and [SOreview@ofgem.gov.uk](mailto:SOreview@ofgem.gov.uk)

**Write to:**

Electricity Systems Team

Department for Business, Energy and Industrial Strategy

Abbey 1, 3rd Floor

1 Victoria Street

London

SW1H 0ET

**and**

Future System Operation

Office of Gas and Electricity Markets

10, South Colonnade

Canary Wharf London

E14 4PU

A response form is available on the GOV.UK consultation page:

[www.gov.uk/government/consultations/XXX](http://www.gov.uk/government/consultations/XXX)

BEIS and Ofgem will share all responses received with each other.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

## Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

Ofgem will publish non-confidential responses (or parts of response) on its website. If you want your response in whole or in part to be considered confidential, please tell us in your response and say why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

Please be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

All responses will be processed by both BEIS and Ofgem as this is a joint consultation. This includes sharing the contact details of respondents between BEIS and Ofgem.

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

## Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: [beis.bru@beis.gov.uk](mailto:beis.bru@beis.gov.uk).

# Glossary

<b>BAU operations or BAU activities</b>	Business as usual operations or activities
<b>BEIS</b>	Department for Business, Energy and Industrial Strategy
<b>BESS</b>	British Energy Security Strategy
<b>BSC</b>	Balancing and Settlement Code
<b>BSCCo</b>	The BSC refers to Elexon as BSCCo (BSC Company). It is used throughout this document with the same meaning as Elexon.
<b>BSC Panel</b>	A group of industry experts and consumer representatives oversee the BSC
<b>BSC Parties</b>	All industry parties signed up to the <b>BSC</b>
<b>CCUS</b>	Carbon capture, usage and storage
<b>Code consolidation</b>	Refers to merging all or some of the codes into one or several codes to improve accessibility and facilitate coordinated change.
<b>Code consultation response</b>	Refers to the government response to the Energy Code Reform Consultation published in March 2022.
<b>CfD</b>	Refers to the Contracts for Difference scheme which creates contracts between electricity generators and the Low Carbon Contracts Company which incentivise low-carbon investments.
<b>DCC</b>	Data Communications Company
<b>DNO</b>	Distribution Network Owners
<b>EBGL</b>	Electricity Balancing Guideline regulation, a European framework that lays down the rules for the integration of balancing markets in Europe to enhance Europe's security of supply
<b>EMR</b>	Electricity Market Reform
<b>EMRS</b>	Electricity Market Reform Settlement



<b>ESO</b>	Electricity System Operator, also referred to as <b>NGESO</b> (see below).
<b>FSO</b>	Future System Operator
<b>FSO consultation response</b>	Refers to the government response to the Future System Operator Consultation published in April 2022.
<b>HMT</b>	Her Majesty's Treasury
<b>LCCC</b>	Low Carbon Contracts Company
<b>MHHS</b>	Market-wide Half-Hourly Settlement, a major programme reforming electricity settlement
<b>NETA</b>	Refers to the three-part New Electricity Trading Arrangements which make up the system under which electricity is traded in the UK.
<b>NGESO</b>	National Grid Electricity System Operator Ltd, also referred to as <b>ESO</b> (see above).
<b>NGET</b>	National Grid Electricity Transmission
<b>NGG</b>	National Grid Gas
<b>Non-material code change</b>	A code change that does not have a material impact on consumers, competition, or the operation of the market (in line with current criteria set out in licences and codes).
<b>Ofgem</b>	The Office of Gas and Electricity Markets
<b>REC</b>	Retail Energy Code
<b>RECCo</b>	Retail Energy Code Company
<b>REMA</b>	Review of Electricity Market Arrangements

# Executive Summary

## Background

The Government and Ofgem response to the consultation on the Future System Operator (FSO)<sup>1</sup> set out the Government's decision to create a publicly owned FSO, taking on all the current roles of National Grid Electricity System Operator (NGESO) and some key roles in the gas system. The creation of this body and the associated transfer into the public sector requires us also to consider the future ownership of Elexon Limited, a subsidiary of NGESO. Elexon Limited (referred to as Elexon in this document) was established to administer the Balancing and Settlement Code (BSC)<sup>2</sup> and procure the systems needed to implement it ahead of the New Electricity Trading Arrangements. Elexon also performs other roles in the electricity market, for example related to Electricity Market Reform Settlement (EMRS).

Elexon is wholly owned by NGESO. However, Elexon is operationally and financially independent from its parent company and is controlled by its own board with input from the BSC Panel. The organisations have very different roles and considerations around their future ownership may be different. Therefore, the changes proposed for NGESO necessitate consideration of Elexon's ownership independently from considerations about FSO ownership. For this reason, we are consulting to gather evidence and views on our proposals for the future ownership of Elexon.

This consultation is being driven purely by the creation of the FSO and its proposed ownership structure. However, code reform and the intention to create a new governance framework for energy codes<sup>3</sup> also has implications for Elexon. An important consideration in the future ownership structure for Elexon is therefore that it not only enables Elexon to continue to perform its existing functions well, but it also does not preclude any outcomes of code reform.

## Ownership and Governance

Throughout this document we refer to 'ownership' and 'governance' of Elexon. When talking about 'ownership', we are referring solely to the entity or entities holding shares in Elexon. This is because NGESO exerts no control over Elexon in its capacity as shareholder and changing Elexon's owner therefore has no immediate impact on how Elexon is controlled. Nor does NGESO obtain any financial rights from its ownership e.g. no dividends or other distributions, no proceeds on a winding-up and no profits from a 'sale' of the shares. By 'governance', we mean board composition and appointment, role of the BSC panel, and voting rights –

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<sup>1</sup> Government response to the consultation on a Future System Operator, March 2021.

<https://www.gov.uk/government/consultations/proposals-for-a-future-system-operator-role>

<sup>2</sup> The BSC establishes the rules for financial settlement when the amount of electricity generated or used by a BSC party differs from that they had purchased or sold in forwards markets.

<sup>3</sup> Government response to the consultation on energy code reform, March 2021.

<https://www.gov.uk/government/consultations/energy-code-reform-governance-framework>

essentially, how control is exerted over Elexon. As set out in 1.2, our primary concern is Elexon ownership. We acknowledge that, following a change in ownership, there may be consequential changes to governance required, but our intention is not to change governance, unless it is necessary for other reasons.

## Proposed ownership models

In light of the decisions in the FSO consultation response, we have identified two leading enduring options for the ownership of Elexon (see section 2):

1. public ownership as a subsidiary of the FSO, and
2. industry ownership, owned by a representative group of industry stakeholders.

We have also considered several other options for the future of Elexon, including whether Elexon should be merged into the FSO when it is created, and whether Elexon could have a single private owner (as is currently the case). Section 2 sets out why we only analyse public ownership and ownership by industry parties in detail.

### Public ownership

Under this option, Elexon would move into the public sector as a subsidiary of the FSO, which will ultimately be owned by government. It would still be governed through the BSC. We anticipate that there would be few if any changes to the existing governance structure, data sharing provisions and mandatory activities of Elexon outlined within the BSC, allowing it to continue its business as usual (BAU) operations. Under this option, we consider that it would be important that (as with the FSO itself) Elexon was operationally independent of government, meaning government would not be involved in day-to-day operational decisions. Where new public bodies are created, they are subject to separate government classification and approvals processes.

### Industry ownership

This ownership option would involve Elexon being owned collectively by relevant energy industry parties (which may or may not include the FSO) and governed through the BSC. The shares in Elexon would be reallocated from NGESO to all or a subset of the BSC parties. As with governance with the public option, we expect that there would be minimal changes to the existing structure (beyond the change in ownership), funding arrangements, data sharing provisions and mandatory activities of Elexon outlined within the BSC. This would allow Elexon to continue their BAU operations and maintain the organisation's industry accountability.

Should this option be preferred, an important consequential decision is which exact groups of BSC parties ought to own Elexon. Since the new shareholders would have no control and no liabilities, we believe that ensuring swift implementation with minimum disruption for Elexon is our objective when selecting the correct shareholders. We set out the different shareholder groups that could own Elexon, with a focus on selecting shareholders that are licenced and which present the fewest hurdles to successful implementation. Within this option, we believe

that licenced, funding parties (suppliers and generators) is likely to be the most appropriate group of shareholders.

### Assessment of proposed ownership models

We have analysed the two key ownership models against the following criteria.

- minimise disruption to Elexon's BAU operations, including on the BSC;
- avoid disruption to the FSO delivery timeline;
- preserve accountability to industry stakeholders and independence; and
- ensure resilience to future change, including the impact of code reform.

Our analysis suggests that both public and industry ownership options broadly meet these criteria. We believe either would allow Elexon to continue its essential work.

However, we have not seen any clear evidence that private ownership raises any specific issues, or any specific rationale to think a public body is more appropriate.

Without any strong case for public ownership, **our preferred enduring option is industry ownership.**

### Temporary Fallback Option

If we were to decide, post-consultation, to implement the industry ownership option, we would need also to understand how quickly it could be delivered, as it will require careful coordination across a large number of different parties. There is a risk that this process could cut across or even delay the wider changes proposed to ownership of the FSO. In this case, we suggest mitigating the risk of disruption by deploying the public ownership option as a temporary fallback option. The fallback option would only be implemented if it became apparent that industry ownership could not be implemented before the FSO contract signature date. This is set out in detail in section 3.

## Implementation

Should we choose to pursue the industry ownership option, implementation would require a period of engagement with the new shareholders to agree arrangements to implement the new model. Following this, provisions to enable transfer of shares would be required, in addition to appropriate modifications to the licences of parties who now own Elexon and to the BSC. The length of these two components would be dependent on decisions made by industry stakeholders and therefore it is unclear how long this could take. If the duration of the engagement were to impact the FSO delivery, the fallback option as outlined in section 4 would need to be adopted temporarily.

We consider that a public ownership option could be implemented in line with the FSO timelines. However, irrespective of whether this option would be implemented as the enduring state option, or whether we would want to retain the possibility of using it as a fallback option, it

would be important to ensure that Elexon remained operationally independent and free from day-to-day control during any enduring or temporary period of public ownership.

### Assessment of key costs and risks

There will, as detailed below, be some minor costs to implementing this change of ownership, however the benefits of ensuring the timely implementation of the FSO and safeguarding the effectiveness of Elexon clearly outweigh these.

We are not proposing any changes to the funding or roles of Elexon, and so this should not impact on the costs paid by BSC funding parties. The shares of Elexon themselves we expect will be transferred to a new shareholder at negligible value, given it is not a profit-making entity. The costs of the industry ownership option are therefore likely to be only the administrative costs borne by organisations involved in implementing and maintaining the new ownership structure.

The costs of implementing the public ownership option would be similar, although a greater portion of the costs would fall to BEIS.

### Next steps

In the next few weeks, we will host a webinar to outline our consultation proposals and invite initial views on these. This will be an open invite to all interested stakeholders. Following this, we will have both individual meetings and workshops with industry stakeholders to discuss views on the proposals to a greater extent.

This engagement is not a substitute for formal written responses, which we invite throughout the consultation period. The instructions for submitting a written response are outlined on page 7.

# 1 Background

## 1.1 The roles, ownership, and governance of Elexon

### 1.1.1 Roles

Elexon Limited<sup>4</sup> (referred to as Elexon in this document) is a private company limited by shares which was established on 1 August 1999 to administer the Balancing and Settlement Code (BSC) and procure the systems needed to implement it ahead of the New Electricity Trading Arrangements (NETA) that went live on 27 March 2001. The BSC establishes the rules for financial settlement when the amount of electricity generated or used by a BSC party differs from that they had purchased or sold in forward markets. Elexon administers this code and carries out the settlement of imbalances.

In addition, Elexon performs some wider services related to Electricity Market Reform (EMR), through its subsidiary EMR Settlement Ltd, such as for the Low Carbon Contracts Company (LCCC) in respect of the Contracts for Difference scheme<sup>5</sup> and the Electricity Settlements Company in respect of the Capacity Market. Elexon also has a lead role as Senior Responsible Owner for the industry-led implementation of Market-Wide Half-Hourly Settlement (MHHS). To facilitate industry efforts for implementation, there is a separate 'MHHS Programme' unit in Elexon. Elexon was also chosen to initially govern the Event Driven Architecture<sup>6</sup> (a new IT system for MHHS), however this will be reviewed as part of code reform. These functions make Elexon a central part of the energy system. Furthermore, the recently published Review of the Electricity Market Arrangements (REMA) consultation outlined the proposals for the review of the British electricity market structure. Any ownership option should be resilient to changes arising from these reforms, along with the changes related to MHHS and EMRS.

Elexon has two active subsidiaries, primarily EMR Settlement Ltd. We are not considering their ownership separately from Elexon and anticipate they will be transferred into new ownership with their parent, Elexon Ltd. This is because they do not operate as separate entities, but rather share their governance with Elexon with annual accounts being consolidated. "Elexon" in this document can be taken to mean Elexon Ltd and its subsidiaries.

### 1.1.2 Ownership and funding

Elexon is wholly owned by National Grid Electricity System Operator (NGESO), which is required by their licence to establish Elexon. However, Elexon is operationally and financially independent from NGESO. Although NGESO is Elexon's only shareholder, its powers to appoint or remove directors are completely constrained under the BSC, as are any other

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<sup>4</sup> ELEXON LIMITED - Company number 03782949

<sup>5</sup> This scheme provides the developers of renewable generation capacity with a guaranteed price at which they can sell their electricity. This encourages investment. It is the government's main scheme for supporting low-carbon electricity generation.

<sup>6</sup> <https://www.ofgem.gov.uk/publications/decision-governance-funding-and-operation-event-driven-architecture-market-wide-half-hourly-settlement>

powers it may have as shareholder. Elexon's financial results are not consolidated with those of NGESO. The BSC also removes any obligation on NGESO to provide shareholder funding. It is essentially accountable to its customers – over 500 signatories of the BSC – making it a service provider to industry. Elexon is a not-for-profit entity, funded by a subset of the BSC parties. Its funding arrangements are set out in the BSC.

### 1.1.3 Governance

Elexon is governed by industry in three ways. Firstly, the BSC sets out that Elexon will have a Board of Directors and that this Board will establish a Nomination Committee to decide who to appoint as Directors, having regard to ensuring a mix of industry and non-industry skills in its non-executive directors. NGESO, as the owner, cannot interfere in this process. This Board appoints the Executive of Elexon, who run the organisation day-to-day. In this manner, Elexon is governed and run independently from NGESO.

Secondly, the BSC both constrains and sets out the activities of Elexon. The BSC Panel ("The Panel") oversees the BSC including a key role in approving, or recommending the approval of, BSC modifications, while Elexon manages the day-to-day delivery of BSC processes. The BSC Panel is a group of industry, independent, and consumer experts.<sup>7</sup> All panel members are required to act impartially and not as representatives of any organisation or sector. The Panel assess modifications to the BSC, approving non-material changes<sup>8</sup> and making recommendations to Ofgem for major modifications. In addition, it ensures that all parties comply with the code's rules and that Elexon is administering the code properly. The BSC grants Elexon independence over the arrangements for administering the code and sets out the general responsibilities of Elexon in some detail. However, the Panel has oversight over Elexon's performance of these functions and can ask Elexon to carry out some specific actions, such as taking action against any BSC parties that breach their obligations.

Finally, a sub-section of BSC Parties make up the BSC Voting Parties. These organisations approve directorial appointments, reappointments, and removals. They can also pass non-binding advisory motions.

## 1.2 Creation of the Future System Operator

Elexon's shares are owned entirely by NGESO. However, Elexon is operationally and financially independent from its parent company. It is controlled by its own board and

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<sup>7</sup> There are 12 voting members in total comprised of 10 full voting members - five elected industry members, two consumer members and three appointed by the chair. The NGESO member can't vote on modification business but can vote on other decisions. The chair doesn't normally get a vote but if there is an equality of votes on any resolution the chair gets a casting vote. There are thirteen voting members – the Chair, five members elected by BSC parties, two members appointed by Citizens' Advice, one member appointed by NGESO, and up to three members appointed by the Chair. Ofgem and the Distributed System Operators can send a representative but are not members of the Panel.

<sup>8</sup> The criteria for which code changes can be approved by the BSC panel are set out in Section F and Annex X1 of the BSC and include changes that are unlikely to have a material impact on existing or future electricity consumers; competition; the operation of the market; security of supply; or BSC governance procedures or modification procedures.



accountable to industry, with the BSC Panel overseeing BSC arrangements. Elexon is wholly owned by NGESO, but the organisations have very different roles and therefore considerations around their future ownership may be different.

The transfer of NGESO into public ownership means that maintaining the status quo ownership model is not possible, since a private-sector ESO will no longer exist. The different roles of Elexon and the ESO mean that Elexon's ownership must be considered independently from considerations about FSO ownership.

This consideration of ownership is purely driven by the FSO changes. In the absence of those, we would not be considering this question, as we are not aware of any other drivers suggesting changes are necessary.

Since NGESO exerts no control over Elexon in its capacity as shareholder, the creation of the FSO should not in itself impact significantly on Elexon's role, operations, funding, or governance. The only question it raises is the question of ownership. There may be some consequential changes to governance that are necessary based on the new ownership arrangements, however our only objective is to create an appropriate ownership structure.

### 1.3 Code Reform

The Government response to the consultation on energy code reform<sup>9</sup> announced the intention to create a new governance framework for the energy codes. As part of this new framework, Ofgem will be granted new strategic code functions, which will include the ability to establish and regulate (via licence) one or more code manager(s). These new code managers will replace the existing combination of code administrators and code panels and will be responsible for playing an enhanced role in the code change process and delivering the strategic direction set by Ofgem.<sup>10</sup> All decisions regarding who to select and licence as a code manager will be taken by Ofgem, who will have a range of competitive and non-competitive selection options available to them. This means that code administrators will not automatically become code managers. Ofgem plans to consult as part of the selection process, which may also entail an initial period of code consolidation.

Although this present consultation is being driven by the impact of the creation of the FSO, code reform also has implications for Elexon. In addition to ensuring Elexon continues to perform its existing functions well, we do not want any changes to the ownership structure of Elexon to preclude its potential appointment as a code manager in future, or other potential changes such as code consolidation.

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<sup>9</sup> Government response to the consultation on energy code reform, April 2022.

<https://www.gov.uk/government/consultations/energy-code-reform-governance-framework>

<sup>10</sup> All decisions on the detailed roles and responsibilities of code managers will be subject to future consultation by Ofgem.



## 1.4 Criteria

In light of these interactions with the FSO and code reform projects, we believe that there are essentially four key criteria we ought to use to inform decisions post-consultation. We have not included 'cost' as a criteria here. This is because we believe both implementation and ongoing costs for both options are low and, although they do vary slightly, they are minor compared to the benefits of ensuring Elexon remains resilient and successful. Analysis of these costs can be found in section 5.

- **Minimise disruption to work on the BSC, MHHS, and EMR:** the ownership structure needs to be deliverable in a manner which minimises disruption to Elexon's crucial work on the BSC, as well as its work on energy system transformation through MHHS and EMRS. It is not our objective to alter the roles or governance of Elexon, although consequential alterations may be needed because of ownership change.
- **Avoid disruption to the FSO delivery timeline:** the core objective of this project is to ensure Elexon continues to function well without disrupting the timely creation of the FSO.
- **Preserve accountability to industry stakeholders and independence:** the ownership structure of Elexon needs to preserve the accountability of Elexon to their key stakeholders, as well as the independence of Elexon from any other specific organisation.
- **Ensure resilience to future change:** including to the impact of code reform on Elexon's work.

### Question:

1. **Do you agree with the proposed criteria to determine the future ownership of Elexon? Please state why.**

## 1.5 Scope of this consultation

This consultation proposes two ownership options for Elexon, namely Elexon transferring to the public sector as a subsidiary of the FSO, and Elexon being owned by a group of industry stakeholders and thereby remaining in the private sector. We analyse both options against the criteria set out in section 1.4 and provide a high-level overview of how either option could be implemented in section 4.

We also describe a temporary fallback option, which would only be relevant if, post-consultation, we decided that Elexon should be industry owned, and if this final option could not be implemented without risking disruption to the FSO implementation timelines.

Finally, we set out an assessment of key costs and risks.

Previously, stakeholders have suggested to us that Elexon take on additional responsibilities as part of the creation of the FSO, and in particular some stakeholders have suggested that

Elexon could take on the administration of additional codes as part of this process. We do not consider that proposal here. The allocation of code administration and management responsibilities is a question being addressed through the separate code reform project. This proposal is therefore out of scope of this consultation, which focuses only on the ownership of Elexon.

Throughout this document we refer to 'ownership' and 'governance' of Elexon. When talking about 'ownership', we are referring solely to the entity or entities holding shares in Elexon. This is because NGESO exerts no control over Elexon in its capacity as shareholder and changing Elexon's owner therefore has no immediate impact on how Elexon is controlled. By 'governance', we mean board composition and appointment, role of the BSC Panel, and voting rights – essentially, how control is exerted over Elexon. As set out in section 1.2, our primary concern is Elexon ownership. However, we acknowledge that, following a change in ownership, there may be consequential required changes to governance, but our intention is not to change governance, unless it is necessary for other reasons.

## 2 Ownership models

In light of the response to the FSO consultation, we have considered the possible options for the future ownership of Elexon. We believe the two most realistic and effective ownership options are:

- public ownership as a subsidiary of the FSO, and
- ownership by a group of industry stakeholders.

Section 2.1 discusses some wider options we have discounted. Sections 2.2 and 2.3 then provide an overview of the two lead options. Following this, section 2.4 sets out an analysis of both options against the criteria set out in section 1.4. Section 2.5 makes a recommendation for industry ownership and notes the key questions we have for respondents on this option.

### 2.1 Consideration of alternative options

In addition to the two ownership options above that we are consulting on, we considered several other options for the future of Elexon which we believe are not as appropriate and effective for the following reasons. We are therefore not consulting on these.

- One option would be for Elexon to be merged into the FSO when it is created and for it therefore to no longer exist as an independent company. While there could be some potential benefits to this proposal, at this stage a major organisational change such as this might risk interfering with not only Elexon's provision of essential services, but also with the creation of the FSO and the ESO/FSO's essential operations. We do not therefore consider it as a substantive option.
- Another option would be for Elexon to have a single private owner. This is currently the case, with NGESO the single owner. In theory, another private company could take on the shareholding of Elexon. The new owner would have to be a BSC party and agree to be bound by provisions currently binding NGESO since, if the provisions of the BSC did not constrain the new owner in the manner they do NGESO, the level of influence of a private owner on Elexon would be at their discretion and they may expect a level of influence. This would be a major change to Elexon's governance. We have identified two possible categories of single private owner, but believe they are inappropriate for the following reason:
  - Elexon could be owned by another part of National Grid group, for example National Grid Electricity Transmission. Transmission Owners (TOs) are currently not listed as entities that can become a BSC party, so fundamental changes would be needed to the BSC to recognise a Transmission Owner as a BSC party in only a limited role as shareholder of Elexon. This is a complex and unnecessary change to the BSC which would not protect the timeline for the creation of the FSO and may interfere with Elexon's BAU work due to the high resource burden.

- Another single BSC party or a small number of specifically important BSC parties could replace NGESO as the sole shareholder of Elexon. We have not identified any other single BSC party which holds a central and unique role in the system like that held by the NGESO such that it would be appropriate for it to become the sole shareholder. If a single party was selected, a new risk would also be created that the new owner became insolvent and Elexon's share capital became an asset in the insolvency process.
- Elexon could be owned by a new holding company limited by guarantee, with some combination of industry parties acting as the guarantors. This would be a more complex change to Elexon's ownership which will take longer to implement, endangering the FSO implementation timeline and possibly intruding on Elexon's capacity to carry out its BAU work. Due to the separation of control and financial liability from ownership, this new ownership model would bring no benefits commensurate to these risks.

## 2.2 Public Ownership

Under this option, Elexon would not be separated from NGESO prior to the transfer into the public sector. Elexon would move into the public sector as a subsidiary of the FSO, which will ultimately be owned by government. More details on the future ownership and governance of the FSO are set out in the Government and Ofgem response to the consultation on the Future System Operator.<sup>11</sup>

Changes required to the BSC would be limited to changing the references from NGESO to the FSO which would make this option reasonably straightforward to implement.

Under this option we consider that it would be important that (as with the FSO itself), Elexon was operationally independent of government, meaning government would not be involved in day-to-day operational decisions.

It is established government policy<sup>12</sup> that new public bodies should only be created if there is a clear and pressing requirement and no viable alternative. Where they are created, they are subject to separate Government classification and approvals processes. If it were necessary to create a new public body, it is likely that this new body would face some controls to ensure it delivered its functions effectively within the public sector.

## 2.3 Industry ownership

This ownership option would involve Elexon being owned by parties within the energy industry and governed through the BSC arrangements (see sections 1.1.2 and 1.1.3). The shares in Elexon would be allocated to the new shareholders. We do not anticipate that there would be

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<sup>11</sup> Government response to the consultation on a Future System Operator, April 2022.

<https://www.gov.uk/government/consultations/proposals-for-a-future-system-operator-role>

<sup>12</sup> <https://www.gov.uk/government/publications/classification-of-public-bodies-information-and-guidance>

any changes to the existing governance structure beyond changing the owner of the shares, and there would be no additional liabilities for the owners.

As per Elexon's current governance structure, BSC parties would continue to be responsible for voting for Elexon Board members and the industry members of the BSC Panel. In addition, the existing funding arrangements, data sharing provisions and mandatory activities of Elexon outlined within the BSC would remain the same. This would allow Elexon to continue their BAU operations and maintain the organisation's industry accountability and would mean that any liability or costs incurred by Elexon throughout its operations will remain the responsibility of all BSC parties. Elexon would therefore continue to be accountable to industry via the BSC Panel.

There is precedent for taking this approach. The ownership structure of this option has some similarities to the Retail Energy Code Company (RECCo), which is owned by domestic suppliers, non-domestic suppliers, gas transporters, distribution network operators (DNOs), and the Data Communications Company (DCC). It is similar to Elexon in so far as shareholders are not allowed to interfere with RECCo's operations, and RECCo's activities are restricted to those outlined in the Retail Energy Code (REC) itself.

### **Potential shareholder groups**

The full list of categories of BSC party can be found in Section A 1.3 of the BSC.<sup>13</sup> The main groups are:

- The System Operator. ESO is licenced and does not provide funding. It has 6% of the vote at meetings of the BSC voting parties.
- Distribution Network Operators. DNOs are licenced, but do not provide funding to Elexon. They are however BSC Voting Parties, allocated 8% of the total voting power between them.
- Suppliers. Suppliers are BSC trading parties. They are licenced, they fund Elexon, and they are voting parties.
- Generators are BSC trading parties. They are licenced, they fund Elexon, and they are voting parties.
- Interconnectors (and interconnector error administrators) are licenced. As trading parties, they are allocated a voting share, however they do not provide funding to Elexon.
- Non-physical traders, such as commodities traders, are not licenced. They provide funding to Elexon, but only in proportion to their activities, which are assumed to drive lower costs than those of physical trading parties. They are voting parties, assigned votes according to their share of funding.
- Virtual Lead Parties, organisations which exist only to participate in the balancing mechanism and therefore do not face the same level of charges as other BSC Parties. They are neither currently licenced, nor do they fund Elexon, nor are they voting parties.

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<sup>13</sup> <https://www.elexon.co.uk/the-bsc/bsc-section-a-parties-and-participation/>

Trading parties (suppliers, generators, and interconnections) are allocated 86% of the total votes in proportion to how much funding they provide.

If we conclude that industry ownership is the correct policy, we will need to choose all or some of these groups to take on the share capital. Given that ownership does not denote control and all these parties would be bound by the existing governance arrangements set out in the BSC, we believe the key issue to consider is how easy these new shareholder groups would be to implement, as well as its resilience to change as parties join and leave the cohort. An easier implementation protects the timeline for the creation of the FSO (criteria 1) and means less interruption to Elexon's BAU work (criteria 3).

We do not believe it is viable for all BSC Parties to own Elexon. This is because the group is very large and contains a diverse range of organisations, which is likely to make the practical steps necessary to transfer shares more complicated. We believe it would be more appropriate for a sub-set of BSC parties to own Elexon, and have identified the following possible options:

- 1) Licenced BSC Parties: generators, suppliers, the System Operators, DNOs, and Interconnectors. This has the advantage that all these parties can be given a licence obligation to own the shares and cooperate to implement the new structure (see Section 4)
- 2) Licenced parties who fund Elexon: generators and suppliers. This has a similar advantage to above, that all parties may be given the licence obligation to own these shares, with the additional possible advantage that there are fewer parties involved. This smaller membership may make co-ordination easier.
- 3) Voting Parties: all licenced parties, plus some non-physical traders. This carries the advantage that there is an existing decision-making forum that already votes on certain matters under the BSC and could take the shareholder decisions required to ratify a code modification in the same meetings, e.g., on approving new or modified Articles of Association. However, it has the disadvantage of being a wider range of parties than licenced funding parties, including some parties who are not licenced (e.g. non-physical traders). This means licence obligations could not be placed on all new shareholders.

We believe that all three of these options are worth consideration, although as per Section 4, implementation and enforcement may be easier if all the new owners are licenced. This suggests that BSC Voting Parties is not a viable shareholder group. Therefore, we recommend that the new shareholders be the licenced funding parties, generators and suppliers. These parties are all licenced, and the exclusion of other licenced parties may make implementation easier.

### **Rights and Obligations**

In the near term, the new owners would be required to co-operate in the work necessary to transfer the shares to them and any consequential tasks (e.g. alterations to the Articles of Association). There may be a small, similar administrative activities required by any firms which accede to the BSC in future and are required to take on shares. They will own a single

share so this wouldn't have any impact on their annual reports, and they will exercise no control over Elexon so there shouldn't be any corporate governance implications for them.

The rights of the new Elexon shareholders would be constrained by the BSC, as NGESO's are currently. Decisions regarding directorial appointments and approval of accounts are made by Voting Parties, not by shareholders. It is possible that in future shareholders may have to formally approve a decision, such as alterations to Article of Association, however we are not at this time aware of any ongoing routine work that will be required.

The BSC currently states that "[NGESO] as BSCCo Shareholder has no liability or obligation to provide any finance or financial support to Elexon or its subsidiaries<sup>14</sup>. We propose that this continues to apply to any new owner(s) of Elexon, such that they would also have no such liabilities or obligations. Under the current model, Elexon is entirely funded by industry participants under the provisions of the BSC and this would continue. Elexon has robust financial management arrangements in place which ensure that industry participants provide all the necessary funding for their operations in all scenarios.

### Questions:

- 2. Do you agree that public ownership and industry ownership, as set out above, are the two most credible ownership options? In your view, are there any other ownership options that we should consider, and why?**
- 3. Do you agree with our stated preference of the potential combinations of BSC parties which could own Elexon if industry ownership were chosen? Please state why.**

## 2.4 Analysis of ownership models

Below we assess the risks and benefits of both options described above against the criteria set out in section 1.4.

### **Criterion 1: Minimise disruption to work on the BSC, MHHS, and EMRS**

Neither ownership option would hinder the delivery of Elexon's core responsibilities (e.g., managing the BSC and MHHS), because, as set out under criterion 3, governance, funding, and operational arrangements would not change beyond the change in ownership of shares.

Elexon would be able to continue its crucial work on the BSC, MHHS, and EMRS under these scenarios. Governance and funding arrangements would not change.

### **Criterion 2: Avoid disruption to the FSO delivery timeline**

We believe that the tasks necessary to implement either new ownership structure can be completed to an FSO timescale. The industry ownership option does require the coordination,

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<sup>14</sup> <https://bscdocs.elexon.co.uk/bsc/bsc-section-c-bscco-and-its-subidiaries>



agreement and mobilisation of a large number of different parties, whereas public ownership can be implemented without complex coordination. This may include certain legal processes required for the share transfer which would be managed by industry.

### **Criterion 3: Preserve accountability to industry stakeholders and independence**

Under both options, Elexon's current funding and governance arrangements, data sharing provisions and mandatory activities would remain as outlined within the BSC. This means that the organisation's industry accountability would be maintained. We would also expect Elexon to remain operationally independent of government if publicly owned, and we would not want Government to be involved in day-to-day decisions.

### **Criterion 4: Ensure resilience to future change**

Under both options, as Elexon would continue to use the existing governance structure outlined within the BSC, Elexon's resilience to wider industry changes would likely be similar to the current situation, whereby Elexon leverages knowledge that exists within the organisation, alongside guidance from the BSC Panel to inform strategic decision making.

If a transition of ownership were to occur simultaneously with the code reform outcome it could be a significant amount of change for Elexon at one time, which also needs to be considered. To aid this, we would need to implement this option in such a way that we minimise work duplication. Despite this, overall, we believe that both options would ensure resilience to the impacts of code reform.

Elexon's work on MHHS is a significant responsibility. In the longer term, policy changes driven by EMRS and MHHS will require Elexon to adapt operationally to cope with an increase in the granularity of data and volume of payments being transferred. This may lead to more disputes on settlements due to the greater volumes of data being dealt with. However, none of this will change Elexon's core system delivery roles or its code activities, rather they may just expand in capacity. Both the ownership structures considered would ensure that Elexon retains its non-profit status and the shareholders of Elexon would be prohibited from interacting with Elexon's activities as stated in the BSC. Either ownership option would therefore be acceptable for work on these areas to continue.

## **2.5 Preferred position on ownership option**

We are not proposing changes to Elexon's functions and purposes. As set out above, we believe either of these two ownership options meet these four criteria to a sufficient extent for us to believe they are plausible.

We have not seen any clear evidence that private ownership is a problem, or any specific rationale to justify the creation of a new public body. Without any strong case for public ownership, our preferred enduring option is industry ownership.



If we were to decide, post-consultation, to implement the industry ownership option, deploying the public ownership option as a temporary fallback option could mitigate potential risks to the FSO implementation timelines. The fallback option would only be implemented if it became apparent that the industry ownership could not be implemented before the FSO contract signature date. This is set out in detail in section 3.

**Question:**

- 4. To what extent do you agree with the above analysis of the two main ownership options, public ownership and industry ownership, and our preference for industry ownership?**

## 3 Consideration of a temporary fallback option

### 3.1 Necessity of fallback option

If, following consultation, industry ownership was chosen as the enduring solution for Elexon, there would be a potential risk impacting or delaying the timely delivery of the FSO transition. It is therefore prudent to consider an interim fallback option.

We consider a fallback option a temporary solution to prevent impeding the progress of the FSO project overall. This means a fallback option would only be implemented under very defined circumstances, namely:

- if we had determined post-consultation that the industry ownership model was the correct way forward **and**
- transferring Elexon ownership from NGESO to industry takes longer than anticipated and risks impeding on the progress of creating the FSO.

If we determine that this option is preferable, there will be a trigger point at which we would need to revert to implementing the fallback option if a transition to industry ownership was not achievable, so that the Elexon ownership transfer would be implemented prior to establishment of the FSO.

If a fallback option were to become necessary, this would be proposed as a temporary arrangement.

### 3.2 Consideration of potential temporary fallback options

We have considered various potential arrangements that could serve as a fallback option. As such an arrangement would always be temporary and need to be implemented quickly, we consider ease of implementation as the key criteria for identifying the best fallback option. We have looked into the following fallback options:

#### 3.2.1 Option 1: temporarily transfer Elexon into ownership of a single industry party

In section 2.1, we set out why we believe that Elexon being owned by a single industry party would not be desirable in the long term. We believe the same reasons apply to this option as a short-term measure.

### 3.2.2 Option 2: temporarily transfer Elexon into public ownership as a separate entity from the FSO

We also considered moving Elexon temporarily into public ownership as a direct subsidiary of BEIS. This option would raise some of the similar issues set out for a single industry owner, as the relevant government entity owner would not be an existing party to the BSC. Implementing this option would also require extensive changes to the BSC as well as potentially setting up a temporary framework agreement between BEIS and Elexon. This is likely to be complex and time and resource intensive and we do not consider the required changes proportionate for a temporary ownership arrangement. We are therefore not taking forward this fallback option.

### 3.2.3 Option 3: temporarily transfer Elexon into public ownership as a subsidiary of the FSO

As set out in the Government response to the consultation on a Future System Operator<sup>15</sup>, it is intended for the FSO to become a public corporation, that is, a public entity that is operationally independent from government but classified as public sector. Should industry ownership for Elexon be chosen, following consultation, and a fallback option becomes necessary, we propose to temporarily move Elexon into the public sector as a subsidiary of the FSO.

This fallback option would be the same as described in section 2.2 on the permanent public ownership option, meaning we do not anticipate changes to the existing governance structure or roles of Elexon. Elexon would be operationally independent of government in this scenario. The reason we consider this the best option is that it faces the fewest risks to its implementation timelines.

Should a fallback option be required as set out above, transferring Elexon out of interim public sector ownership and into industry ownership will require further time and resource. We therefore intend to only make use of this fallback option if absolutely necessary, in order to facilitate the creation of the FSO. This option would be subject to separate Government classification and approval processes.

## 3.3 Recommendation

For the reasons set out above, we consider option 3, a temporary transfer of Elexon as an FSO subsidiary into public ownership the fallback option that best fits.

#### Question:

- 5. To what extent do you agree with our proposal that Elexon should transfer temporarily into the public sector as a subsidiary of the FSO as a last resort, if industry ownership was chosen following consultation and could not be implemented without delaying the creation of the FSO? Please explain why.**

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<sup>15</sup> Government response to the consultation on a future system operator, March 2021.  
<https://www.gov.uk/government/consultations/proposals-for-a-future-system-operator-role>

## 4 Implementation

### 4.1 Implementation of public ownership option

We consider this option could be implemented in line with the FSO timelines. Transferring Elexon as an FSO subsidiary could be implemented with the powers related to the creation of the FSO.

#### **Changes to licences**

Condition C3 of the Electricity Transmission Standard Licence Conditions sets out obligations on the NGESO in relation to Elexon and the BSC.<sup>16</sup> These include the obligation on NGESO to have in force a BSC; the obligation to establish BSCCo (Elexon) to ensure the BSC is efficiently implemented; provisions regarding what shall and shall not be included in the BSC; and an obligation to comply with the BSC. With the creation of the FSO, these licence conditions would move to the new FSO licence, which would also remain the case if Elexon were owned by FSO. Ofgem will consult on the wording of the FSO licence conditions.

#### **Changes to codes**

The rights and obligations (as set out in chapter 2) of the shareholder of Elexon are set out in Section C of the BSC. To implement this option, all references to the NGESO in the BSC would need to be changed to the FSO. Most of these changes would already be required to create the FSO and we therefore do not expect further time to be required to make the changes to the codes to implement this option.

If we decided, post-consultation, to implement the industry ownership option, and the public option were to be implemented as a temporary fallback option, we note that transferring ownership of Elexon from the public sector to industry at a later stage would require consequential amendments to the BSC, however this would be the case for the implementation of any temporary fallback option.

#### **Other changes**

Articles of association for Elexon would require ministerial approval, but we believe this could be done as part of the process conducted for the FSO and therefore is unlikely to require additional resources.

Irrespective of whether this option would be implemented as the enduring state option, or whether we would want to retain the possibility of using it as a fallback option, there are separate government classification and approval processes that would need to be followed.

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<sup>16</sup> Electricity Transmission Standard Licence Conditions, Condition C3.  
<https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

This is because without this approval we could not use this option as a temporary solution if we were required to do so.

Powers to enable these code and licence changes will be included in legislation relating to the FSO. We do not think that any wider legislative changes are necessary.

## 4.2 Implementation of industry ownership option

If industry ownership were chosen for Elexon, the implementation of this option would involve three main stages: industry engagement, licence changes and code changes.

### **Engagement with industry**

BEIS and Ofgem would undertake engagement with industry to conclude which group of industry parties should own Elexon. We are hopeful that with cooperation between all relevant stakeholders this engagement would be relatively succinct given the extremely limited role of ownership as distinct from governance.

### **Changes to licences**

The obligation to have a BSC in force is currently given to the ESO, in condition 3 of its Transmission Licence. It sets out the obligation to have in force a BSC, and certain details of what the code will and won't contain. As discussed, we are considering only the ownership of Elexon here, not the arrangements which underlie the BSC. Given this, we do not consider it necessary to move this obligation and consider that System Operator's licence remains an appropriate place for this obligation to be set out. We therefore propose to move this from the Transmission Licence to the FSO's Electricity System Operator licence. Regardless of the ownership option chosen, the FSO will have the same interaction with the BSC (via the BSC Panel and its role as a Voting Party) as the ESO currently has.

Paragraph 1(b) of Condition 3 of the Transmission Licence puts an obligation on the licensee to establish the BSCCo. We believe this licence condition is now inappropriate given that Elexon already exists and is functioning as intended. Therefore, we propose to remove paragraph 1(b) from the Transmission Licence. Instead, we propose to add into the licence of the proposed new shareholders an obligation to own the BSCCo and to co-operate in its maintenance as necessary.

The intention of this would be to ensure that all parties co-operate in the implementation of the new ownership structure via a licence obligation to do so. The obligation to maintain Elexon ensures that they are bound by their licence to, for example, approve amended articles of association, if necessary, although this would not be an obligation which required any regular or onerous action from the licensee.

### Changes to codes

Irrespective of the group of industry parties that would own Elexon, the rights and obligations for shareholders would remain set out in the BSC. This would ensure that all shareholders would have the same rights and obligations. If a distinction is to be made for any reason, and specific rights and obligations set out in the BSC shall apply to specific shareholders only, the BSC would need to be amended accordingly.

Section C of the BSC would need to be amended to reflect the existence of multiple shareholders, such as replacing any references to NGESO with references to the new shareholders. As the sole Elexon shareholder, NGESO is not allowed to increase the authorised share capital of Elexon, issue share capital, or transfer its shares (unless directed to do so by Ofgem).<sup>17</sup> This would need to be amended if there were multiple shareholders of Elexon to allow for the increasing of share capital, the issuing of share capital, and the transfer of its shares, and to set out the circumstances under which this would be allowed.

Note that these would be administrative changes without financial consequences, but the ability to do this would be crucial considering that the number of shareholders would fluctuate as parties accede to or secede from the BSC. New provisions would also need to be made about how these processes would work, for example how shares would be transferred and reallocated, and what would happen to a share if a shareholder dropped out of the market. We propose to put an obligation in the BSC on any new shareholders to co-operate in the maintenance of BSCCo. This would be similar to Condition 37.6 of the electricity distribution licence about the collective nature of the licence obligation relating to the Data Transfer Service. Similarly, paragraph 18 of Condition 9 of the gas transporter licence requires licencees to work together (the so-called ‘joint governance arrangements’).

### Other changes

The Electricity Balancing Guideline (EBGL) regulation is a European framework that lays down the rules for the integration of balancing markets in Europe to enhance Europe’s security of supply. When the UK left the European Union, the regulation was retained in UK law and so, as GB’s transmission system operator (TSO), the ESO has a number of responsibilities and obligations under the EBGL. As the FSO will take on all the roles of the ESO, and therefore fulfil the TSO role for GB, the obligations and responsibilities for TSOs set out in the EBGL will move over to the FSO. The ESO has delegated some of its stakeholder consultation and publication tasks under the EBGL in relation to any proposed amendment to Article 18 of the EBGL as per EBGL Article 13 to the BSC Panel where the BSC contains the relevant terms and conditions.<sup>18</sup> Changing the ownership of Elexon has no impact on the FSO’s right and ability to delegate, so if Elexon were owned by industry parties in the future, the FSO could continue to delegate tasks set out in the EBGL to Elexon as per Article 13.

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<sup>17</sup> Balancing and Settlement Code (BSC), Section C paragraph 2.2. <https://bscdocs.elexon.co.uk/bsc/bsc-section-c-bscco-and-its-subsidiaries>

<sup>18</sup> The Electricity Balancing Guideline (EBGL) aligns the way settlement is done across Europe and has been retained post Brexit (Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (Text with EEA relevance), <https://www.legislation.gov.uk/eur/2017/2195/contents>)

**Questions:**

- 6. Are any other changes required to implement either of the two ownership options?**
- 7. What are your views on the proposed licence and code changes set out above?**

## 5 Assessment of costs and benefits

There will, as detailed below, be some minor costs to implementing this change of ownership, however the benefits of ensuring the timely implementation of the FSO and safeguarding the effectiveness of Elexon clearly outweigh these.

We are not proposing any changes to the funding or roles of Elexon, and so this should not impact the costs paid by BSC funding parties.

The shares themselves will be transferred to a new shareholder at negligible value as Elexon is not a profit-making entity.

The costs of implementing the industry ownership option would therefore likely be only the operational costs borne by organisations involved in implementing and maintaining the new ownership structure. There would be a need for some work to, e.g. draft new Articles of Association, and a commitment of staff time or external advisors may be necessary. There might also be a small ongoing cost to this structure if, for instance, a registry function was created to maintain the list of current industry shareholders. In general, simpler solutions are likely to be easier to implement and maintain and, therefore, have lower costs, although we do not expect any options to be a significant burden.

The costs of implementing the public ownership option would be similar but a greater portion of them would fall to BEIS. If we decided, post-consultation, to implement the industry option eventually but to use public ownership as a temporary fallback option, we would intend to move Elexon to industry ownership as soon as possible afterwards. The costs of implementing the industry option would still apply in that case.

If we decided, post-consultation, that industry ownership is the best way forward, the largest risk we would face is that the option could not be implemented in line with the timeline required by the creation of the FSO. The temporary fallback option would be our contingency plan for this risk.

### **Question:**

- 8. Have we considered all relevant costs and benefits of these proposals? Please state why.**



## 6 Next steps

In the next few weeks, we will host a webinar to outline our consultation proposals and invite initial views on these. This will be open invite to all interested stakeholders. Following this, we will have both individual meetings and workshops with industry stakeholders to discuss views on the proposals to a greater extent.

This engagement is not a substitute for formal written responses, which we invite throughout the consultation period. The instructions for submitting a written response are outlined on page 7. We will consider the responses to this consultation and, based on them, reach a decision on the most appropriate model for ownership of Elexon, before proposing licence amendments to give effect to either a public or private ownership.

The consultation closes on 22nd September and people can respond by contacting us at [futuresystemoperator@beis.gov.uk](mailto:futuresystemoperator@beis.gov.uk) or [SOreview@ofgem.gov.uk](mailto:SOreview@ofgem.gov.uk). We will respond to this consultation as soon as possible, summarising the responses we received, setting out our analysis and decision, and discussing the implementation plan.

## 7 Consultation questions

1. Do you agree with the proposed criteria to determine the future ownership of Elexon? Please state why.
2. Do you agree that public ownership and industry ownership are the two most credible ownership options? In your view, are there any other ownership options that we should consider, and why?
3. Do you agree with our stated preference of the potential combinations of BSC parties which could own Elexon if industry ownership were chosen? Please state why.
4. To what extent do you agree with the above analysis of the two main ownership options, public ownership and industry ownership, and our preference for industry ownership?
5. To what extent do you agree with our proposal that Elexon should transfer temporarily into the public sector as a subsidiary of the FSO as a last resort, if industry ownership was chosen following consultation but could not be implemented without delaying the creation of the FSO? Please explain why.
6. Are any other changes required to implement either of the two ownership options?
7. What are your views on the proposed licence and code changes set out above?
8. Have we considered all relevant costs and benefits of these proposals? Please state why.

## Annex – shareholder compositions of other relevant industry organisations

If the industry owned option was chosen, ownership of Elexon would change from NGESO to all or a subset of industry parties. To aid decision making regarding which BSC parties would own Elexon, we have conducted research into the shareholder compositions of similar organisations in the energy industry, such as the RECCo<sup>19</sup>, Electralink<sup>20</sup> and Xoserve<sup>21</sup>. Based on this research, we propose three possible compositions of BSC parties which could own Elexon.

We have explored at a high level the shareholder compositions of industry organisations and the implications these could have for Elexon. The composition of shareholders depends on factors like the purpose of the organisation and motivations of shareholders.

- **Industry wide shareholders:** RECCo, for example, has 95 shareholders, including domestic suppliers, non-domestic suppliers, gas transporters, distribution network operators (DNOs)<sup>22</sup> and the Data Communications Company (DCC). This ownership composition has implications, for example for the re-allocation of shares. A company with a wider range of shareholders may have more frequent changes in shareholders than those with fewer shareholders. This is likely to require more administrative resources to manage than when compared with a more stable ownership base (when shareholders change less). If a wide range of shareholders were to own Elexon, it would be important to ensure that the additional administrative burden could be met and would not outweigh the benefits of such a composition of shareholders, such as being representative of the industry it serves. Additionally, for some organisations each party to the code becomes a shareholder. This is the case with RECCo, in which each party to the REC is a shareholder. The fact that RECCo provides services to the energy industry in a similar way to Elexon provides precedent for having a subset of BSC parties own Elexon, in the scenario in which industry ownership is chosen.
- **Singular type of industry shareholder:** Electralink, for example, is solely owned by the set of industry DNOs. The 14 DNO regions which the DNOs operate are fixed, which limits how many DNOs can exist. Consequently, the number of DNOs that hold a share in Electralink is unlikely to change year on year. This reduces the complexity associated with large volumes of different and regularly changing owners (an issue outlined in the case of RECCo).

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<sup>19</sup> RECCo enables the effective implementation of the REC, an energy code which all licenced energy suppliers, gas transporters, electricity distribution network operators, metering operators and the Data Communication Company (DCC) are required to accede to.

<sup>20</sup> Electralink operates the central energy Data Transfer Function and is part of the Energy Market Data Hub. Through this, Electralink consolidates and enables the flow of information across the energy industry.

<sup>21</sup> Xoserve manages the data services in relation to the gas market (underpinned by the Uniform Network Code).

<sup>22</sup> The six DNOs are: Electricity North West Limited, Northern Powergrid, Scottish and Southern Energy, ScottishPower Energy Network, UK Power Networks, Western Power Distribution.

- **Other compositions of stakeholders:** Xoserve is owned by National Grid Gas (NGG) and Britain's four major gas distribution network companies.

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