



Department for
Energy Security
& Net Zero

ofgem

Making a positive difference
for energy consumers

The Future Ownership of Elexon: new electricity supply and generation licence conditions and Balancing and Settlement Code (BSC) changes

Government and Ofgem Statutory
Consultation

Closing date: 21 February 2024

January 2024



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Any enquiries regarding this publication should be sent to us at: futuresystemoperator@energysecurity.gov.uk.

Introduction

The Department for Energy Security and Net Zero (the Department) and Office of Gas and Electricity Markets (Ofgem) (collectively referred to in this document as “we”) are consulting on new electricity supply and generation licence conditions, and changes to the Balancing and Settlement Code (BSC), to support implementation of the new ownership arrangements for Elexon Limited (Elexon). We welcome views from stakeholders across the industry.

The March 2023 Joint Elexon Ownership Decision,¹ set out our decision for these new ownership arrangements, which is that Elexon will remain an industry body with the shares held by a subset of the industry parties that fund Elexon. These proposed arrangements are a consequence of the establishment of the Future System Operator (FSO) (which will be called the “National Energy System Operator”). As Elexon is owned by National Grid Electricity System Operator Ltd (NGESO), the creation of the National Energy System Operator (NESO) as a publicly owned entity required us to also consider the future ownership of Elexon.

On 5 September 2023, Ofgem published an initial consultation on new electricity supply and generation licence conditions to implement new ownership arrangements for Elexon.² We are now proposing to create new licence conditions to enable the Secretary of State and the Gas and Electricity Markets Authority (the Authority) to direct relevant parties to hold a share in Elexon.

In addition, on 5 September 2023, Elexon launched a separate engagement exercise with BSC Parties.³ This dealt with aspects of ownership set out in the BSC, including rights and responsibilities of the shareholders, management of the allocation and transfer of shares, and treatment of liabilities.

Following this engagement, we propose to make these licence and BSC changes using powers in the Energy Act 2023 (the Act).⁴ Therefore, the Department and Ofgem are now launching our statutory consultation on the proposed modifications (i.e., the modifications to the electricity supply and generation licences and BSC set out in Appendixes 1 and 4), pursuant to sections 169 and 170 of the Act. The BSC changes also include changes in the form of Elexon’s Articles of Association (AoAs), that is to say, the content of Elexon’s AoAs as prescribed by the BSC. The AoAs, modified to conform with the proposed new BSC wording on Elexon ownership arrangements, are shown in Appendix 4.

This consultation is issued jointly by the Department and Ofgem but operates as notice published by the Secretary of State for the purposes of Section 170(1) of the Act.

This consultation sets out: proposed licence and code modifications and their effect, the date from which we propose that the modifications will have effect, and the reasons why we propose to make the modifications. It also provides the response to the September 2023 Ofgem Licence Consultation and sets out our wider policy decisions relating to the ownership

¹ <https://www.gov.uk/government/consultations/the-future-ownership-of-elexon>

² <https://www.ofgem.gov.uk/publications/consultation-supply-and-generation-licence-conditions-implement-new-ownership-arrangements-elexon>

³ <https://www.elexon.co.uk/consultation/informal-consultation-on-the-bsc-changes-needed-to-enable-elexons-ownership-change/>

⁴ <https://www.legislation.gov.uk/ukpga/2023/52/contents/enacted>

of shares in Elexon, to provide supporting guidance and context for the proposed modifications.

We would particularly welcome views from directly affected parties, as well as those with an interest in the balancing and settlement arrangements, Elexon, and the creation of NESO. We also welcome responses from participants in the supply and retail market, the generation and wholesale market, distribution networks, transmission networks, suppliers, generators, shippers and traders, and consumer groups.

This document outlines the scope, purpose, and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We will then publish a notice of our decision as well as next steps on GOV.UK.

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General information

Why we are consulting

We are consulting on new electricity supply and generation licence conditions and changes to the BSC to support the implementation of the new ownership arrangements for Elexon. We welcome views from stakeholders across the industry.

Consultation details

Issued: 24 January 2024

Respond by: 21 February 2024

Enquiries to:

Electricity Governance Reform
Department for Energy Security and Net Zero
3-8 Whitehall Place
London
SW1A 2HP
United Kingdom

and

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

Email: futuresystemoperator@energysecurity.gov.uk and FSO@ofgem.gov.uk.

Consultation reference: The Future Ownership of Elexon Licence and Code Consultation

Audiences:

Energy suppliers, generators, transmission owners, distribution networks, engineering standards bodies, energy sector research groups, consumer groups and any other organisations with a direct interest.

Territorial extent:

Great Britain

How to respond

We would prefer you to respond via email, please ensure you respond to both email addresses below.

Email to: futuresystemoperator@energysecurity.gov.uk and FSO@ofgem.gov.uk

If you would like to send a hard copy, please send copies to the following addresses. As this is a joint consultation, please ensure you send copies to both addresses below. Write to:

Electricity Governance Reform
Department for Energy Security and Net Zero
3-8 Whitehall Place
London
SW1A 2HP

and

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

The Department 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.

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).

If you want the information that you provide to be treated as confidential, please tell us, but 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 the Department for Energy Security and Net Zero [privacy policy](#) and the Ofgem privacy notice at Appendix 5.

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. In addition, Ofgem will publish the non-confidential responses on its website. If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain 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.

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: bru@energysecurity.gov.uk.

1. Background

1.1 Elexon was established to administer the BSC and procure the systems needed to implement it ahead of the New Electricity Trading Arrangements (NETA). Elexon also performs other roles in the electricity market, for example related to Electricity Market Reform (EMR) Settlement. Elexon is currently wholly owned by NGESO.

1.2 In April 2022, the joint Department and Ofgem response to the July 2021 consultation on a FSO role (the April 2022 Joint FSO Decision) set out the decision to create a publicly owned FSO.⁵ Furthermore, it outlined the decision for this new body to take on all the current roles of NGESO, as well as the longer-term planning, forecasting and market strategy functions in respect of gas. As Elexon is owned by NGESO, the creation of the FSO (which will be called NESO) as a publicly owned entity required us to also consider the future ownership of Elexon.

1.3 Following on from the April 2022 Joint FSO Decision, in July 2022, the Department and Ofgem published the Elexon ownership consultation (the July 2022 Joint Elexon Ownership Consultation).⁶ Following this, the March 2023 Joint Elexon Ownership Decision set out the key decisions that Elexon will remain in industry ownership and that the initial shareholders of Elexon will be the 13 licensed BSC funding parties with a greater than 2% funding share in Elexon as of 1 January 2023.⁷

⁵ <https://www.gov.uk/government/consultations/proposals-for-a-future-system-operator-role>

⁶ <https://www.gov.uk/government/consultations/the-future-ownership-of-elexon/the-future-ownership-of-elexon>

⁷ <https://www.gov.uk/government/consultations/the-future-ownership-of-elexon>

2. Proposed Implementation Approach

2.1 Elexon's new ownership structure will be implemented using powers in the Act to:

- Place a condition in electricity supply and generation licences, which will enable a Relevant Authority (as defined in the Glossary of this document) to direct parties to hold a share, and
- Modify the BSC as needed to support implementation of the new ownership arrangements (See Appendix 3, where we set out the policy on the changes to the BSC).

2.2 This statutory consultation addresses both the licence and code modifications, including the form of Elexon's Articles of Association (AoAs), which will be needed to enable the implementation of this policy. The draft licence condition text for electricity supply and generation licences can be found in Appendix 1 of this document. Alongside this document, we are also publishing legal text for amendments to Section C of the BSC, Section X-1 of the BSC (the General Glossary), and Elexon's AoAs in Appendix 4, as amended by Elexon to take account of the proposed new ownership arrangements. We would welcome comments on all of these documents.

2.3 Elexon's AoAs currently set out the arrangements by which shares may be allotted, created, dealt with, or otherwise disposed of. Elexon's directors are unconditionally authorised to do this. We propose that the AoAs be amended so that Elexon's directors' discretion in regard to management of Elexon shares is subject to the new provisions in the BSC.

2.4 The BSC prescribes the form of Elexon's AoAs and that form is subject to amendment by code modification. While Elexon's AoAs can only be changed as part of an approved BSC Modification Proposal they are not part of the BSC or an extension of it, that is to say, they are not linked to the BSC. However, they need to be compliant with the BSC or at least not conflict with the BSC. Our proposed modification of the BSC includes amending the form of AoAs, to be in the amended form included with this consultation, so that they reflect the policy described in this consultation and the new licence conditions. Where the form of the AoAs is modified by code modification, NGENSO (as the current shareholder of Elexon) is required by the BSC to exercise its voting rights as shareholder to adopt the amended AoAs. We would welcome any comments on the proposed amendments of the form of the AoAs.

2.5 A transfer scheme will be made under paragraph 1(2) of Part 1 of Schedule 9 to the Energy Act 2023.⁸ It will be used to transfer Elexon shares from NGENSO to the new shareholders. The transfer scheme will be effective in law when made by the Secretary of State.

⁸ <https://www.legislation.gov.uk/ukpga/2023/52/enacted>

3. Relevant Legislation

3.1 This statutory consultation is being carried out under the Act. Sections 169 and 170 of this Act enable a Relevant Authority to modify licences and codes in preparation for, or in connection with, or in consequence of, the designation of the Independent System Operator and Planner (ISOP), also referred to as the FSO (and which will be called NESO).⁹ Section 169 sets out the arrangements for modification of licences and relevant documents, including the roles of the Relevant Authority. Section 170 sets out the procedure relating to modifications under Section 169, including notification of stakeholders.

3.2 Section 170(1) of the Act requires the Secretary of State or the Authority to publish a notice about the proposed modification and consider any representations made within the period specified in the notice about the proposed modification, or the date from which it would take effect. This consultation is issued to fulfil the obligation to publish a notice about the proposed modifications. This consultation operates as a notice given by the Secretary of State for the purposes of Section 170(1).

3.3 The Act then states that if, after complying with the above in relation to a modification, the Secretary of State or the Authority decides to make the modification, it must publish a notice about the decision. After giving due consideration to any responses to this consultation, if the decision is made to make the modifications, a response to this consultation will be published, to fulfil this obligation. It is currently proposed that the date from which the modifications will be effective will be on the date with effect from which the Secretary of State by notice designates a person as the ISOP.

⁹ <https://www.legislation.gov.uk/ukpga/2023/52/enacted>

4. Policy Decisions

4.1 On 5 September 2023, Ofgem published the Consultation on Elexon Ownership Licence Conditions (the September 2023 Ofgem Licence Consultation),¹⁰ and Elexon published the Consultation on the BSC changes needed to enable Elexon's ownership change (the September 2023 Elexon BSC Consultation).¹¹ These consultations were conducted as a part of a process led by the Department and Ofgem to confirm that the proposed changes meet the policy intent, as set out in the March 2023 Joint Elexon Ownership Decision.¹²

4.2 The September 2023 Ofgem Licence Consultation also set out our proposed approach to implementing industry ownership of Elexon and asked whether stakeholders agreed with our approach, including our proposal for flexibility. In addition, we asked if there were any other factors that we should consider for successful implementation.

4.3 We have analysed the responses to the September 2023 Ofgem Licence Consultation. Separately, we have reviewed the summary of responses to the September 2023 Elexon BSC Consultation prepared by Elexon and Elexon's commentary on these responses.¹³ 11 responses were received on the September 2023 Ofgem Licence Consultation, and 8 responses were received on the September 2023 Elexon BSC Consultation. These came from a mix of generators and suppliers, including companies which have both electricity supply and generation licences, system bodies, and distribution networks.

4.4 We do not use the exact or absolute numbers of respondents when referring to responses received to the September 2023 Ofgem Licence Consultation and the September 2023 Elexon BSC Consultation. Instead, we use the following categories:

- “majority” is used when referring to 6 or more of those that provided a response to the consultation.
- “many” is used when referring to 4-5 of those that provided a response to the consultation.
- “some” is used when referring to 3 respondents to the consultation.
- “a small number” is used when referring to 1 or 2 respondents.

4.5 This section sets out our proposed policy, which takes account of responses to the September 2023 Ofgem Licence Consultation and the September 2023 Elexon BSC Consultation. We also set out our analysis of responses to the September 2023 Ofgem Licence Consultation and explanations of how this is addressed in the proposed policy.

¹⁰ <https://www.ofgem.gov.uk/publications/consultation-supply-and-generation-licence-conditions-implement-new-ownership-arrangements-elexon>

¹¹ <https://www.elexon.co.uk/consultation/informal-consultation-on-the-bsc-changes-needed-to-enable-elexons-ownership-change/>

¹² <https://www.gov.uk/government/consultations/the-future-ownership-of-elexon>

¹³ <https://www.elexon.co.uk/documents/change/modifications/elexon-and-desnz-response-to-informal-consultation-on-the-bsc-changes-to-implement-elexons-ownership-change/>

Definitions

Related Consultation Responses

4.6 In response to the September 2023 Ofgem Licence Consultation, a small number of respondents recommended clarification of the definition of “designated party” (where we had said this party may be the same as the directed party). We have updated this, so the definition now states that the designated party is separate from the directed party. In addition, a few respondents suggested additional clarity on other definitions including “wholly owned affiliate” and “qualifying threshold”, which have now been updated below. We have also now added definitions of “eligible party”, “initial cohort”, “mandated shareholder”, and “funding share”, to reduce the ambiguity of the policy.

Policy Decisions

4.7 We set out the definitions below, for the purpose of understanding this consultation document and the policy. These definitions have been updated in response to the comments received on the September 2023 Ofgem Licence Consultation, and the definitions below are relevant to the policy that underpins the licence condition on which we are now consulting, and the explanation of how it will be used.

- funding share party - a BSC Party that meets the qualifying threshold.
- directed party - a party that holds an electricity supply or generation licence and is either itself a funding share party or has a wholly owned affiliate that is a funding share party, and that receives a direction to hold a share in Elexon.
- designated party - a BSC Party that is a wholly owned affiliate of a directed party and (in a case where the directed party chooses not to hold the share itself) is nominated by the directed party to hold the share in Elexon on its behalf.
- wholly owned affiliate - a company is a wholly owned affiliate of another company if (a) it is a wholly owned subsidiary of the other company, (b) both companies are wholly owned, directly or indirectly, by a common parent company, or (c) it is a parent company that wholly owns, directly or indirectly, the other company. Where the document refers to a wholly owned affiliate, the nature of the other company is specified.
- qualifying threshold – the criteria to be met for a party to be directed (as set out in paragraph 4.26 of this document).
- eligible party - a BSC Party that itself holds, or has a wholly owned affiliate that holds, an electricity supply or generation licence.
- initial cohort - the directed parties of the complete set of funding share parties named in the March 2023 Joint Elexon Ownership Decision (unless any such party is found to be exempt, as set out in paragraph 4.10 of this document, in which case, this term refers to the complete set, minus any exempt party).
- mandated shareholder - a BSC Party that holds a share as a result of a shareholding direction having been given.
- funding share – General Funding Share as defined in the BSC.

Licence and Code Text

Related Consultation Responses

4.8 A small number of respondents to the September 2023 Ofgem Licence Consultation suggested that relevant definitions (which have now been updated under the “Definitions” heading in this document in paragraph 4.7) should be incorporated into the licence condition itself, for ease of future reference. These definitions are set out for the purpose of understanding this consultation document and the policy. These terms are not used in the licence itself, hence, we would not include these definitions in the licence. However, we have included a definition of “Elexon” in the licence since this term is not currently used in the electricity supply or generation licence.

4.9 A small number of respondents to the September 2023 Ofgem Licence Consultation also noted that the licence condition has no reference to exit arrangements, eligibility criteria, and the options for the issuance of new directions. Our policy on these matters is set out under the “Exit Arrangements” heading (paragraph 4.21) and under the “Flexibility” heading (paragraphs 4.16 to 4.18) in this document. This is not included in the licence because our intention is to keep the licence condition itself simple and focused on providing for the Relevant Authority to issue a direction to the licensee to hold a share in Elexon.

Policy Decisions

4.10 The proposed licence condition is set out in Appendix 1. The licence text is focused on providing for the Relevant Authority to issue a direction to the licensee to hold a share in Elexon, and for the Relevant Authority to be provided with information that is relevant to the issuance of such a direction. This would give the Authority and the Secretary of State the power to direct parties to take on a share as needed, consistent with this policy. It would also give the Authority or the Secretary of State the ability to provide exemptions to the obligation proposed in this document if a licensee was able to demonstrate that this was necessary. The amended drafting takes account of the responses received to the September 2023 Ofgem Licence Consultation.

4.11 We have also reviewed the responses to the September 2023 Elexon BSC Consultation and Elexon’s commentary on these responses.¹⁴ On this basis, we are content that Elexon’s process has produced appropriate code changes, and we are publishing in Appendix 4 legal text for amendments to Section C of the BSC, Section X-1 of the BSC (the General Glossary), and Elexon’s AoAs. Section C of the BSC concerns BSCCo (BSC Company) and its subsidiaries, and the amended drafting makes the necessary changes to the BSC to implement Elexon’s ownership change, in line with the policy (Appendix 3). Section X-1 of the BSC (the General Glossary), redefines “BSCCo Shareholder” as a person from time to time registered as a holder of a share in BSCCo pursuant to Annex C-3 of the BSC. Elexon’s AoAs set out Elexon’s governance. This amended drafting takes account of the responses received to the September 2023 Elexon BSC Consultation and Elexon’s commentary against these responses. As well as the policy updates set out in this section, some minor drafting changes have been made to the BSC, as set out in the response to the September 2023 Elexon BSC Consultation, published by Elexon.

¹⁴ <https://www.elexon.co.uk/documents/change/modifications/elexon-and-desnz-response-to-informal-consultation-on-the-bsc-changes-to-implement-elexons-ownership-change/>

Flexibility

Related Consultation Responses

4.12 In response to the September 2023 Ofgem Licence Consultation, the majority of respondents expressly agreed with the proposed flexibility or provided comments that indicated broad agreement. Many respondents specifically commented that they supported flexibility, while a small number commented on flexibility reducing any risk of the intended shareholders being unable to take their Elexon share simultaneously.

4.13 A small number of respondents to the September 2023 Ofgem Licence Consultation requested clarification on whether a directed party would need to nominate itself as a designated party if it were holding the share itself. For administrative ease, we will assume that a directed party fulfils the obligation to hold a share themselves unless and until they notify us that they have delegated this to a wholly owned affiliate that then becomes a designated party.

4.14 A few respondents to the September 2023 Ofgem Licence Consultation asked for an explanation of the rationale for a party needing to be wholly owned to discharge the obligation to hold a share. Regarding the rationale for a directed party to be a wholly owned affiliate of the funding share party, we have considered a scenario where a directed party is a joint venture. The party that holds the share must be sufficiently connected to the funding share party (as identified in our March 2023 Joint Elexon Ownership Decision), and we have suggested that this criterion of being “sufficiently closely connected” is met through 100% affiliation. Complications (including in relation to party governance) could arise if the obligation could be imposed on, or satisfied by, a company with less than 100% affiliation to the funding share party. Therefore, a direction will only be given under the licence condition to a licensee that is, or has a wholly owned affiliate that is, a funding share party.

4.15 A small number of respondents to the September 2023 Ofgem Licence Consultation requested the ability to freely transfer any direction between parties eligible to be directed. They suggested that arrangements should be set out in the licence conditions, along with guidance on how any such transfers will work. We propose that, to allow flexibility for future shareholders, the share can be delegated to an appropriate designated party (i.e., a BSC Party that is a wholly owned affiliate of the directed party). Therefore, if a directed party wishes to choose a new designated party to hold its share on their behalf at a later date, they will have the ability to do so. In this circumstance, the current holder of the share would be able to transfer the share to the new designated party. Details of this process can be found in the BSC text published alongside this consultation in Appendix 4. The relevant directed party would also be obligated to notify Ofgem, as per the licence condition in Appendix 1.

Policy Decisions

4.16 As set out in the March 2023 Joint Elexon Ownership Decision, the initial shareholders of Elexon will be determined on the basis of funding share parties, in other words, the subset of BSC funding parties (as listed in the March 2023 Joint Elexon Ownership Decision) that have a greater than 2% funding share in Elexon as of 1 January 2023 and are eligible parties. As a default, subject to the flexibility arrangements outlined below, we would direct the funding share party to hold a share in Elexon.

4.17 A Relevant Authority may give a direction to hold a share in Elexon to:

- the funding share party, if it holds an electricity supply or generation licence; or

- a wholly owned affiliate of the funding share party that holds such an electricity supply or generation licence, if the funding share party does not have such a licence or the funding share party makes a request to the Relevant Authority to give the direction to that wholly owned affiliate.

4.18 The directed party may choose to fulfil their licence obligation by nominating another wholly owned affiliate that is a BSC Party to discharge the responsibility for holding a share in Elexon on its behalf. The directed party would retain responsibility for ensuring that the licence obligation is being met. This approach provides flexibility and discretion, while preserving accountability, and will allow companies to manage new Elexon ownership responsibilities in a way that minimises costs and administrative burden.

Exit Arrangements

Related Consultation Responses

4.19 In response to the September 2023 Ofgem Licence Consultation, a few respondents asked what would happen if a funding share party, which itself does not have an electricity supply or generation licence, also does not have any wholly owned affiliate with an electricity supply or generation licence. To clarify, if there are no eligible wholly owned affiliates of the funding share party to be the directed party (and the funding share party does not itself hold an electricity supply or generation licence), then no licensee will be mandated to hold a share in respect of that funding share party at that time because, without an appropriate licensee, we will not be able to direct a party to hold a share.

4.20 A small number of respondents to the September 2023 Ofgem Licence Consultation noted that the licence drafting did not contain an obligation for the directed party to notify the Relevant Authority if they cease to be a wholly owned affiliate of a funding share party. The licence drafting (Appendix 1) has now been updated to include provision for the Relevant Authority to be notified of any relevant changes in the corporate relationship between the directed party and the funding share party. This means that we can ensure that any party that is directed to hold a share is, or has a wholly owned affiliate that is, a funding share party (as per our eligibility criteria set out under the “Flexibility” heading in this document in paragraphs 4.16 to 4.18).

Policy Decisions

4.21 An Elexon share will be held on an enduring basis by the directed party, to support the resilience and stability of the shareholder cohort, as set out in the March 2023 Joint Elexon Ownership Decision. However, a party would stop holding a share in Elexon, in the following scenarios because they would no longer meet the eligibility criteria set out under the “Flexibility” heading in this document in paragraphs 4.16 to 4.18:

- If a funding share party leaves the market, any direction to them or any wholly owned affiliate to hold a share would cease to have effect.
- If a directed party that is not also a funding share party ceases to hold a relevant licence, the direction to them to hold a share will cease to have effect. If a directed party that is not also a funding share party ceases to be a wholly owned affiliate of the funding share party, the direction to them to hold a share will be suspended once the Relevant Authority is made aware of the change in affiliation. In these cases, if the funding share

party has any other eligible wholly owned affiliate remaining, a new direction may be issued to that party. If there is more than one eligible wholly owned affiliate of the funding share party, the funding share party will be asked to choose a party to be the new directed party. If the funding share party does not choose a new directed party, the Relevant Authority will have the ability to choose a party to be directed. If there are no eligible wholly owned affiliates of the funding share party, then the funding share party will cease to be in scope.

- If a designated party ceases to be a BSC Party or ceases to be a wholly owned affiliate of the directed party, the directed party must either nominate another wholly owned affiliate to be the designated party or fulfil the obligation to hold the share themselves.

Topping Up

Related Consultation Responses

4.22 In response to the September 2023 Ofgem Licence Consultation, some respondents commented on arrangements for maintaining the shareholder cohort and thought it would be helpful to have additional clarity on the topping up process and for there to be regular scheduled reviews of the cohort. To avoid unnecessary administrative burden, we currently have no plans for scheduled reviews. The shareholder cohort will be monitored on an ongoing basis through notifications of any changes to delegated parties as required by the licence condition. The proposed licence condition (Appendix 1) requires that the Relevant Authority to be informed when any party is no longer eligible to be a shareholder (in the scenarios described under the “Exit Arrangements” heading in this document in paragraph 4.21). We have included more detail on the mechanics of topping up in this section and introduced the concept of a minimum threshold.

4.23 In response to the September 2023 Elexon BSC Consultation, a small number of respondents asked about whether the names of Elexon’s shareholders would be published. Ofgem will publish a list of the directed parties to provide transparency on decisions about the parties directed to hold a share. We may update this from time to time, to reflect any changes in the cohort of directed parties. For example, if parties leave the market and/or there is topping up. Elexon is also intending to publish a list of its shareholders.

Policy Decisions

4.24 To maintain a stable and resilient cohort, once a licensee is directed to hold a share in Elexon, they must hold (themselves or via a designated party) a share on an enduring basis, regardless of any reduction in the funding share of the funding share party. However, the requirement to hold a share may change in certain circumstances, as discussed under the “Exit Arrangements” heading in this document in paragraph 4.21. Over time, those changed circumstances could result in a reduction of the number of mandated shareholders.

4.25 The provision under the electricity supply and generation licence conditions will allow a Relevant Authority (at their discretion) to direct any of the largest funding parties by funding share to take a share, as needed. The Relevant Authority may, at any point in the future, exercise the power to give a direction to any generation or supply licensee that that itself meets, or has a wholly owned affiliate that meets, the qualifying threshold. The Relevant Authority can choose to restore the number of mandated shareholders to up to 13. We refer to

this process as “topping up”. The topping up mechanism could be brought into action at any time after the initial cohort is in place.

4.26 For the initial cohort, the “qualifying threshold” is being a BSC Party with a funding share of over 2% as of January 2023. If the Secretary of State or the Authority decides to top up, the BSC Parties that are directed as part of topping up would not need to have a funding share of over 2% to meet the qualifying threshold, they would qualify by virtue of being one of the BSC Parties with the largest funding share that holds, or has a wholly owned affiliate that holds, an electricity supply or generation licence and does not already hold a share. The assessment of the companies with the largest funding share would be based on the most recent annual data as reported monthly at that time.

4.27 Our intention is that topping up would occur if the number of mandated shareholders drops to 7, after the initial cohort is in place. We are proposing 7 as a minimum threshold because this would be over 50% of the original cohort. This provides a balance between ensuring that a resilient cohort is maintained, and retaining the flexibility to ensure that the cohort is managed without imposing unnecessary administrative burden. The Relevant Authority would retain the ability to top up before the number of shareholders drops to 7, to prevent the minimum threshold of 7 from being reached. We would take factors, such as market conditions at the time and the number of voluntary shareholders, into consideration.

4.28 Directed parties would hold a share in Elexon on an enduring basis, to ensure the stability of the cohort. Therefore, we would retain the cohort that is left even if some directed parties are no longer amongst or affiliated to the 13 parties with the largest funding share. We would then add to this cohort drawing on parties, in order, from the eligible parties with the largest funding share that do not already hold a share in Elexon. As noted above, the assessment of the companies with the largest funding share would be based on the most recent annual data as reported monthly at that time.

Shareholder Liabilities and Costs

Related Consultation Responses

4.29 In response to the September 2023 Ofgem Licence Consultation, many respondents asked for clarity on possible future liabilities, and a small number of respondents requested that the licence condition should provide for a guarantee or cap on pension liability to ensure that no such liability can fall to the new proposed shareholders. In response to the September 2023 Elexon BSC Consultation, a small number of respondents also asked for clarity on possible future liabilities.

4.30 We note the request for a guarantee or cap on pension liability in the licence conditions to ensure that no such liability can fall to the new proposed shareholders. As the purpose of the licence is to place obligations on licensees, we cannot see how any such guarantee or cap would be effective by being included in the licence. The BSC sets out that shareholders (in that capacity) have no obligations to fund Elexon.

4.31 In response to the September 2023 Elexon BSC Consultation, a small number of respondents asked about the support for shareholders’ financial costs. The costs of becoming a Elexon shareholder, and of being an Elexon shareholder are not considered material. Therefore, it is not considered necessary to provide support for these costs.

Policy Decisions

4.32 We consider that there is currently no plausible scenario in which the requirement for the proposed shareholders to hold shares in Elexon would expose those parties (in their capacity as shareholders) to the risk of liability in respect of future costs or other liabilities of Elexon. Our intention is that the transfer scheme that transfers Elexon shares to the new shareholders will not transfer anything other than those shares – it will not transfer any liabilities or obligations of NGENSO to the new shareholders at the point of beginning the new ownership arrangements.

4.33 As is the case at present, in respect of the current shareholder (NGESO), once the new ownership arrangements are in place, the BSC will enshrine the principles that:

- (i) all of Elexon's costs and other liabilities are to be funded by BSC funding parties,
- (ii) shareholders (in that capacity) have no obligations to fund Elexon, and
- (iii) shareholders will not individually or collectively exercise control over Elexon.

If any future changes were proposed by industry, Ofgem, or the Government, they would be subject to the appropriate consultation processes and assessments.

5. Next steps

5.1 In this consultation, we have set out our policy on Elexon ownership, considering this in the context of previous engagement.

5.2 As we have outlined above, we are proposing modifications to electricity supply and generation licences, to enable the Secretary of State and the Authority to direct relevant parties to hold a share in Elexon on the basis of this policy. The draft text for the electricity supply and generation licences is at Appendix 1.

5.3 We are also proposing to modify the BSC, which sets out other aspects of the ownership arrangements, including rights and responsibilities of the shareholders, management of the allocation and transfer of shares, and treatment of liabilities. We set out the aspects of policy that need to be in the BSC at Appendix 3 and we have also included the proposed BSC modification, which includes Section C of the BSC, Section X-1 of the BSC (the General Glossary), and Elexon's AoAs at Appendix 4.

5.4 We welcome any comments on:

- the policy approach,
- the draft licence condition, and whether this delivers the policy intent; and
- the BSC modifications (including the form of the AoAs), and whether this delivers the policy intent.

5.5 These comments will be used to inform our decision-making in relation to the new electricity supply and generation licence conditions and BSC modifications, proposed for the implementation of the new Elexon ownership arrangements. After giving due consideration to any responses to this consultation, we will publish a notice about our decision.

Appendices

Appendix 1 – Draft licence condition text for electricity supply and generation licences

For Electricity Supply Licences

Section A: Standard conditions for all suppliers

General arrangements

Condition 1. Definitions for standard conditions

Insert between “Electronic Communication” and “Energy Discount”:

“Elexon Elexon Ltd and its subsidiaries unless stated otherwise where Elexon fulfils the role of Balancing and Settlement Code Company (also known as BSCCo).

For Generation Licences

Part II: The standard conditions of licence

Condition 1. Definitions and interpretation

Insert between “electricity supplier” and “estimated costs”:

“Elexon Elexon Ltd and its subsidiaries unless stated otherwise where Elexon fulfils the role of Balancing and Settlement Code Company (also known as BSCCo).

Section A: Standard conditions for all suppliers

General arrangements

Condition 1. Definitions for standard conditions

Insert between “Electronic Communication” and “Energy Discount”

“Elexon Elexon Ltd and its subsidiaries unless stated otherwise where Elexon fulfils the role of Balancing and Settlement Code Company (also known as BSCCo).

For both electricity supply licences and generation licences:

Section xx. Standard Licence Conditions

Condition xx: Elexon ownership

Obligation to own shares in Elexon:

1. The licensee must hold one share in Elexon if they are directed to do so by the Secretary of State or the Authority with effect from the date specified in the direction.
2. The licensee may delegate any responsibility for holding a share in Elexon to one of their wholly owned affiliates that is a signatory to the BSC.
3. Where the responsibility for holding a share in Elexon is delegated in accordance with paragraph 2, the licensee must inform the Secretary of State and the Authority:
 - a. of the name of the party to whom responsibility is delegated;
 - b. if the responsibility for holding a share is delegated to another wholly owned affiliate of the licensee in future; and
 - c. if the party to whom responsibility is delegated ceases to a wholly owned affiliate of the licensee.
4. Once directed under paragraph 1, the licensee must inform the Secretary of State and Authority about a change in the corporate relationship between the licensee and any affiliate of the licensee specified in the direction.
5. The Secretary of State or the Authority may issue a direction revoking any requirement on the licensee to hold a share in Elexon.

Appendix 2 – Explanatory note on the licence condition

This licence condition will be introduced into the electricity supply licence and into the electricity generation licence. The same wording will be used in both licences.

The purpose of this condition is to create an obligation on the licensee to own one share in Elexon, when directed to do so by the Secretary of State or the Authority.

The effect of this condition is for the licensee to hold a share in Elexon from the date specified in the direction when a direction under this condition has been issued.

In addition, this condition provides for the licensee to delegate the requirements of any direction under paragraph 1 of the licence condition to one of their wholly owned affiliates. This party must be a signatory to the BSC. This allows the directed party the option of fulfilling their licence obligation by nominating another, wholly owned affiliate that is a BSC Party to discharge the responsibility for holding a share in Elexon on its behalf. The directed party would retain responsibility for ensuring that the licence obligation and associated code obligations are being met.

This condition also creates an obligation on the licensee to inform the Secretary of State and the Authority of any arrangements for delegation under paragraph 3 of the licence condition, including the name of the party to whom any responsibility delegated, and to inform the Secretary of State and the Authority if the responsibility for holding a share is delegated to another wholly owned affiliate of the licensee in future. We will assume that a directed party fulfils the obligation to hold a share themselves, unless they notify us that they would like to nominate an eligible wholly owned affiliate to be their designated party.

In addition, this condition creates an obligation on the licensee to inform the Secretary of State and the Authority of a change in the corporate relationship between the licensee and any affiliate of the licensee specified in the direction.

Appendix 3 – Policy on the BSC

We set out below the policy that underpins the new provisions in the BSC relating to new Elexon ownership arrangements. This sets out the aspects of Elexon ownership that would be delivered through the BSC.

Management of share transfers including facilitating compliance; relinquishing shares and trading

Elexon would manage share transfers (who can acquire shares, how can they be moved, and when they are disposed of) including the following processes:

- making available shares to parties directed to hold shares or volunteering to hold shares; and
- taking back shares if and when a mandated party has a legitimate reason for no longer holding the share, or a voluntary party decides they no longer want to hold a share.

The pre-agreed price at which shares would be purchased and sold would be set out in the BSC.

Were a party to have their licence revoked, they would need to return or otherwise dispose of their shareholding. Any requirement to dispose of shares on licence revocation would be dealt with under the BSC. We recognise that there are other circumstances under which a shareholder may leave. The period over which the party holds the share is indefinite as long as the entity remains a party to the BSC.

Specifically, there would be an obligation on Elexon to provide shares to any party directed to hold a share (that is to say, mandated shareholders). In respect of voluntary shareholders, Elexon would have discretion to refuse any request for a voluntary shareholding and to revoke any arrangement by which shares were held voluntary. This may be needed, for example, if any potential voluntary shareholder could be perceived as raising national security concerns. As we plan to establish the initial cohort using a share transfer scheme, a condition on Elexon to manage initial share transfers would not be required.

Additionally, a BSC condition is needed for placing an obligation on Elexon to take back any shares when requested to do so by the shareholder. This could be necessary in a scenario where a shareholder ceases to be licensed and/or a signatory to the BSC.

A mandated shareholder could also be taken over by a new owner deemed to be unsuitable as a shareholder of Elexon. The BSC should provide for Elexon to revoke and refuse shares if necessary.

Rights and responsibilities of the shareholders

As stated in the July 2022 Joint Elexon Ownership Consultation, this change 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. Against this background, the rights and responsibilities of the new shareholders in respect of this new shareholding would be unchanged from the rights and responsibilities of the current shareholder the National Electricity Transmission System Operator (NETSO). The rights and responsibilities of NETSO in respect of their shareholding in Elexon are currently set out in the

BSC. It is our intention that the BSC be modified so that these conditions govern the new shareholders. This will be done reflecting that some of the obligations on NGENSO in the BSC stem from their role as the GB NETSO, some from their role as the owner of Elexon. This means that rights and responsibility of NETSO that are not a result of NETSO's ownership of BSCCO will remain.

Voluntary shareholders would be subject to the same rights and responsibilities as mandated shareholders.

Additionally, a requirement will be needed in the BSC that parties ceasing to be signatories to the code or ceasing to be a licensed funding party are required to surrender any shares to Elexon.

Liabilities

Stakeholders have signalled concerns about potential liabilities on shareholders arising from pensions, any penalties on Elexon as a potential code manager, and any liabilities arising from any other future obligations/roles taken on by Elexon. Specifically, for the avoidance of doubt, liabilities that stem from any party's role as a funding party would continue to sit with that party in its capacity as a funding party, including where that party were also a shareholder.

The BSC currently includes a "no obligation to finance" provision which states that "The NETSO as BSCCo Shareholder shall have no liability or obligation to provide any finance or financial support to BSCCo or any Subsidiary of BSCCo and shall have no obligation to Parties as BSCCo Shareholder other than as expressly provided in the Code." 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 in their role as Elexon shareholders. We note that any "no obligation to finance" provision would not override the financial responsibilities of any funding party, and their requirement to fund Elexon in their capacity as a funding party.

Obligations on shareholders to co-operate

We propose to add into the BSC of the proposed new shareholders an obligation on new shareholders to co-operate in the maintenance of BSCCo as necessary.

Transfer of shares from ESO to initial cohort of new shareholders

It is planned to use a share transfer scheme made under paragraph 1(2) of Part 1 of Schedule 9 to the Act to transfer shares from ESO to new shareholders to create the initial cohort of shareholders.¹⁵ The transfer scheme will solely transfer a share to each new shareholder. The transfer scheme will be brought into effect when signed by the Secretary of State and does not need to be signed or approved by the new shareholders. Thereafter, for topping up and voluntary shareholders, Elexon would manage the creation and allocation of new shares.

¹⁵ <https://www.legislation.gov.uk/ukpga/2023/52/enacted>

Appendix 4 – Section C of the BSC, Section X-1 of the BSC, and Elexon’s Articles of Association

These documents have been published alongside this consultation document.

Appendix 5 - Ofgem Privacy notice on consultations

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, “Ofgem”). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

4. With whom we will be sharing your personal data

We intend to share responses including the names and addresses of respondents with the Department where these are supplied.

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for 12 months after the consultation has closed.

6. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services

- object to certain ways we use your data
 - be safeguarded against risks where decisions based on your data are taken entirely automatically
 - tell us if we can share your information with 3rd parties
 - tell us your preferred frequency, content and format of our communications with you
 - to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.
7. Your personal data will not be sent overseas
 8. Your personal data will not be used for any automated decision making.
 9. Your personal data will be stored in a secure government IT system.
 10. More information For more information on how Ofgem processes your data, click on the link to our "[ofgem privacy promise](#)".

Glossary

The Authority	The Gas and Electricity Markets Authority (GEMA).
BSC	Balancing and Settlement Code.
BSCCo	The BSC refers to Elexon as BSCCo (BSC Company). Where used in this document, it has the same meaning as Elexon and its subsidiaries.
BSC Parties	All industry parties signed up to the BSC.
Joint Elexon Ownership Consultation	The joint Department and Ofgem consultation on “The future ownership of Elexon”, published 14 July 2022.
The Department	The Department for Energy Security and Net Zero and its predecessor, the Department for Business, Energy and Industrial Strategy.
Elexon	Elexon Ltd and its subsidiaries unless stated otherwise.
EMR	Electricity Market Reform.
FSO	Future System Operator.
ISOP	Independent System Operator.
Funding share	“Annual funding share”, as defined in the BSC.
March 2023 Joint Elexon Ownership Decision	The joint Department and Ofgem Response to the Joint Elexon Ownership Consultation, published 23 March 2023.
NETA	New Electricity Trading Arrangements.
NETSO	National Electricity Transmission System Operator.
NGESO	National Grid Electricity System Operator Ltd.
Ofgem	The Office of Gas and Electricity Markets. It also refers to the Gas and Electricity Markets Authority, when relevant.
Relevant Authority (in the context of this document and the Energy Act 2023)	The Secretary of State or the GEMA. A Relevant Authority may modify the conditions of a particular relevant licence as set out in the Energy Act 2023.
wholly owned affiliate	In the context of this document a company is a wholly owned affiliate of another company if (a) it is a wholly owned subsidiary of the other company, (b) both companies are wholly owned directly or indirectly by a common parent company, or (c) it is a parent company that wholly owns, directly or indirectly, the other company.

This consultation is available from: www.gov.uk/government/consultations/future-ownership-of-elexon-licence-and-code-changes

If you need a version of this document in a more accessible format, please email alt.formats@energysecurity.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.