



Department for
Energy Security
& Net Zero

Nuclear RAB consultation on industry code and licence modifications

Government response to consultation

February 2024



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Introduction

The Nuclear Energy (Financing) Act 2022 (“the Act”) provides the legislative framework to implement a Regulated Asset Base (“RAB”) model to fund new nuclear energy projects. In order to fully establish the model, there needs to be a robust revenue stream that ensures a secure and consistent flow of revenues between electricity suppliers and nuclear companies benefitting from the RAB model. The Nuclear Regulated Asset Base Model (Revenue Collection) Regulations 2023 (“the Regulations”) were made using the powers under Part 2 of the Act and set out the detailed mechanics of how the revenue stream would operate.

Section 29 of the Act gives the Secretary of State powers to make modifications to Transmission and Distribution Licences, the standard conditions incorporated into those licences, and industry codes that are maintained under those types of licences. Modifications may be made under these powers for the purpose of allowing or requiring services to be provided to a Revenue Collection Counterparty and enforcing obligations under a revenue collection contract, which will in turn enable the Regulations to function as intended.

The government ran a consultation from 24 October to 5 December 2023 which sought stakeholder views on the proposed modifications, specifically to the Balancing and Settlement Code (“BSC”) for the effective functioning of the revenue stream.¹

This document sets out the government’s response to the consultation, summarising the responses received on each of the consultation questions, and the government’s response to the points raised.

Consultees

The Act places a statutory obligation on the Secretary of State to consult with the persons specified in section 29(4) of the Act before making modifications. These persons are:

- Scottish Ministers
- Welsh Ministers
- Holders of any licence being modified
- Electricity suppliers
- Ofgem

The Act also makes provision for the Secretary of State to consult any other persons they consider appropriate. For the purpose of this consultation the Secretary of State considered it appropriate to also consult the following persons as the proposed modifications would be relevant to them:

- Holders of Transmission and Distribution Licences

¹ Nuclear RAB consultation on industry code and licence modifications (2023), available - <https://assets.publishing.service.gov.uk/media/6537882526b9b1000daf1e16/nuclear-rab-industry-code-licence-modifications-consultation.pdf>

- Electricity industry code administrators²
- Low Carbon Contracts Company Limited (“LCCC”)
- EMR Settlement Limited (“EMRS”)
- BSC parties
- BSC Panel³

Engagement with relevant stakeholders

Prior to the launch of the formal consultation, the government informally engaged with Ofgem who administers the Transmission and Distribution Licences, all electricity code administrators, and other stakeholders (e.g. LCCC and EMRS). Due to the technical nature of the licences and codes, the government sought expert input from these stakeholders to assess and identify which changes might need to be made to the documents they are responsible for administering. To inform this assessment the government engaged with the relevant stakeholders to learn more about the documents they administer, explain the Secretary of State’s powers to make modifications to them, and provide them with an overview of the mechanics of the nuclear RAB revenue stream.

The outcome of this exercise indicated that at this stage, modifications would only need to be made to the BSC.⁴ The BSC is administered by Elexon and is a legal document that contains the rules and governance arrangements for the balancing mechanism and imbalance settlement processes for electricity in Great Britain.

The drafting of proposed modifications was led by Elexon (see **Annex A to D** of the consultation document), working alongside government and other administrators. Ofgem, which is responsible for Transmission and Distribution Licences, and all electricity code administrators had the opportunity to review BSC proposals to identify any consequential modifications that might be required to the documents they administer. They also had the opportunity to review proposed consultation text relating to the documents they administer to comment on their technical accuracy. The government also engaged with other relevant stakeholders (i.e. BSC Panel, LCCC and EMRS) to seek their input as part of the process of developing proposals for modifications.

Consultation dissemination

In the interest of transparency, the government decided to publish the consultation on GOV.UK.⁵

Consultees were informed of the commencement of the consultation period (either through email or postal notification) and how to respond. Ministerial letters were issued to Ministers in

² National Grid ESO, Elexon, ElectraLink, Energy Networks Association, Gernserv-Smart Energy Code Administrator and Secretariat, Retail Energy Code Company.

³ <https://www.elexon.co.uk/groups/bsc-panel/membership/>

⁴ Balancing and Settlement Code, available - <https://www.elexon.co.uk/bsc-and-codes/>

⁵ Nuclear RAB consultation on industry code and licence modifications (2023), available - <https://assets.publishing.service.gov.uk/media/6537882526b9b1000daf1e16/nuclear-rab-industry-code-licence-modifications-consultation.pdf>

the Scottish and Welsh Government inviting them to respond to the consultation. Details of the consultation were also issued by Elexon to their BSC change mailing list and published in their Newscast newsletter to ensure the relevant parties were aware of the consultation.

Responses

In total, the government received 8 responses to the consultation⁶. For the purpose of analysis, based on the responses received, stakeholders have been grouped into the following categories:

- Scottish and Welsh Ministers
- Electricity suppliers/ BSC parties
- Ofgem⁷
- BSC Panel
- Transmission Licence holders
- Industry code administrators

A full list of respondents has been set out in **Annex 1**.

Respondents engaged with the consultation in different ways, some responded to the consultation questions through Citizen Space, while others responded by email.

Although this government response does not list or comment on every point made by consultees in their responses, all responses have been analysed by the government. Some respondents did not structure their responses around the specific questions posed, therefore the government has sought to consider those responses by reference to the consultation question/position that they are most suited to. The summary of responses (see below) focuses on the key points raised as they directly relate to the consultation question.

⁶ It should also be noted that some respondents fit into more than one category see **Annex 1**. Some respondents responded anonymously and therefore have not been listed. However their responses have been considered as part of the summary of responses.

⁷ Response was provided by Ofgem's electricity distribution charging function and is not intended to reflect the full range of views from all departments within Ofgem.

Outcome of the consultation

The consultation proposed to make modifications to the BSC in order for the nuclear RAB revenue stream to function correctly. The consultation did not propose any changes to Transmission and Distribution Licences and the other electricity codes maintained under these licences (i.e. Connection Use of System Code, Grid Code, System Operator – Transmission Operator Code, Distribution Use of System Code, Distribution Code, Smart Energy Code and Retail Energy Code).

Following the analysis of responses received (see below), it is noted that respondents were largely in agreement with proposals and/or did not raise concerns that would necessitate a different approach (see below for summary of responses). Consequently, the Secretary of State has proceeded with the proposed modifications detailed in the consultation with no further amendments (see **Annex A, B, C and D** of the consultation).

Specifically, the Secretary of State has proceeded with making changes to Section C (Annex C-1), Section H, Section V and Section X (Annex X-1) of the BSC which seek to:

- Establish EMRS as the Nuclear RAB Settlement Services Provider to carry out nuclear RAB settlement functions (for example, to calculate and settle supplier payments) on behalf of the Revenue Collection Counterparty (i.e. LCCC).
- Ensure that the Nuclear RAB Settlement Services Provider and the Revenue Collection Counterparty receive the BSC data that they need to carry out their functions.
- Insert new defined terms to correspond with the changes above.

Next steps

To accompany the publication of this government response, the Secretary of state has made a legal instrument to implement the changes to the BSC. A draft of this instrument has been provided in **Annex 2**. This will be sent to Elexon alongside a letter requesting that Elexon updates the BSC with the changes the Secretary of State has made using the power at section 29(1) of the Act (as set out in **Annex 2**). A draft of the letter has been provided in **Annex 3**.

Modifications will take effect from 29/02/2024

Details of the modifications that have been made have also been published here – <https://www.gov.uk/government/publications/nuclear-regulated-asset-base-rab-balancing-and-settlement-code-modifications>

Following the introduction of the changes to the BSC outlined in this government response, future modifications to licences or industry codes could be made by way of the standard change processes or by the Secretary of State using the power at section 29(1) of the Act if the modifications fell within the scope of that provision.

Analysis of responses

Questions 1 - 6 received 6 responses each. This included responses from a Transmission Licence holder, an industry code administrator, electricity suppliers/ BSC parties, Ofgem and the BSC Panel.

Questions 7 – 9 received 5 responses each. This included responses from a Transmission Licence holder, an industry code administrator, electricity suppliers/ BSC parties and the BSC Panel.

As set out above some respondents did not structure their responses around the specific questions posed. Therefore as part of the analysis of consultation responses the government has sought to consider those responses by reference to the consultation question/position that they are most suited to.

Balancing and Settlement Code

Nuclear RAB Settlement Services Provider

The consultation proposed making modifications to Section C (i.e. Annex C-1) of the BSC to establish EMRS as the Nuclear RAB Settlement Services Provider. Under this role, EMRS would be able to carry out the processes that enable supplier payments to be calculated and settled (according to the amount of electricity they supplied on each day of the levy period) on behalf of the Revenue Collection Counterparty.

Question 1:

Do you consider that these modifications are sufficient to enable EMRS to perform the role of the Nuclear RAB Settlement Services Provider?

Summary of responses

All respondents were largely content that the proposed changes to Section C of the BSC are sufficient to enable EMRS to perform the role of the Nuclear RAB Settlement Services Provider.

Government response

The government considers it appropriate to take forward the position set out in the consultation. Therefore the Secretary of State has proceeded with making the modifications to Section C of the BSC as outlined in the consultation (see **Annex A** of the consultation – refer to Annex C-1 of Section C, paragraph 5.1.1).

Use of BSC data for nuclear RAB

The consultation sought views on the proposals for modifications to be made to Section H and V of the BSC for the purpose of enabling data sharing in accordance with nuclear RAB legal requirements.

The proposed modification to Section V is intended to place an obligation on Elexon to provide the required data to the Nuclear RAB Settlement Services Provider and the Revenue Collection Counterparty. This both enables Elexon to provide BSC data and creates a requirement for that data to be provided. The proposed modification to Section H will ensure that Elexon (and BSC Parties) are not in breach of BSC confidentiality provisions in providing BSC data to the Revenue Collection Counterparty and Nuclear RAB Settlement Services Provider where they are required to do so under a nuclear RAB legal obligation.

Question 2:

Do you consider that these modifications are sufficient to allow BSC data to be provided to the Revenue Collection Counterparty and Nuclear RAB Settlement Services provider for the purpose of nuclear RAB?

Summary of responses

Respondents largely agreed that the proposed changes set out in the consultation achieved the desired outcome, allowing BSC data to be provided to the Revenue Collection Counterparty and Nuclear RAB Settlement Services Provider as necessary for the revenue stream to function effectively.

Government response

Having considered responses, the government considers it appropriate to take forward the changes proposed in the consultation. Therefore the Secretary of State has made changes to Section H (see **Annex B** of the consultation – refer to Section H, paragraph 4.1.1) and Section V (see **Annex C** of the consultation – refer to Section V, paragraph 5.5) of the BSC.

Defined terms

The consultation proposed that Section X (i.e. Annex X-1) of the BSC should be modified to include definitions for Nuclear RAB Legal Requirement, Nuclear RAB Settlement Services, Nuclear RAB Settlement Services Provider and Revenue Collection Counterparty, to accompany the changes proposed to the BSC.

Question 3:

Do you have any comments on the defined terms?

Summary of responses

Most respondents did not have comments on the defined terms, where they did, they were consistent with the views of government and expressed that the terms set out above were defined as per their intended use and are consistent with the proposed modifications to the BSC.

Government response

The government has taken the responses into account and considers that the defined terms are fit for purpose and align with the modifications proposed to Section C, H and V of the BSC. Therefore the Secretary of State has proceeded with making the modification set out in the consultation to Section X of the BSC (see **Annex D** of the consultation).

General

The government gave consultees the opportunity to provide further comments on the changes proposed to the BSC in the consultation and consider whether any other changes are needed to the BSC to ensure effective functioning of the nuclear RAB revenue stream.

Question 4:

Do you have any comments on the proposed changes to the BSC to enable the functioning of the Regulations?

Question 5:

Do you consider there to be any further changes needed to the BSC to enable the functioning of the Regulations?

Summary of responses

Respondents did not have further comments in relation to questions 4 and 5.

Government response

As set out above and having considered the responses received in relation to the proposed changes to the BSC, the Secretary of State has proceeded with making the changes proposed to Section C, H, V and X of the BSC as set out in the consultation.

Other codes

The consultation proposed that at this stage no changes would be required to the following codes:

- Connection and Use of System Code (CUSC)– on the basis that it is broad enough to enable the Regulations to function as intended.
- Grid Code – on the basis that it is broad enough to enable the Regulations to function as intended.
- System Operator – Transmission Operator Code (STC)- on the basis that it is broad enough to enable the Regulations to function as intended.
- Distribution Use of System Code (DCUSA) – on the basis that it is concerned with the use of electricity distribution systems to transport electricity to or from connections to them. There is not a direct interplay between the Regulations and the development, maintenance, or operation of the distribution system.

- Distribution Code (DCode)– on the basis that it does not deal with revenues, pricing, generation or suppliers, and there is no direct interplay between the Regulations and how the network operates.
- Smart Energy Code (SEC) – on the basis that it deals with services the DCC provides to industry and how those costs are levied by the DCC on to SEC parties. Given that the Regulations would not result in changes to how the DCC provides services and subsequently how those costs are levied, no modifications are required.
- Retail Energy Code (REC)- on the basis that it deals with the rules suppliers in the retail energy sector must follow when selling to consumers

Question 6:

Do you consider there to be any changes required to the CUSC, GRID Code, STC, DCUSA, DCode, SEC or REC for the effective functioning of the Regulations?

Summary of responses

Respondents did not consider there to be any changes required to the above codes. They were of the view that changes to industry codes for the purpose of the Regulations would sit within the BSC and were therefore satisfied that the changes to the BSC were sufficient.

Government response

Given the responses received and the interaction between these codes and the Regulations, the government considers it appropriate to proceed with the proposals set out in the consultation. Therefore the Secretary of State has not made changes to the CUSC, GRID Code, STC, DCUSA, DCode, SEC or REC for the effective functioning of the Regulations.

Transmission Licence

As part of the consultation the government considered whether modifications should be made to the Transmission Licence, including whether the list of Applicable BSC Objectives set out in paragraph 3 of Condition C3 of the Transmission Licence should also include a ‘nuclear RAB objective’.

This was on the basis that there is an existing objective relating to the Electricity Market Reform (“EMR”) (being the legislative mechanism for implementing the CFD scheme) and the nuclear RAB and CFD revenue streams having similarities. However, the consultation document highlighted that the EMR introduced a number of substantive changes to the BSC that were necessary in order to facilitate payments to CFD/CM generators, which subsequently impacted balancing and settlement arrangements.

For nuclear RAB the proposed modifications to the BSC are to provide Elexon (and therefore EMRS) with the authority under the BSC to perform the settlement services provider role for nuclear RAB. In the past where changes have been made to the BSC that are for the purpose of enabling Elexon to undertake settlement services, it has not resulted in the need for a new Applicable BSC Objective to deliver this. This is because the Transmission Licence allows for these activities, and by their nature, such changes do not impact the rules relating to the balancing and settlement arrangements.

Therefore, on this basis the government proposed to make no changes to the Transmission Licence.

Question 7:

It is proposed not to add nuclear RAB to the list of Applicable BSC Objectives. Do you have any comments on this proposal?

Question 8:

Do you consider there to be any changes required to the Transmission Licence for the effective functioning of the Regulations?

Summary of responses

Respondents largely agreed with proposals and considered that no changes would be required to the Transmission Licence. They expressed that they did not see any strong case for adding nuclear RAB to the list of Applicable BSC Objectives and considered that keeping changes within the BSC would be sufficient for the effective functioning of the nuclear RAB revenue stream.

One respondent provided a detailed response in support of the government's rationale for not adding nuclear RAB to the list of Applicable BSC objectives in the Transmission Licence. Their response reaffirmed there being no precedent of previous changes to the BSC to enable Elexon, or EMRS to perform the settlement services provider role being implemented through a new Applicable Objective.

They also set out that under nuclear RAB, payments to nuclear generators would be as directed / determined by Ofgem and would not need to be calculated under the BSC. Elexon/EMRS's role under nuclear RAB would be for the purposes of determining how much revenue is to be collected from suppliers to meet the amounts determined by Ofgem and in doing so they will be using existing 'open' BSC data to determine this. In order to deliver this function, no changes would be needed to the rules around balancing and settlement as the Transmission Licence already allows for this.

Government response

Following analysis of the responses received to this question the government considers it appropriate to proceed with the proposals set out in the consultation. Therefore the Secretary of State has not made any changes to the Transmission Licence.

Distribution Licence

The consultation proposed that no changes should be made to the Distribution Licence, this is on the basis that the Regulations do not impact on, nor are they impacted by, the mechanics and activities which govern the distribution of electricity.

Question 9:

Do you consider there to be any changes required to the Distribution Licence for the effective functioning of the Regulations?

Summary of responses

Respondents agreed that no changes would be required to the Distribution Licence and changes would sit within the BSC.

Government response

The government has proceeded with the proposals set out in the consultation. Therefore the Secretary of State has not made any changes to the Distribution Licence.

Other matters raised

Letters were received from both Scottish and Welsh Ministers in response to the Ministerial letters notifying them of the consultation.

The letters included the Scottish and Welsh Governments' respective positions on new nuclear and wider matters such as the need to ensure protection for energy consumers (i.e. households (including the most vulnerable) and businesses) from high costs.

The government recognises and has previously addressed concerns around consumer impacts (e.g. in consultations, government responses⁸ and other public engagement on nuclear RAB and the case for new nuclear). The government has committed to ensuring that consumers' interests are protected, and steps are taken to prevent consumers from bearing unacceptable costs through subjecting projects seeking to use the model to rigorous due diligence. The Act itself also includes a requirement for projects to be suitably mature and likely to represent value for money in order to be designated to use the RAB model⁹. Any project approved to use RAB, and which receives a positive final investment decision will be subject to a robust incentives regime to manage project costs and schedules.¹⁰

As responses did not directly relate to the consultation questions or subject matter and did not raise any specific concerns about proposals set out in the consultation, the government considers it appropriate to proceed as set out in the consultation.

⁸ Consultation and government response on revenue stream for nuclear RAB model (2022), available - <https://www.gov.uk/government/consultations/revenue-stream-for-the-nuclear-regulated-asset-base-rab-model>

⁹ <https://hansard.parliament.uk/lords/2022-02-21/debates/e8d88b2d-9ba1-4c35-a8f8-358b8eeadafe/LordsChamber>- Column 44

¹⁰ <https://hansard.parliament.uk/lords/2022-02-21/debates/e8d88b2d-9ba1-4c35-a8f8-358b8eeadafe/LordsChamber>- Column 17

Annexes

Annex 1 – List of respondents

Categories	Respondent
Scottish and Welsh Ministers	Minister for Energy and the Environment -Gillian Martin MSP (Scottish Minister) ¹¹ Minister for Climate Change - Julie James MS (Welsh Minister)
Electricity suppliers/ BSC parties	EDF Energy Limited Npower Commercial Gas Limited
Ofgem	Ofgem's electricity distribution charging function. ¹²
BSC Panel	BSC Panel
Transmission Licence holders	National Grid ESO
Industry code administrators	National Grid ESO

Each organisation submitted one response but may have been listed more than once as they fall into multiple categories.

Annex 2 – Draft legal instrument

The [draft legal instrument to implement the changes to the BSC](#) has been published as an accompanying document

Annex 3 – Draft letter to Elexon

The [draft letter instructing Elexon to update the BSC](#) has been published as an accompanying document.

¹¹ Currently Minister for Energy, Just Transition and Fair Work

¹² Their response is not intended to reflect the full range of views from all departments within Ofgem.

This consultation is available from: www.gov.uk/government/consultations/nuclear-regulated-asset-base-rab-industry-code-and-licence-modifications

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