



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 Response to  
Consultation

August 2024



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# Contents

Contents	3
1. Executive Summary	4
2. Background	6
3. Relevant Legislation	8
4. Analysis of Consultation Responses and Policy Conclusions	9
4.1 Licence and Code Text	10
4.1.1. Purpose of the Licence and Code Modifications	10
4.1.2 The Licence Conditions	12
4.1.3 The BSC and AoAs	15
4.2 Wider Policy Conclusions	16
4.2.1 Flexibility	16
4.2.2 Exit Arrangements	16
4.2.3 Topping Up	17
4.3 Other feedback on the January 2024 Statutory Consultation	18
4.3.1 Shareholder Liabilities and Costs	18
4.3.2 Responsibilities of Shareholders	18
4.3.3 Timelines	19
4.3.4 Due Diligence	19
4.3.5 Revoking/Refusing Shareholders	20
5. Directed Parties	21
6. Appendices	23
Appendix 1 – Elexon Ownership Statement of Policy	23
Appendix 2 – Amended Balancing and Settlement Code	30
Appendix 3 – Balancing and Settlement Code Analysis	31
Glossary	44

# 1. Executive Summary

Elexon will remain an industry body with the shares held by a subset of the industry parties that fund Elexon, as set out in the March 2023 Joint Elexon Ownership Decision.<sup>1</sup> These proposed arrangements are a consequence of the establishment of the National Energy System Operator (NESO).<sup>2</sup> As Elexon is owned by National Grid Electricity System Operator Ltd (NGESO), the creation of NESO as a publicly owned entity required us to also consider the future ownership of Elexon.<sup>3</sup>

On 24 January 2024, a statutory consultation was published (the January 2024 Statutory Consultation), proposing new electricity supply and generation licence conditions and changes to the Balancing and Settlement Code (BSC) to support the implementation of the new ownership arrangements for Elexon.<sup>4</sup> 11 responses were received from a mix of generators and suppliers (including companies which have both electricity supply and generation licences) and other industry parties.

This publication serves as the Department and Ofgem's response to the January 2024 Statutory Consultation. This document sets out our analysis and consideration of responses and our policy conclusions. When and if the decision to change Elexon's ownership is made, the relevant authority will modify the electricity generation and supply licence conditions (as set out in Section 4) and the BSC, as well as the form of Elexon's Articles of Association (AoAs) (as set out in Appendix 2).

Our proposal is that the Secretary of State will make the modifications, using the powers under Sections 169 and 170 of the Energy Act 2023 (the Act) upon, and subject to, the Secretary of State deciding to proceed with the establishment of NESO. Upon that decision being made, we intend to publish a notice of decisions that updates the electricity supply licences, generation licences, the BSC and AoAs with the proposed modifications set out in this response.

Beyond the licence and code changes that are the focus of this document, there are also other legal steps that we propose to take to enact the change of ownership of Elexon upon, and subject to, the Secretary of State deciding to proceed with the establishment of NESO. These include:

- A transfer scheme made under paragraph 1(2) of Part 1 of Schedule 9 of the Act to transfer Elexon shares from NGESO to the new shareholders.
- A direction to the future Elexon shareholders, which will require them to hold a share in Elexon (as provided for under the proposed licence conditions).

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

<sup>2</sup> In this document, references to the "establishment of NESO" also denote the designation of National Grid Electricity System Operator Ltd as the Independent System Operator and Planner.

<sup>3</sup> Elexon Limited Company Number 03782949

<sup>4</sup> <https://www.gov.uk/government/consultations/future-ownership-of-elexon-licence-and-code-changes>

These documents are not within the scope of this consultation response, and are being developed through separate processes, as appropriate.

## 2. Background

Elexon was established to administer the Balancing and Settlement Code (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.

In April 2022, during the last Parliament, the government and Ofgem published a joint response to the July 2021 consultation on a Future System Operator (FSO) role (the April 2022 Joint FSO Decision), which set out the decision to create a publicly owned FSO.<sup>5</sup> 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 NESO as a publicly owned entity required us to also consider the future ownership of Elexon.

We propose that the implementation of Elexon's new ownership structure will involve modifying electricity supply and generation licences to enable the Secretary of State and the Gas and Electricity Markets Authority (GEMA, also referred to in this document as "the Authority") to direct parties to hold a share in Elexon.<sup>6</sup> We also propose that the BSC will be modified, as needed, to support implementation of the new ownership arrangements. We intend that these modifications will be made using powers in the Act, specifically sections 169 and 170, subject to the Secretary of State deciding to proceed with the establishment of NESO. The January 2024 Statutory Consultation was the statutory consultation on these modifications, and this document forms the response to this consultation. A separate notice of decisions will follow in due course.

This statutory consultation response addresses both the licence and code modifications, (including the form of Elexon's AoAs) all of which will be needed to implement this policy. The licence condition text for the electricity supply and generation licences can be found in Section 4 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 2, due to the length of the text.

In addition, subject to the Secretary of State deciding to proceed with the establishment of NESO, we propose that a transfer scheme will be made under paragraph 1(2) of Part 1 of Schedule 9 to the Act.<sup>7</sup> It will be used to transfer Elexon shares from NGESO to the new shareholders. Under paragraph 2(1) of Part 1 of Schedule 9 to the Act, the Secretary of State must consult the transferor, and such other persons as the Secretary of State considers

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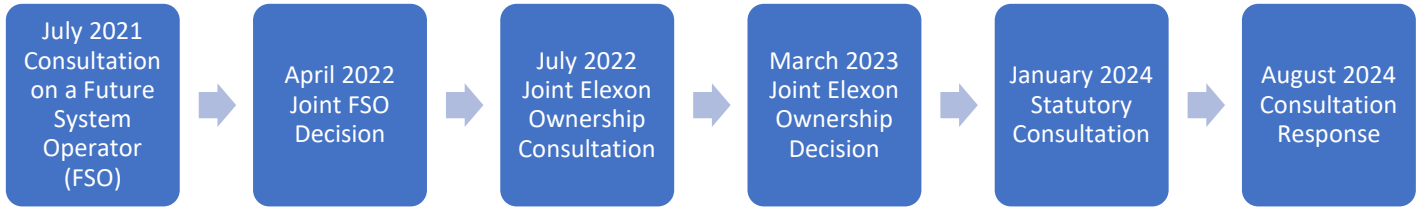
<sup>5</sup> <https://www.gov.uk/government/consultations/proposals-for-a-future-system-operator-role>

<sup>6</sup> The Gas and Electricity Markets Authority (GEMA) is the governing body of Ofgem. Ofgem acts on behalf of GEMA.

<sup>7</sup> <https://www.legislation.gov.uk/ukpga/2023/52/enacted>

appropriate, on the making of a transfer scheme. This was the subject of separate consultation with Elexon, NGENSO, and the proposed shareholders, which has been completed.

**Figure 1**



### 3. Relevant Legislation

Sections 169 and 170 of the Act enable a relevant authority to modify licences and codes in preparation for, in connection with, or in consequence of, the establishment of NESO.<sup>8</sup> 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.

Section 170(1) of the Act requires the relevant 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. The relevant authority could be the Secretary of State or the Authority. For the purpose of the licence and code changes related to the future ownership of Elexon, we intend the Secretary of State to be the relevant authority. The January 2024 Statutory Consultation (which we are responding to in this document) was issued to fulfil the obligation to publish a notice about these proposed modifications for the purposes of Section 170(1). This consultation was also sent to statutory consultees separately, along with a separate notice document covering the January 2024 Statutory Consultation.

Section 170(4) of the Act then states that if, after having given notice as required by the Act, the Secretary of State or the Authority decides to make the modification, it must publish a notice about the decision.

This document is the joint Department and Ofgem response to the January 2024 Statutory Consultation and sets out our conclusions about the modifications to be made, but it **does not operate as decisions or notice of decisions** under sections 169 and 170 of the Act. Those decisions will be made upon, and subject to, the Secretary of State deciding to proceed with the establishment of NESO. Upon those decisions being made, **we will publish a separate notice of decisions about the licence and code changes related to the future ownership of Elexon.**

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



## 4. Analysis of Consultation Responses and Policy Conclusions

In this section, we set out our analysis of responses to the January 2024 Statutory Consultation. We also set out the rationale for the policy conclusions that we have made, which take account of the responses that were received. This includes consideration of the amendments to the electricity supply and generation licence conditions, the BSC and Elexon's AoAs, as well as our wider policy conclusions relating to the ownership of shares in Elexon. The full Elexon ownership statement of policy can be found at Appendix 1. This policy will apply upon and subject to the decision of the Secretary of State to establish NESO.

11 responses were received to the January 2024 Statutory Consultation from a mix of generators and suppliers (including companies which have both electricity supply and generation licences) and other industry parties. We do not use the exact or absolute numbers of respondents when referring to responses. 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.

This section is structured as follows:

- Licence and Code Text (this section covers the legal text itself, and any changes that we have made as a result of feedback).
  - Purpose of the Licence and Code Modifications
  - The Licence Conditions
  - The BSC and AoAs
- Wider Policy Conclusions (this section sets out the feedback on, and updates to, key areas of policy that were described in the January 2024 Statutory Consultation).
  - Flexibility
  - Exit Arrangements
  - Topping up
- Other feedback on the January 2024 Statutory Consultation (this section considers the feedback that was received to the January 2024 Statutory Consultation which referred to topics that were not discussed in detail in that consultation).
  - Shareholder Liabilities and Costs

- Responsibilities of Shareholders
- Timelines
- Due Diligence
- Revoking/Refusing Shareholders

Within each sub-section, we set out consideration of feedback received and the impact that this has had on the policy conclusions and legal text.

As noted above, the full Elexon ownership statement of policy can be found at Appendix 1. This includes a full list of definitions used in this document. The definitions are provided for the purpose of understanding this consultation response and the Elexon ownership statement of policy. No comments were received on the definitions that were set out in the January 2024 Statutory Consultation. However, as our policy has been refined, we have updated the definitions to provide further clarity and aid understanding.

### 4.1 Licence and Code Text

*In this section, we set out the purpose of the proposed licence and code modifications. We then set out the updated licence text, a summary of the detailed feedback that was received on the licence, and the changes that have been made as a result. Appendix 3 considers the feedback received on the BSC and AoAs, and sets out what changes have been made as result of the feedback. The BSC and AoAs text itself is included in Appendix 2 (which has been published alongside this document due to the length of the text).*

#### 4.1.1. Purpose of the Licence and Code Modifications

The proposed Electricity Supply Standard Licence Condition 60 and Generation Standard Licence Condition 21 provide for the Secretary of State or the Authority to issue a direction to the licensee to hold a share in Elexon and for the licensee to provide information to the Secretary of State and the Authority that is relevant to the issuance of such a direction. The licence condition text gives the Authority and the Secretary of State the power to direct parties to take on a share as needed, consistent with the Elexon ownership statement of policy set out in Appendix 1.

Section C of the BSC concerns BSCCo (BSC Company) and its subsidiaries, and the proposed amendments make the necessary changes to the BSC to implement Elexon's ownership change, in line with the Elexon ownership statement of policy (Appendix 1).<sup>9</sup> 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.

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<sup>9</sup> As defined in Section X-1 of the BSC, BSCCo means ELEXON Limited (or any successor to that company acting in the capacity as BSCCo).

Elexon's AoAs set out Elexon's governance and the proposed amendments reflect Elexon's change in ownership, in line with the Elexon ownership statement of policy.

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.

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 it. Our proposed modification of the BSC includes amending the form of AoAs, to be in the amended form shown in Appendix 2, so that they reflect the policy described in this consultation response and the new licence conditions. Where the form of the AoAs is changed as part of an approved BSC Modification Proposal, NGENO (as the current shareholder of Elexon) is required by the BSC to exercise its voting rights as shareholder to adopt the amended AoAs.

A full explanation of the effect of the licence and code modifications, and the policy intent, can be found in Appendix 1.

## 4.1.2 The Licence Conditions

The proposed licence conditions are set out below.

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” the definition of Elexon as below:

“Elexon means Elexon Ltd, a company registered in England and Wales under registered number 03782949 whose registered office is at 4th Floor, 350 Euston Road, London, NW1 3AW”

### SECTION C: STANDARD CONDITIONS FOR ALL SUPPLIERS

Condition 60: Elexon ownership

60.1. 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.

60.2. 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.

60.3. Where the responsibility for holding a share in Elexon is delegated in accordance with paragraph 60.2, 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 be a wholly owned affiliate of the licensee.

60.4. Once directed under paragraph 60.1, the licensee must inform the Secretary of State and the Authority about a change in the corporate relationship between the licensee and any affiliate of the licensee specified in the direction.

60.5. The Secretary of State or the Authority may issue a direction revoking any requirement on the licensee to hold a share in Elexon.

For Electricity Generation Licences:

PART II: THE STANDARD CONDITIONS OF LICENCE

Condition 1. Definitions and interpretation

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

“Elexon means Elexon Ltd, a company registered in England and Wales under registered number 03782949 whose registered office is at 4th Floor, 350 Euston Road, London, NW1 3AW”

PART II: THE STANDARD CONDITIONS OF LICENCE

PART II – SECTION B: GENERAL

Condition 21: Elexon ownership

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 be a wholly owned affiliate of the licensee.
4. Once directed under paragraph 1, the licensee must inform the Secretary of State and the 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.

The table below sets out the comments received on the licence drafting and our responses.

<b>Comment raised by respondent</b>	<b>Consultation response analysis and rationale for any changes</b>	<b>Updated text</b>
<p>Clarification of the definition of Elexon as “Elexon Ltd and its subsidiaries unless stated otherwise where Elexon fulfils the role of Balancing and Settlement Code Company (also known as BSCCo).”</p>	<p>Adopt the definition used in the draft transfer scheme.</p>	<p>“Elexon Ltd, a company registered in England and Wales under registered number 03782949 whose registered office is at 4th Floor, 350 Euston Road, London, NW1 3AW”</p>
<p>Missing word “be” in section 3.c.</p>	<p>We have addressed this.</p>	<p>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</p> <p>c. if the party to whom responsibility is delegated ceases to be a wholly owned affiliate of the licensee.</p>
<p>Clarification/explanation of paragraph 4 requested. This clause tells parties they must let the Secretary of State and the Authority know of changes in affiliation.</p>	<p>Paragraph 4 provides for the Secretary of State and the Authority to specify in the direction the name of the funding share party relevant for that licensee. It then provides for the Secretary of State and the Authority to be informed if there is a change in relationship between the licensee and the funding share party, for example if there ceases to be wholly owned affiliation between the two parties. The Secretary of State and the Authority will then be aware if the</p>	<p>Text is unchanged.</p>

	relationship has changed and can take any action that may be appropriate. For example, if the funding share party left the market, the Secretary of State or the Authority could revoke the direction.	
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### 4.1.3 The BSC and AoAs

Redlined versions of the proposed modification to the BSC and AoAs have been published alongside this consultation response document in Appendix 2, due to the length of the text.

#### **Consultation response and rationale for any changes:**

In Appendix 3, we set out our consideration of detailed feedback to the January 2024 Statutory Consultation and the impact that this has had on the legal text of the BSC and AoAs. As well as detailed feedback on the drafting (as set out in Appendix 3), it was also suggested by a small number of respondents that the process for topping up and exit should be set out in the BSC.

We do not propose that the detail of the process for topping up and exit will be reflected in the BSC. This is because the BSC sets out the obligations of BSC Parties (and in the context of Elexon ownership, the modifications being made are for the purpose of setting out the rights and responsibilities of shareholders), while the policy on topping up and exit relates to the intentions of the Department and Ofgem. Topping up and exit will be managed by the Department or Ofgem, as needed.

The proposed licence conditions set out above (in Section 4) give the Secretary of State and the Authority the ability to top up the shareholder cohort, and to be notified when a shareholder is in an exit scenario. We have set out how we intend to use this ability in the Elexon ownership statement of policy in Appendix 1. We have also amended the BSC to ensure that it reflects the Elexon ownership statement of policy.

## 4.2 Wider Policy Conclusions

*In this section, we address the feedback received on the Elexon ownership policy. We set out our analysis of responses, and the conclusions we have reached. The Elexon ownership policy provides clarity on the purpose behind the proposed modifications to licences and the BSC. This includes detail on how we intend for the obligations to be met, as well as our intentions for managing the shareholder cohort in future. The Elexon ownership statement of policy can be found in Appendix 1.*

### 4.2.1 Flexibility

The Elexon ownership policy sets out the basis on which the shareholders of Elexon will be determined. In particular, it sets out the role of, and relationship between, funding share parties, directed parties and designated parties.

#### **Consultation response analysis and rationale for any changes:**

As there were no comments on flexibility arrangements in response to the January 2024 Statutory Consultation, these remain unchanged.

### 4.2.2 Exit Arrangements

Although an Elexon share will be held on an enduring basis by the directed party (or a designated party on behalf of the directed party), we recognise that there are some circumstances where a party would stop holding a share in Elexon. The policy on exit arrangement sets out examples of exit scenarios, and our intention for how an exit would be managed.

#### **Consultation response analysis and rationale for any changes:**

A small number of respondents sought clarification on the process for exit arrangements. Requests for clarification particularly related to when a shareholder could notify the Secretary and State or the Authority that they are no longer eligible to be a mandated shareholder.

In response to feedback, the Elexon ownership statement of policy in Appendix 1 confirms that a directed party may notify the Secretary of State and the Authority of a change in circumstances, as a result of which the shareholding direction will cease to have effect or be revoked, in advance of the change of circumstance occurring. In such a case:

- (a) the funding share party (if it will continue to be an eligible party) may at the same time notify its nomination of a new directed party to the Secretary of State and the Authority; and
- (b) (if the outgoing directed party had nominated a designated party) the new directed party may at the same time notify its intent to nominate the same designated party (such that the Elexon share would not need to be returned).

In such a case, the Secretary of State or the Authority will give reasonable consideration to giving notice of revocation of the shareholding direction and (where applicable) issuing a new



shareholding direction, on the applicable basis set out in Paragraphs 5.2 and 5.3 of the Elexon ownership statement of policy in Appendix 1 (and in a case within Paragraph 5.4(b), to accepting the notification of the designated party) in advance of the change in circumstance occurring. In deciding whether or when to act in advance, the Secretary of State or the Authority may take into account whether a new directed party has been nominated. The Secretary of State or the Authority may impose conditions when taking such actions, including that the change of circumstances occurs within a specified time after the actions are taken, and that the relevant party informs them when the change of circumstances occurs.

This is in line with our policy to provide a resilient and stable cohort of shareholders for Elexon. It also allows flexibility for Elexon shareholders, to ensure that holding an Elexon share would not unreasonably impact on the business operations of a shareholder.

### 4.2.3 Topping Up

Recognising that exit arrangements could lead to a reduction in the number of shareholders, the Elexon ownership statement of policy (Appendix 1) sets out the circumstances in which the Secretary of State or the Authority may, at any point in the future, exercise the power to give a direction to hold an Elexon share to a generation or supply licensee, to restore the number of mandated shareholders to 13. We refer to this process as “topping up”. The topping up mechanism could be used at any time after the initial cohort is in place.

#### **Consultation response analysis and rationale for any changes:**

A small number of respondents requested further clarification on the process for topping up; and asked if we would implement regular scheduled reviews of the shareholder cohort, to inform our decisions about when to top up.

To avoid unnecessary administrative burden, we currently have no plans for scheduled reviews of the cohort of Elexon shareholders. We will maintain awareness of the mandated shareholder cohort through:

- (a) notifications by directed parties of changes (as to whether a directed party and funding share party continue to be wholly owned affiliates) as required by the licence condition;
- (b) the Authority's knowledge of parties whose licences have been revoked or surrendered, and
- (c) notification by Elexon if a funding share party ceases to be a BSC Party.

In deciding whether to top up, the Secretary of State or the Authority would take into consideration factors such as market conditions at the time.

## 4.3 Other feedback on the January 2024 Statutory Consultation

*This section sets out additional topics that received feedback or queries, in responses. These topics do not directly relate to the licence and code text, or the Elexon ownership statement of policy (as set out in Appendix 1) but pertain more broadly to our policy intent in regard to the implementation of Elexon ownership arrangements. Below we set out our responses to these comments.*

### 4.3.1 Shareholder Liabilities and Costs

In response to the January 2024 Statutory Consultation, many respondents raised questions about liabilities and sought assurance that liabilities (including pension liabilities) will not fall to shareholders.

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, including with regard to pensions. It is not our present intention that holding a share in Elexon will impose costs or liabilities on shareholders, and 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 NGENO to the new shareholders at the point of beginning the new ownership arrangements.

As is the case at present in respect of the current shareholder (NGESO), once the new ownership arrangements are in place, the BSC will continue to 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.

### 4.3.2 Responsibilities of Shareholders

A small number of respondents raised questions about the shareholders' roles and responsibilities in the process (e.g., how to delegate shareholding, and how to notify the Secretary of State or the Authority about exit arrangements).

We have clarified our policy on delegation and exit arrangements in the Elexon ownership statement of policy (Appendix 1). We will ensure that shareholders are provided with a contact in the Department and/or Ofgem once the ownership change is complete. This will be the contact point for any future changes regarding exit arrangements and nominating wholly owned affiliates to be directed or designated parties, and shareholders will be informed of any changes to the relevant contact details.

### 4.3.3 Timelines

A small number of respondents raised queries about the timetable and the steps that will be taken for the transfer of ownership.

As noted above, in Section 3, this document is the joint Department and Ofgem response to the January 2024 Statutory Consultation and sets out our conclusions about the modifications to be made, but it **does not operate as decisions or notice of decisions** under sections 169 and 170 of the Act. Those decisions will be made upon, and subject to, the Secretary of State deciding to proceed with the establishment of NESO. This is because the powers that we are intending to use to make the licence and code modifications proposed in this document can only be exercised in preparation for establishment of NESO.

Upon those decisions being made, **we will publish a separate notice of decisions about the licence and code changes related to the future ownership of Elexon**. The notice of decisions will be sent to relevant parties, as per requirements under section 170 of the Act. Similarly, it is our intention to send the Elexon transfer scheme to relevant parties to the Elexon transfer scheme on the same day as we publish the notice. Subject to this notice of decisions, we propose that the date from which the modifications to the licences and code, and the transfer scheme, will be effective will be on the date with effect from which NESO is established (by decision of the Secretary of State). Our intention is to issue a direction to the directed parties (as proposed in Section 5 of this consultation response) on the date that the decision is taken to establish NESO. Therefore, the date that Elexon will be transferred to the industry parties who will be the mandated shareholders will depend on the timeline for the establishment of NESO.

### 4.3.4 Due Diligence

A small number of respondents raised a request for the Department to share the information we have in relation to any due diligence exercises that were done on Elexon to ensure that the transfer of Elexon shares does not confer any liabilities to shareholders.

The funding arrangements and operation of Elexon are already transparent to its funding parties and, in particular, funding arrangements and the relationship between the current shareholder and Elexon are set out in the BSC. All shareholders will be BSC Parties, which means that information that would normally form part of a due diligence exercise is already readily available to the potential shareholders. In addition, the Department has facilitated direct contact between Elexon and the prospective shareholders so that they can check their understanding.

The Department itself has been working with Elexon so that it can be confident that any decisions to transfer shares to the new shareholders is reasonable. This includes confirming that we are not exposing shareholders to any liabilities.

### 4.3.5 Revoking/Refusing Shareholders

A small number of respondents asked under what circumstances shareholders would be revoked/refused.

The March 2023 Joint Elexon Ownership Decision stated that after the initial transfer, licensed BSC Parties would then have a voluntary option to request a share in Elexon.

The March 2023 Joint Elexon Ownership Decision also said that “share ownership does not confer control, therefore we do not consider that there is a risk that shareholders will benefit from additional influence beyond that of other BSC Parties. However, if any other parties are concerned by the perception that they might do, we believe this can be alleviated if those parties are able to apply to Elexon to acquire a share after the transfer of shares to the group listed above. This will be subject to detailed rules set out in the BSC modification and the Articles of Association of Elexon. This is in line with the approach taken by RECCo. We do however believe that this ability should be restricted to parties that have a licence which includes a licence condition requiring compliance with the BSC. This is to allow Ofgem to ensure they comply with the requirements relating to holding a share, as outlined in the BSC.”

Therefore, the criteria for being an Elexon shareholder are:

- being a BSC Party, and
- holding a licence that requires compliance with the BSC.

Voluntary shareholders would be subject to the rules set out in the BSC, and the revised Articles of Association of Elexon.

Elexon may, at their discretion, refuse to issue or transfer a share to a BSC Party volunteering to hold a share, and require the return of such a share. Elexon is obliged to provide shares to any party directed to hold a share for topping up unless there are technical reasons for not doing so, such as when a party does not hold a relevant licence or they are not a BSC Party.

## 5. Directed Parties

As outlined in this consultation response (in Section 4), the proposed new licence conditions would require the licensee to hold one share in Elexon, if directed to do so by the Secretary of State or the Authority (with effect from the date specified in the direction). Pursuant to paragraph 2 of the licence condition text, the licensee may delegate its responsibility for holding a share in Elexon to one of its wholly owned affiliates that is a signatory to the BSC.

For the initial cohort, the relevant share will be transferred to the licensee or the nominee pursuant to a transfer scheme to be made by the Secretary of State pursuant to the Act.

The Secretary of State intends to issue directions to:

- EDF Energy Customers Limited
- E.ON Next Energy Limited
- British Gas Trading Limited
- RWE Generation UK Plc
- SSE Energy Supply Limited
- Orsted ESS Mersey Limited
- ScottishPower Renewables (UK) Limited
- Drax Energy Solutions Limited
- Uniper UK Limited
- Ovo Electricity Limited
- Octopus Energy Limited
- Drax Power Limited
- TotalEnergies Gas and Power Limited

Some of these directed parties have indicated an intent to delegate responsibility to wholly owned affiliates (as designated parties).

The basis for issuing the direction to the parties, and (where applicable) their designated parties, are set out in the table below:

**Table of Shareholders**

<b>Funding Share Party</b>	<b>Directed Party</b>	<b>Designated Party</b>	<b>Licence (Supply or Generation)</b>
EDF Energy Limited	EDF Energy Customers Limited	N/A	Supply
E.ON UK Energy Markets Limited	E.ON Next Energy Limited	E.ON UK Energy Markets Limited	Supply
British Gas Trading Limited	British Gas Trading Limited	N/A	Supply
RWE Generation UK Plc	RWE Generation UK Plc	N/A	Generation
SSE Energy Supply Limited	SSE Energy Supply Limited	N/A	Supply
Orsted Salg and Service AS	Orsted ESS Mersey Limited	N/A	Generation
Scottish Power Energy Management Ltd	ScottishPower Renewables (UK) Limited	N/A	Generation
Drax Energy Solutions Limited	Drax Energy Solutions Limited	N/A	Supply
Uniper Global Commodities SE	Uniper UK Limited	N/A	Generation
Ovo Energy	Ovo Electricity Limited	N/A	Supply
Octopus Energy Limited	Octopus Energy Limited	N/A	Supply
Drax Power Limited	Drax Power Limited	N/A	Generation
TotalEnergies Gas and Power Limited	TotalEnergies Gas and Power Limited	N/A	Supply

## 6. Appendices

### Appendix 1 – Elexon Ownership Statement of Policy

This statement of policy sets out the policy, as of August 2024, of the Secretary of State and the Gas and Electricity Markets Authority (GEMA, also referred to in this document as “the Authority”) in respect of the mandatory ownership of the shares of Elexon.<sup>10</sup> This policy will apply upon and subject to the decision of the Secretary of State to establish NESO.

#### 1. Definitions

1.1 In this statement of policy:

- (a) **BSC** means Balancing and Settlement Code;
- (b) **BSC Party** means Party as defined in the BSC;
- (c) **Consultation Response** means the document entitled “The Future Ownership of Elexon: new electricity supply and generation licence conditions and Balancing and Settlement Code (BSC) changes - Government and Ofgem Response to Consultation”, dated August 2024;
- (d) **designated party** means a BSC Party that is a wholly owned affiliate of a directed party to which the directed party has delegated the responsibility to hold an Elexon share;
- (e) **directed party** means a party that holds an electricity supply or generation licence and is either itself a funding share party or is a wholly owned affiliate of a funding share party, and that receives a shareholding direction;
- (f) **Elexon** means Elexon Limited (as “BSCCo” under the BSC);
- (g) **Elexon share** means a share in the share capital of Elexon;
- (h) **eligible licensee** means, in relation to a funding share party, each member of the group comprising that party and its wholly owned affiliates that holds a generation licence or a supply licence;
- (i) **eligible party** means a BSC Party that itself holds, or has a wholly owned affiliate that holds, an electricity supply or generation licence;
- (j) **funding share** means General Funding Share as defined in the BSC;
- (k) **funding share party** means an eligible party that (at the time at which the decision to issue a shareholding direction is made) meets the qualifying threshold;
- (l) **initial cohort** means all of the directed parties pursuant to the first shareholding directions to be given pursuant to this statement of policy (as identified in the Table

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<sup>10</sup> The Gas and Electricity Markets Authority (GEMA) is the governing body of Ofgem. Ofgem acts on behalf of GEMA.

of Shareholders in the Consultation Response, unless the discretion not to issue a shareholding direction is exercised under Paragraph 4.4);

- (m) **mandated shareholder** means a BSC Party that holds a share as a result of a shareholding direction having been given to it or its wholly owned affiliate;
- (n) **new licence condition** means the new standard licence condition to be introduced into the standard conditions of generation licences and supply licences as described in Paragraph 2;
- (o) **qualifying threshold** means the level of funding share of a BSC Party at which it may be a funding share party, as specified in this statement of policy;
- (p) **shareholding direction** means a direction to hold an Elexon share given under paragraph 1 of either new licence condition;
- (q) **Table of Shareholders** means the table in Section 5 of the Consultation Response (that sets out funding share parties, directed parties and designated parties) as from time to time updated;
- (r) **topping up** means the process described in Paragraph 6;
- (s) a company A is a **wholly owned affiliate** of another company B if (i) A is a wholly owned subsidiary of B, (ii) both A and B are companies wholly owned, directly or indirectly, by a common parent company, or (iii) A is a parent company that wholly owns, directly or indirectly, B.

## 2. Background – Generation and Supply Licence Conditions

2.1 As set out in the Consultation Response, new standard licence conditions will be introduced into the electricity supply licence and into the electricity generation licence. Under those conditions:

- (a) the licensee will be obliged to own one Elexon share, if directed to do so by the Secretary of State or the Authority, from the date specified in the direction.

This statement of policy sets out how and to whom the Secretary of State and the Authority have decided to give (initially, and in the future) those shareholding directions, and when such a direction may cease to have effect or be revoked;

- (b) the licensee is permitted, where such a direction has been given, to delegate the responsibility to hold an Elexon share to a wholly owned affiliate which is a BSC Party.

The licensee (as directed party) would retain responsibility for ensuring that the licence obligation and associated BSC obligations are being met.

- (c) the licensee is obliged to inform the Secretary of State and the Authority of any such delegation, and whether the responsibility for holding an Elexon share is delegated to another wholly owned affiliate of the licensee in future.



(d) the licensee is obliged 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.

Where a shareholding direction is given to a licensee that is a wholly owned affiliate of a funding share party, the direction will specify the name of the funding share party. This will allow the Secretary of State and the Authority to be informed if there is a change in relationship between the licensee and the funding share party, for example if there ceases to be wholly owned affiliation between the two parties.

### 3. Background – Balancing and Settlement Code

3.1 The BSC sets out certain rights and responsibilities of the shareholders of Elexon in that capacity. It also sets out:

- (a) the basis on which a BSC Party that is not a mandated shareholder party may voluntarily hold an Elexon share;
- (b) arrangements for the management of the issue, transfer and return of Elexon shares.

Certain relevant provisions are summarised below.

3.2 Following establishment of the initial cohort, the issuance and transfer of Elexon shares will be managed by Elexon. The processes managed by Elexon include:

- (a) making available (by issue or transfer) shares to BSC Parties directed to hold shares or volunteering to hold shares; and
- (b) return of shares (to be transferred to and held by a nominee) where a mandated shareholder is no longer required to hold a share, or a voluntary shareholder decides they no longer want to hold a share.

3.3 Elexon is obliged to issue or procure a transfer of a share to any BSC Party required to hold a share for topping up, and to approve or a transfer made pursuant to the exit arrangements described in Paragraph 5.

3.4 A mandated shareholder is obliged to return (by transfer to the BSCCo nominee) its share if and when required as a result of the exit arrangements described in Paragraph 5.

3.5 Elexon may, at their discretion, refuse to issue or transfer a share to a BSC Party volunteering to hold a share, and require the return of such a share to the nominee.

3.6 The pre-agreed price at which shares are transferred or issued is as set out in the BSC.

3.7 Shareholders are required to cooperate with Elexon to secure the implementation of these processes.

## 4. Establishing the initial cohort

4.1 The initial cohort of shareholders of Elexon will be determined on the basis of funding share parties.

4.2 Funding share parties are BSC Parties that:

- (a) are eligible parties; and
- (b) have a greater than 2% funding share in Elexon as of 1 January 2023. This is the qualifying threshold in relation to the initial cohort.

4.3 For each funding share party, the Secretary of State or the Authority will issue a shareholding direction to an eligible licensee. The licensee to which a direction will be given is determined as follows:

- (a) where there is more than one eligible licensee in relation to the funding share party:
  - (i) the funding share party may nominate one of those eligible parties (which may be itself) and request that the shareholding direction is given to that eligible party;
  - (ii) if the funding share party does not make such a request, the shareholding direction will be given to the funding share party if it is an eligible party, and otherwise to an eligible party selected by the Secretary of State or the Authority;
- (b) where there is only one eligible party in relation to the funding share party, the shareholding direction will be given to that party.

4.4 The Secretary of State and the Authority retain the discretion not to issue a shareholding direction if they consider, based on submissions by the funding share party and its wholly owned affiliates, that there are legally binding obligations or constraints as a result of which no eligible licensee in relation to the funding share party could hold an Elexon share, and that those obligations and constraints could not have been overcome by steps that might reasonably be expected to have been taken by the funding share party or any of its wholly owned affiliates. In such case, the number of shareholders in the initial cohort may be fewer than 13.

4.5 As stated in Paragraph 2.1(b), under the new licence condition a directed party may delegate the responsibility to hold an Elexon share to a wholly owned affiliate that is a BSC Party (as a designated party). For the initial cohort, the directed party will hold the Elexon share itself, if it has not informed the Secretary of State and the Authority of such delegation. A directed party may change its designated party at a later date, and must inform the Secretary of State and the Authority if it does so. In this circumstance, the current holder of the Elexon share would be able to transfer the share to the new designated party, in accordance with the arrangements in the BSC.

4.6 Once a shareholding direction has been given to a directed party, the shareholding obligation applies on an enduring basis, regardless of whether the funding share party's funding share falls below 2% in the future, subject to the exit arrangements set out in

Paragraph 5. A funding share party may not change its directed party except as set out in those exit arrangements.

4.7 For the initial cohort, the outcome of these arrangements is shown in the Table of Shareholders, which sets out:

- (a) the funding share parties;
- (b) the parties to which shareholding directions will be given;
- (c) where applicable, the parties to which the responsibility to hold an Elexon share has been delegated.

4.8 For the initial cohort, a share transfer scheme will be made under paragraph 1(2) of Part 1 of Schedule 9 to the Energy Act 2024 to transfer shares from NGESO to the licensee (the directed party) or the nominee (the designated party).

## 5. Exit Arrangements

5.1 A change in circumstances may affect the basis for a party holding an Elexon share, and result in a shareholding direction ceasing to have effect or being suspended and/or being replaced by another shareholding direction. (As stated above, a reduction in a funding share party's funding share is not a change in circumstances for this purpose).

5.2 Some examples include:

*(a) Case 1: A funding share party ceases to be a BSC Party.*

In this case, the shareholding direction will be revoked once the Secretary of State and the Authority are made aware that the funding share party has ceased to be a BSC Party.

*(b) Case 2: A directed party ceases to hold a generation or supply licence.*

In this case, the shareholding direction will cease to have effect.

*(c) Case 3: A directed party that is not the funding share party ceases to be a wholly owned affiliate of the funding share party*

In this case, the shareholding direction will be revoked once the Secretary of State and the Authority are made aware of the change in affiliation.

*(d) Case 4: A designated party ceases to be a BSC Party or ceases to be a wholly owned affiliate of the directed party.*

In this case the directed party must either nominate another wholly owned affiliate to be the designated party or fulfil the obligation to hold the share themselves.

*(e) Other cases*

There may be other unforeseen cases, in which case the Secretary of State and the Authority would act with a view to ensuring that Elexon shares continue to be held in accordance with the policy in this document.

5.3 In cases 2 and 3, if the funding share party continues to be an eligible party (i.e. there is any eligible licensee in relation to the funding share party) a new shareholding direction will be issued to an eligible licensee. If there is more than one such eligible licensee, the funding share party will be asked to nominate one of them to be the new directed party. If the funding share party does not nominate a new directed party, the Secretary of State or the Authority will choose a party to be directed. If there is no eligible licensee in relation to the funding share party, then no new shareholding direction will be given (and the funding share party will cease to be a funding share party).

5.4 A directed party may notify the Secretary of State and the Authority of a change in circumstances, as a result of which the shareholding direction will cease to have effect or be revoked, in advance of the change of circumstances occurring. In such a case:

- (a) the funding share party (if it will continue to be an eligible party) may at the same time notify its nomination of a new directed party to the Secretary of State and the Authority; and
- (b) (if the outgoing directed party had nominated a designated party) the new directed party may at the same time notify its intent to nominate the same designated party (such that the Elexon share would not need to be returned).

5.5 In such a case, the Secretary of State or the Authority will give reasonable consideration to giving notice of revocation of the shareholding direction and (where applicable) issuing a new shareholding direction, on the applicable basis set out in Paragraphs 5.2 and 5.3 (and in a case within Paragraph 5.4(b), to accepting the notification of the designated party) in advance of the change in circumstance occurring. In deciding whether or when to act in advance, the Secretary of State or the Authority may take into account whether a new directed party has been nominated. The Secretary of State or the Authority may impose conditions when taking such actions, including that the change of circumstances occurs within a specified time after the actions are taken, and that the relevant party informs them when the change of circumstances occurs.

## 6. Topping Up

6.1 Exit arrangements (as described in Paragraph 5) may lead to a reduction in the number of mandated shareholders of Elexon. In this case, the Secretary of State or the Authority may give further shareholding directions, to restore the number of mandated shareholders to 13. We refer to this process as “topping up”. The topping up mechanism could be used at any time after the initial cohort is in place.

6.2 We will maintain awareness of the mandated shareholder cohort through:

- (a) notifications by directed parties of changes (as to whether a directed party and funding share party continue to be wholly owned affiliates) as required by the licence condition;
- (b) the Authority's knowledge of parties whose licences have been revoked or surrendered, and

(c) notification by Elexon if a funding share party ceases to be a BSC Party.

6.3 To avoid unnecessary administrative burden, we currently have no plans for scheduled reviews of the cohort of Elexon shareholders.

6.4 Topping up may occur at any time that the number of mandated shareholders drops below 13 and will occur if the number of mandated shareholders drops to 7. In deciding whether to top up before the number of mandated shareholders drops to 7, the Secretary of State or the Authority would take into consideration factors such as market conditions at the time.

6.5 The funding share parties for purposes of topping up will be the BSC Parties that:

- (a) are not already funding share parties;
- (b) are eligible parties;
- (c) have the largest funding shares of all BSC Parties that meet (a) and (b), based on the most recent annual data at the relevant time;
- (d) counted together with existing funding share parties, bring the total number of funding share parties to 13 (or if fewer, the total number of funding parties that are eligible parties).

6.6 The marginal funding share for which the conditions in 6.5(a) to (d) are met is the qualifying threshold in relation to the top-up cohort of shareholders.

6.7 The party to which a shareholding direction is given will be selected on the same basis as set out in Paragraph 4.3.

6.8 The discretion of the Secretary of State not to issue a shareholding direction, described in Paragraph 4.4, also applies in topping up (and may result in the number of mandated shareholders being fewer than 13).

6.9 On each occasion on which topping up occurs, Ofgem will publish an updated version of the Table of Shareholders, as soon as reasonably practicable.

## Appendix 2 – Amended Balancing and Settlement Code

Redlined versions of the proposed modification to the BSC and AoAs have been published alongside this consultation response document due to the length of the text.<sup>11</sup> The modifications relate to the following:

- Section C of the BSC, which 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 Elexon ownership statement of policy (Appendix 1).
- Section X-1 of the BSC (the General Glossary), which 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, which set out Elexon’s governance and the amended drafting reflects Elexon’s change in ownership, in line with the Elexon ownership statement of policy.

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<sup>11</sup> <https://www.gov.uk/government/consultations/future-ownership-of-elexon-licence-and-code-changes>

## Appendix 3 – Balancing and Settlement Code Analysis

We set out in the table below comments received on the BSC and AoAs, and our responses to these comments. The full text is set out in Appendix 2.

We note that comments were made on other annexes, but these are not in scope of the Elexon ownership change.

### BSC – Section C

<b>Comment raised by respondent</b>	<b>Consultation response analysis and rationale for any changes</b>
Request for clarification on who would be the “BSCCo Nominee”	The BSCCo Nominee will be appointed by the Elexon Board. It is expected that the BSCCo Nominee will be an employee of Elexon, most likely the company secretary (being an officer of the company). In accordance with paragraph 1.4.6 in Annex C-3, all rights associated with any shares held by the BSCCo Nominee are suspended.
Suggestion to update the definition of “Mandated Party” to specify that this definition includes both directed and designated parties.	The current wording of this definition is correct and in line with the Elexon ownership statement of policy.
Request for clarification on the definition of “parties”	Parties includes anyone that is a signatory to, or has acceded to, the BSC framework agreement that gives legal effect to the BSC.
<p>Suggestion of addition which would either give:</p> <ul style="list-style-type: none"> <li>• a 75% majority of shareholders a veto right over amendments that impact their rights and obligations, or</li> <li>• each shareholder the right to transfer their shares to the BSCCo Nominee or another nominee designated by the Secretary of State, if their rights and obligations are amended.</li> </ul>	These provisions will be subject to the BSC modification process, and we are unable to give shareholders additional rights within the modification procedures. Please note, however, that any changes to these provisions under existing standard modification arrangements would require approval by the Authority. This is because the provisions form part of the Code’s governance arrangements so could not be changed through self-governance.

<p>Requests for more detail about when shares will be revoked or refused.</p>	<p>Voluntary shareholders would be subject to the rules set out in the BSC, and the revised AoAs.</p> <p>Elexon may, at their discretion, refuse to issue or transfer a share to a BSC Party volunteering to hold a share, and require the return of such a share. Elexon is obliged to provide shares to any party directed to hold a share for topping up unless there are technical reasons for not doing so, such as when a party does not hold a relevant licence or they are not a BSC party.</p>
<p>Suggestion to include a new provision that if a shareholder is directed to exercise its voting rights in a way which will result in it breaching a legal requirement or incurring a liability, then BSCCo shall be required to notify and consult with the shareholder. Similarly, there was also a suggestion to include a provision that if a shareholder becomes aware of an intended action which may breach a legal requirement, the shareholder must notify BSCCo.</p>	<p>Amended paragraph 1.8.1 so that it applies to steps that shareholders may be required to take as a consequence of holding a share e.g., where they are required to exercise a voting right.</p>
<p>Suggestion that paragraph 1.2.2 should not state that the shareholders have agreed that their respective rights as shareholders shall be regulated by the provisions of this Annex.</p>	<p>We have made this amendment.</p>
<p>Suggestion that the text in bold is included in paragraph 1.2.2:</p> <p>“The Shareholders have agreed that their respective rights <b>and obligations</b> as Shareholders shall be regulated by the provisions of this Annex.”</p>	<p>We have made this amendment.</p>
<p>Suggestion that paragraph 1.2.3(a) and (b) should be updated or deleted to clarify that Elexon shares will not be transferred prior to the Mandatory Transfer Ownership Date.</p>	<p>We have made this amendment.</p>



<p>Request that paragraph 1.3.2 should be clear that decisions will be taken by the BSCCo Board.</p>	<p>We have clarified this by removing the power to refuse to register/allot from paragraph 1.3.2 and including a new paragraph 1.2.4 instead (and amending paragraph 1.2.1(b)).</p>
<p>Request for the publication of guidance, instructions and proformas to be used by BSCCo directors and future Elexon shareholders to fulfil the roles and responsibilities as set out in Annex C-3 BSCCo Governance “1.3 New Shareholders” and “1.4 Transfers, revocations and returns of Shares”.</p>	<p>Elexon is considering what guidance, instructions and proformas may be required by shareholders. Shareholders and Elexon will be able to contact each other for information related to the shareholder role.</p>
<p>Suggestion that paragraph 1.3.1 should be updated to reflect that Mandated Parties do not need to apply to become shareholders, since shares will be transferred via a transfer scheme.</p>	<p>Paragraph 1.3.1 is subject to paragraph 1.2.3. Paragraph 1.2.3 is the acknowledgement that relates to the initial shareholders, so paragraph 1.3.1 does not apply to the initial shareholders. Notwithstanding this, we have amended paragraph 1.3.1 to clarify further.</p>
<p>Suggestion that paragraph 1.3.3. should be updated so the directors of Elexon are obliged to issue shares and register transfer of shares to Mandated Parties, and are prohibited from allotting shares and registering the transfer of shares (and not just entitled to refuse to register any transfer of shares) to any other person.</p>	<p>This is already reflected in the BSC.  Some additional wording has been added to paragraph 1.3.1 to ensure Elexon is obliged to register transfer of shares to Mandated Shareholders.</p>
<p>Recommendation to insert the following in paragraph 1.3.4:  “where no Shares are otherwise available for issue, they will, <b>promptly on written request by BSCCo</b>, exercise the voting rights...”</p>	<p>This addition is not needed. Any vote will either be at a general meeting or by written resolution. In both cases, shareholders will receive either written notice or the written resolution. Further amendment to paragraph 1.8.1 added for clarity.</p>
<p>Recommendation to change paragraph 1.3.5 to refer either to the “nominal value” of shares and/or the “price” of shares, rather than the “nominal price”.</p>	<p>The text has been amended to refer to the “price”, as per the suggestion.</p>

<p>Suggestion that the provisions in paragraph 1.4.3 should updated with:</p> <ul style="list-style-type: none"> <li>• a requirement that the directors of Elexon be obliged to register any transfer of shares specified in this paragraph;</li> <li>• an obligation on BSCCo Nominee to accept a transfer and pay the price for shares transferred to it;</li> <li>• directors' obligation to register transfers of shares being subject to being presented with a duly executed and certified as exempt from stamp duty instrument of transfer; and</li> <li>• reference to "Party" being changed to "Eligible Party".</li> </ul>	<p>Paragraph 1.4.4 has been amended to ensure transfers to the BSCCo Nominee are registered.</p> <p>Elexon, which is a party to the BSC, is obliged to give effect to the BSC. The directors of BSCCo and the BSCCo Nominee, are therefore also bound. This does not need to be stated in the text, nor does the BSCCo Nominee (who will be a natural person) need to be a party to the BSC in order to give binding effect to these provisions.</p> <p>The statutory obligation to register or refuse a transfer only arises when presented with an instrument of transfer, so no further drafting is needed in the BSC (but please note further drafting added to Article 8 in AoA).</p> <p>The phrases "Party", "Mandated Party", and "Eligible Party" are used correctly in this section, in accordance with the definitions in set out in the modified BSC.</p>
<p>Suggestion that paragraph 1.4.4 can be deleted, and that BSCCo Nominee would not hold shares "on behalf of the other shareholders".</p> <p>In addition, the reference to a Retiring Shareholder having to bear all the costs of transfer should not extend to BSCCo's or BSCCo Nominee's costs or cut across BSCCo Nominee's obligation to pay the transfer price.</p> <p>Request for clarification about the following in 1.4.4:</p> <ul style="list-style-type: none"> <li>• The nature of the costs and expenses which are to be paid by the Retiring Shareholder,</li> <li>• Whether the BSCCo will notify the Retiring Shareholder of the</li> </ul>	<p>We have amended 1.4.4 to remove reference to the BSCCo Nominee holding shares on behalf of the other shareholders.</p> <p>The transfer of Elexon shares will be a limited liability share transfer so any liability to be transferred to the transferees shall be capped at the amount unpaid (if any) on a share that they hold. In this case, this refers to the nominal value of £1.</p> <p>Paragraph 1.4.5 has been amended so that directors are appointed as an agent of the Retiring Shareholder in order to effect the transfer of shares.</p> <p>The costs and expenses of the Retiring Shareholder refer to the shareholders' own costs for completing the required administrative processes. Retiring</p>

<p>identity of the BSCCo Nominee, and</p> <ul style="list-style-type: none"><li>• the period of time that a shareholder would be granted to return its share before the provisions in paragraph 1.4.5 apply.</li></ul>	<p>Shareholders are not expected to cover other companies' costs.</p> <p>Shareholders and Elexon will be able to contact each other for information related to the shareholder role.</p> <p>As noted in Appendix 1, our policy on the timing of returning a share is as follows:</p> <p><i>A directed party may notify the Secretary of State and the Authority of a change in circumstances, as a result of which the shareholding direction will cease to have effect or be revoked, in advance of the change of circumstance occurring. In such a case:</i></p> <ul style="list-style-type: none"><li><i>(a) the funding share party (if it will continue to be an eligible party) may at the same time notify its nomination of a new directed party to the Secretary of State and the Authority; and</i></li><li><i>(b) (if the outgoing directed party had nominated a designated party) the new directed party may at the same time notify its intent to nominate the same designated party (such that the Elexon share would not need to be returned).</i></li></ul> <p><i>In such a case, the Secretary of State or the Authority will give reasonable consideration to giving notice of revocation of the shareholding direction and (where applicable) issuing a new shareholding direction, on the applicable basis set out in Paragraphs 5.2 and 5.3 of the Elexon ownership statement of policy (and in a case within Paragraph 5.4(b), to accepting the notification of the designated party) in advance of the change in circumstance occurring. In deciding whether or when to act in advance, the Secretary of State or the Authority may take into account whether a new directed party has been nominated. The Secretary of State or the Authority may impose conditions when taking such actions, including that the change</i></p>
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	<p><i>of circumstances occurs within a specified time after the actions are taken, and that the relevant party informs them when the change of circumstances occurs.</i></p> <p>Paragraph 1.4.3 (iii) has been amended in the BSC to reflect this flexibility.</p>
<p>Query regarding whether paragraph 1.4.5 would have the intended effect.</p>	<p>Paragraph 1.4.5 has been amended so that directors are appointed as an agent of the Retiring Shareholder in order to effect the transfer of shares.</p>
<p>Request the following to be inserted to paragraph 1.5.1(b):</p> <p>“other than permitted <b>or required</b> by this Annex...”</p>	<p>We have made this amendment.</p>
<p>Suggestion that paragraph 1.5.1(c) should not apply to agreements entered into in order to transfer a share in accordance with the provisions in the Annex.</p>	<p>We have made this amendment.</p>
<p>Request the addition of the words “...that is also a shareholder” in section paragraph 1.5.2 for clarity.</p>	<p>We have made this amendment.</p>
<p>Suggestion that the drafting of paragraph 1.5.3 clarifies that shareholders are only required to exercise their rights and take steps, in their capacity as shareholders, to give effect to the matters listed in paragraph 1.5.4 of the BSC, and that the text should be explicit that shareholders should not be required to take any steps pursuant to paragraph 1.5.3 that would impose any liability on them as shareholders.</p> <p>In addition, suggestions to:</p> <ul style="list-style-type: none"> <li>• remove paragraph 1.5.4(c),</li> <li>• narrow paragraph 1.5.4(b) so that any appointment or removal of a secretary or auditor is only</li> </ul>	<p>This wording reproduces the existing rights/obligations on NGESO as shareholder. 1.5.3 and 1.5.5 are needed to give effect to 1.5.4. Please note that these shareholder powers are only to be exercised in order to give effect to the Code so, for example, shareholders would not be required to ratify breaches of directors’ duties unless this was necessary to give effect to the BSC.</p> <p>Only shareholders can approve changes to the AoA and appoint auditors. Likewise, the reference to directors is also useful as it would mean that if a director is removed through a BSC process but refuses to vacate office, the shareholders would be obliged to exercise their statutory power to remove that director.</p>

<p>on the recommendation of the directors of Elexon,</p> <ul style="list-style-type: none"> <li>• narrow paragraph 1.5.4(e) so that it only refers to matters which must be done by shareholders,</li> <li>• incorporate paragraphs 1.5.5(a) and 1.5.5(b) within paragraph 1.5.4, narrowing both matters so they are only done on the recommendation of the directors of Elexon; and</li> <li>• remove paragraph 1.5.5(c).</li> </ul>	<p>The obligation to issue new shares is covered elsewhere and there's no detriment to having that repeated here. This clause effectively prevents shareholders from issuing new shares other than pursuant to the Code.</p> <p>The reference to approving annual accounts has been removed, as they don't need shareholder approval.</p> <p>For clarity, the wording has now been amended to remove reference to the Panel.</p>
<p>Suggestion to replace "extraordinary" with "other" in paragraph 1.5.5(a).</p>	<p>Elexon's AoAs still refer to extraordinary general meetings so this wording should remain.</p>
<p>Suggestion that there is a typographical error in paragraph 1.6 – "No obligation to finance".</p>	<p>We have made this amendment.</p>
<p>Suggestion to remove "the" prior "Section 3" in paragraph 1.6.1.</p>	<p>We have made this amendment.</p>
<p>Request for clarity about how -paragraph 1.7(a) interacts with paragraphs 1.7(b) and 1.7(c).</p>	<p>This reflects position agreed at New Electricity Trading Arrangements (NETA) vis-à-vis National Grid's ownership and changing these provisions (other than to reflect that Elexon's shareholder is no longer NGESO) goes beyond what is needed to achieve the change of ownership. If there is a desire to review this then we would recommend that this is amended through a BSC modification.</p>
<p>Suggestion that the reference in brackets to "relevant step" in paragraph 1.8.1 is clarified.</p>	<p>We have made this amendment.</p>
<p>Request that the wording in paragraph 1.9.1 clarifies that the new shareholders of Elexon do not take on any tax liability generated in the BSCCo group because any or all of the companies have left a tax group as a result of the transfer of</p>	<p>Elexon is not a part of NGESO's tax group, so the suggested amendment is not required.</p>

<p>ownership to the shareholders or otherwise.</p>	
<p>Suggestion that the clause in paragraph 1.9.2 is not necessary.</p>	<p>Paragraph 1.9.2 is the counterpart to 1.9.1. Whilst we don't believe these are strictly necessary (given the shareholding structure and our policy position on minimum numbers of shareholders, Elexon could not be considered to be part of any of its shareholders' corporate groups), in earlier consultations, stakeholders requested to replicate the existing provisions that apply to NGESO. This is one of those provisions and has been included to provide reassurance to shareholders.</p>
<p>Suggestion that paragraph 1.11 is deleted, or the drafting is amended by deleting the words: "in order to carry out, evidence and confirm their rights under, and the intended purpose of, this Annex" and replacing them with "in order to give effect to this Annex" so that it is clear the further assurance requires no more than co-operation between shareholders to meet the obligations set out clearly in the Annex. In addition, a request for clarity on what would be required of a shareholder in terms of "evidencing" or "confirming" its rights.</p>	<p>We have made this amendment.</p>
<p>Recommendation to include some examples of the costs and expenses that are covered by the provision in paragraph 1.12.1.</p>	<p>The detail of what costs are to be recovered does not need to be set out in the BSC but can be agreed between Elexon and its shareholders. The wording of this paragraph echoes the wording of costs covered for Panel members (which typically covers items such as travel expenses for attending meetings related to the role). Shareholders and Elexon will be able to contact each other for information related to the shareholder role.</p>
<p>Under paragraph 5.2.2, point (c) contained a reference to paragraph 2.6, however the</p>	<p>The reference to paragraph 2.6 in point (c) has now been deleted.</p>

<p>paragraph 2.6 that is being referred to has since been deleted.</p>	
<p>A further change has been made, which was not raised in consultation responses. Upon further consideration of the text, we have also made a minor change, to delete wording in paragraph 2.1.3 that said the share capital and accounting reference date of BSCCo shall be those prevailing at the Code Effective Date.</p>	<p>We believe this change is required to implement the policy, as set out in the Elexon ownership statement of policy, so we have made this amendment.</p>

## Articles of Association

Original Text	Response
<p>Suggestion that the AoAs should include a clause that sets out that BSC Annex C-3 (principally paragraph 1.4.) governs the transfer, revocation and return of shares.</p>	<p>This is already reflected in the AoA through references to the Code, where appropriate.</p>
<p>Suggestion that the AoAs should include a clause to reflect the ability to have a chair, who the chair may be and what their rights are.</p>	<p>The appointment/rights of the chair (including casting votes) are set out in Table A, so no further changes needed.<sup>12</sup></p>
<p>Suggestion that directors' powers should be confined to ensure that only shares of £1 nominal value each may be issued, that they must be fully paid-up on issue and that only shares of the same class, which rank pari passu in all respects with existing shares, can be issued.</p>	<p>We don't believe any changes to the legal text are needed to achieve this.</p> <p>Annex C-3 paragraph 1.3.5 makes clear that shares must have a nominal value of £1.00 and that they must be fully paid up.</p> <p>Regulation 2 in Table A (which applies to Elexon) requires an ordinary resolution in order to issue shares with different rights or restrictions.</p> <p>Since Elexon has only one class of shares, and there are no provisions in the AoAs giving different rights to different shareholders, all shares have the same rights.</p>
<p>Suggestion to add the following additional wording to Article 6: "subject to BSC Annex C-3".</p>	<p>Article 6 only deals with pre-emption rights, specifically this provision allows the directors to issue shares without pre-emption rights arising which is necessary in order to give effect to the Code. Article 3, which deals with the power to allot shares, is subject to the restrictions in the Code.</p>

<sup>12</sup>Table A is available here:

[https://assets.publishing.service.gov.uk/media/5a7d772ae5274a676d5323be/comm1Aug85CoRegulations1985\\_P1.pdf](https://assets.publishing.service.gov.uk/media/5a7d772ae5274a676d5323be/comm1Aug85CoRegulations1985_P1.pdf). For provisions relating to the role of the chair at general meetings, please refer to Article 40 and the following articles.



<p>Request clarification of Article 8 to confirm whether directors must register share transfers where the BSC requires, for example under paragraph 1.4.3(b) or paragraph 1.4.2 of Annex C-3 of the BSC.</p>	<p>Annex C-3 has been amended to include, where relevant, an obligation on BSCCo to register share transfers. The AoAs have now been amended to reflect this obligation.</p>
<p>Suggestion to amend Article 8 by replacing:</p> <p>"The directors may, subject to the provisions of the Code with respect to the transfer of shares but otherwise in their absolute discretion and without giving any reason, decline to register any transfer of any share whether or not it is a fully paid share and the directors may not approve any transfer other than in accordance with the Code."</p> <p>with:</p> <p>"8.1 Subject to Article 8.2, the directors may in their absolute discretion and without giving any reason, decline to register any transfer of any share whether or not it is a fully paid share.</p> <p>8.2 Notwithstanding Article 8.1, the directors may not take any decision with respect to the transfer of shares, including the approval of any transfer of share, other than in accordance with the Code."</p>	<p>We have amended Article 8.1 and added a new Article 8.2 (to address other comments), which supports the existing drafting in Annex C-3.</p>
<p>Article 9 states that two persons entitled to vote shall be a quorum. Suggestion that this should be changed to all shareholders or a majority of shareholders.</p>	<p>Setting the quorum at 2 shareholders is normal practice and is consistent with, for example, RECCo. We have decided to retain this provision, as it is, to prevent administrative burden.</p>
<p>Recommendation to amend the drafting of Article 13, by ensuring the words after the comma in Article 13.2 apply equally to Article 13.1.</p>	<p>We have made this amendment.</p>
<p>Suggestion to reinstate Article 15, to give shareholders the ability to vote by written resolution.</p>	<p>We agree that shareholder votes should be possible in writing, and this is facilitated by</p>

	<p>the AoA notwithstanding the deletion of Article 15.</p> <p>Table A (Article 53) allows written resolutions as does the Companies Act 2006, so the purpose of the change was just to update the means by which written resolutions are communicated and approved.</p> <p>Article 15 was deleted and replaced with the definition of writing in 1.1, which allows written resolutions to be transmitted by more modern forms of communication.</p>
<p>Suggestion that Article 25 should be deleted.</p>	<p>This Article is required, as the Board needs the power to fill vacancies/appoint additional directors which Article 25 provides. Directors are subject to annual election/re-election by Voting Parties, but appointments are made by the Board and then ratified at the next Annual BSC Meeting. The reference in Article 26 to directors being appointed in accordance with the Code was intended to reflect the specific requirements in Section C for the composition of the Elexon Board.</p>
<p>Request Article 36.2 clarifies who the chairman will be or the way in which directors decide.</p>	<p>The chair of Elexon’s Board is determined in accordance with Section C of the BSC. In the event the chair isn’t available for a meeting then the directors would decide who would chair in their absence, but we would normally expect this to be the Senior Independent Director.</p>
<p>Suggestion that the drafting of Article 37.1 should be amended to include the term which is being defined.</p>	<p>We have made this amendment.</p>
<p>Suggestion to include confirmation in the AoAs that shareholder rights are limited to that which is under paragraph 1.5.4 of the BSC Annex C-3</p> <p>Suggestion to expand Article 47 to expressly provide that, to the extent that the members are obliged by the AoAs to give effect to a</p>	<p>Article 47 has been amended so it refers only to Annex C-3 and not the Code as a whole. In terms of precedence between the Code and the Articles, this is set out in paragraph 1.10 of Annex C-3. We have, however, replicated the key part of Annex C-3 in the Articles to reinforce the precedence of Annex C-3.</p>

<p>provision of the Code, the relevant provision shall prevail over the AoAs, should there be any conflict in their respective terms, and the shareholders shall not be required to comply with the AoAs to the extent there is such a conflict.</p>	
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## 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.
the January 2024 Statutory Consultation	The joint Department and Ofgem consultation on “The Future Ownership of Elexon: new electricity supply and generation licence conditions and Balancing and Settlement Code (BSC) changes”, published 24 January 2024, during the last Parliament.
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.
GEMA	The Gas and Electricity Markets Authority (GEMA, also referred to in this document as “the Authority”). The Gas and Electricity Markets Authority (GEMA) is the governing body of Ofgem. Ofgem acts on behalf of GEMA.
ISOP	Independent System Operator and Planner.
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, during the last Parliament.
NESO	National Energy System Operator
NETA	New Electricity Trading Arrangements.
NETSO	National Electricity Transmission System Operator.

NGESO	National Grid Electricity System Operator Limited
Ofgem	The Office of Gas and Electricity Markets. Ofgem is governed by the Gas and Electricity Markets Authority (GEMA).
Relevant authority (in the context of the Energy Act 2023)	The Secretary of State or GEMA. A relevant authority may modify the conditions of a particular relevant licence as set out in the Energy Act 2023.

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