



## Elexon Ownership Consultation

### Response form

The consultation is available at: <https://www.gov.uk/government/consultations/elexon-ownership-consultation>

The closing date for responses is Thursday 22<sup>nd</sup> September

Please return completed forms to:

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

#### **AND**

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

Email:

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

### **Personal / Confidential information**

Please be aware that we intend to publish a summary of all responses to this consultation.

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

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

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

We will process your personal data in accordance with all applicable data protection laws. See our privacy policy.

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

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

I want my response to be treated as confidential ☐

Comments: [Click here to enter text.](#)

# About You

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	<b>Respondent type</b>
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input checked="" type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

## Questions relating to the ownership of Elexon

### Question 1

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

A ☐ Agree ☒ Disagree

B

Please state why.

**We agree that it is important to consider the future ownership of Elexon in the context of the formation of the FSO and transfer into a public corporation.**

**We are broadly supportive of the assessment criteria, although in our view it is difficult to assess resilience to future change. We believe the options assessment would benefit from the addition of a clear criterion reflecting impacts on future owners.**

**We support the assessment criteria of minimising disruption to Elexon's current activities (BSC, MHHS, EMRS) and to the FSO transition, as these are critical to the current and future operation of the electricity system and markets.**

**In our view it is crucial that Elexon's accountability to industry stakeholders and independence is preserved, and this criterion must absolutely be fulfilled by the eventually selected option.**

**The criterion of ensuring resilience to future change is more difficult to assess, as while some future change is signposted, the details, timings, interactions and consequences of current and future policy and industry change cannot yet be known. This criterion has been assessed in terms of not precluding future development of Elexon as a licensed code manager under ongoing industry code reforms. We support the aim of seeking to avoid the erection of any barriers, through ownership model, to Elexon's future functional development within its scope. Maintaining the flexibility and adaptability of Elexon to continue operations and benefit the industry is a useful objective. The varied pace of policy change and future uncertainties, for the industry as well as Elexon's future path in terms of roles and activities, means that this criterion is difficult to assess though.**

**In our view at least one key criterion is missing: an assessment of whether impacts on new shareholders are reasonable, in terms of e.g. fit, disruption, ongoing activities, cost and benefit. The consultation document has discussed these aspects, albeit briefly, but does not utilise them in making the options assessment. The perspective of the new shareholder(s) is not taken into account in the criteria,**

aside from in a generic sense as the benefit to all from the continuation of Elexon's operations and governance per the status quo arrangements.

## Question 2

Do you agree that public ownership and industry ownership are the two most credible ownership options? In your view, are there any other ownership options that we should consider, and why?

A ☒ Agree ☐ Disagree

B

In your view, are there any other ownership options that we should consider, and why?

We agree that public or private sector ownership are the two most credible options, although we believe the possibility of a form of arm's length ownership limited by guarantee warrants more exploration than provided in the consultation. It is unclear whether any further options available for Elexon, especially given its not for profit status, have been reviewed. Our preference overall is for Elexon to remain in private sector ownership.

We assume this question refers to public and private sector ownership in general, rather than the options discussed in the consultation, which are covered later in the response.

At a high level the two main categories of ownership for a company are public and private sector. In the case of Elexon, these appear to be the two most credible options. The current shareholder ownership would transfer to another entity (or other entities), allowing current governance and structure to continue, and with minimal regulatory and legal changes needed. This should be relatively straightforward and quick to progress.

The consultation very briefly discusses the option of a new holding company limited by guarantee, with some combination of industry stakeholders acting as guarantors. This is dismissed in the consultation as too complex and time-consuming for further consideration. It is also pointed out that the intention is that ownership is separated from control and financial liabilities, and therefore this option would not be sufficiently beneficial. In our view this option warrants more exploration from the perspective that it could provide the level of comfort required by parties that they are protected from potential liabilities or regulatory

consequences from any Elexon future activities. BEIS and Ofgem have outlined the prospect of a fall-back option for temporary ownership if federated industry ownership cannot be concluded in time for FSO transition; this fall-back could equally be used during creation of a holding company if time is a concern.

It is unclear whether all possible options for ownership have been explored in the development of the proposals. If there are further options, especially in light of Elexon's not-for-profit status, these should be defined, reviewed and assessed, and if appropriate, disregarded with appropriate evidence in the consultation analysis.

### Question 3

Do you agree with our stated preference of the potential combinations of BSC parties which could own Elexon if industry ownership were chosen? Please state why.

A                      ☐ Agree                      ☒ Disagree

B

Please state why.

Overall we support continued private sector ownership and that industry stakeholders should participate. We agree that federated industry ownership as presented in the consultation is a viable option. However, we do not see adequate justification in the consultation for the selection of the subset of BSC parties made up of Suppliers and Generators as future owners of Elexon and would like further review to support this conclusion. We do not believe that other options, such as network ownership, have been sufficiently examined and weighed up against the preferred option in the consultation analysis. We do not agree with the use of RECCo as a precedent for the proposed approach.

BEIS and Ofgem have proposed that a subset of BSC parties should be obligated to take shares in Elexon. The selection has been made based on the number of parties who would fall into the subset and their role as voting, funding parties to the BSC, in addition to being licence holders, which is an expedient way to enforce the proposal. A subset is deemed necessary in the consultation as all parties to the BSC would be too large a group to coordinate. The selection aims to provide a close continuation of current arrangements with NGESO as the only shareholder.

It is unclear why a manageable size of group should be a key criterion, aside from in the initial transfer of shares. The stated intention is that future shareholders have no control or liability and very limited administrative obligations in connection to Elexon, which Elexon itself could assist with. The fluid nature of the Supplier/Generator subset, due to market entry and exit of participants, and difficulties (and costs) this may present are not considered in the consultation.

Justification for the use of BSC funding status as a criterion in defining the Supplier/Generator subset is not made clear, aside from to achieve a manageable size of group. It is clear that other groups are smaller (e.g. the DNO group, which is also more stable), but these have been discounted without reasoning.

The status quo in terms of BSC governance would be best preserved by transferring ownership to DNOs. This is because they have similar characteristics and rights under the BSC as the ESO currently has: they are voting, non-funding parties. They are also licensed, regulated monopoly service providers. Gas and electricity distribution networks currently hold similar obligations to form and own Xoserve and Electralink as central service providers. The DNO group also has the benefit of being of much smaller size than the Supplier and Generator subset, and additionally is a very stable group with no market entries/exits foreseeable.

The option of NGET ownership is not discussed in detail in the consultation and is dismissed as too complex. This is because NGET is not a BSC party. This assessment of complexity is unclear and lacks detail. In our view a NGET option warrants more consideration, both as a permanent and a temporary fall-back ownership option for Elexon. Previous incarnations of NGET bore the ownership obligation for Elexon, and NGET would be a licensed, single shareholder. As a possible temporary private sector ownership option, alternative to transfer with the ESO into FSO public sector ownership, it warrants further analysis.

The consultation suggests that a helpful precedent in support of Elexon's ownership through a specific subset of BSC parties, is that all REC parties own a share in the RECCo. This parallel clearly does not work.

We note that the initial intention for all REC parties to own a share in the RECCo is not enforced, although over 90 parties own shares. Through the shareholding they are entitled to vote at general meetings and on written resolutions. They also carry an obligation to ensure that RECCo continues its business in a proper manner (REC Schedule 4). There is therefore some difference between a RECCo shareholder and a non-shareholder REC party, which could be perceived as grounds for share ownership. The proposals for Elexon, as we understand them from the consultation, would confer no additional rights or obligations on shareholders beyond those current in the BSC.

#### Question 4

To what extent to you agree with the analysis of the two main ownership options, public ownership and industry ownership, and our preference for industry ownership?

- A
- ☐ Agree
  - ☒ Partially agree
  - ☐ Neither agree nor disagree
  - ☐ Partially disagree
  - ☐ Disagree

B

**Comments regarding ownership options and our preference:**

**We are supportive of Elexon remaining in private sector ownership, but do not find adequate justification in the consultation for the selected subset of shareholders in the analysis and believe that further consideration of other groups is warranted. We agree however that federated industry ownership is a viable option. The consultation concludes that there is no compelling difference between the two options, other than cost and administrative duties falling on a subset of industry parties rather than government.**

**The analysis does not provide adequate review or consideration of the options available to justify the conclusions reached. We noted in our response to Q1 that the impacts on future owners are not used as an assessment criterion. Our response to Q3 discusses the lack of review of DNOs or NGET as possible owners, the lack of justification for the use of BSC funding status as a criterion for selection, the omission of stability of the future ownership group as a factor in the analysis, along with complications and costs this could cause, and inappropriate use of RECCo as a precedent.**

**The consultation has not explored or highlighted the future liabilities and risks that can be anticipated through code reform or otherwise, nor the potential consequences of multiple shareholder involvement, e.g.**

- **Pension liabilities currently with ESO are not mentioned**
- **Potential future liabilities (or conflicts) to shareholders from Elexon's future role as licensed code manager, potentially of multiple codes, and designated central service delivery provider (enforcement, other obligations)**

**We understand that the future market and activities of Elexon are uncertain, however we believe greater discussion of these elements, and possibilities to provide a degree of comfort for future owners against future liabilities, should be included in the consultation analysis.**



## Question 5

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

- A
- ☐ Agree
  - ☒ Partially agree
  - ☐ Neither agree nor disagree
  - ☐ Partially disagree
  - ☐ Disagree

B

**Please explain why:**

**A temporary fall-back option is welcome to ensure the continued operation of Elexon and that a permanent change of ownership is managed in an orderly fashion. We would not support a permanent transfer of ownership under the FSO. We believe temporary private sector ownership is preferable to temporary public sector ownership if a fall-back is needed.**

**The ambitious timeline for creation of the FSO as a public corporation prior to or during 2024 means that it is sensible to have a fall-back option for Elexon ownership in the case that permanent arrangements cannot be introduced in good time. It also allows for all parties to take due time and consideration of the arrangements and ensure that they are fit for purpose.**

**In our view it would be better to preserve Elexon under private sector ownership if the fall-back option is needed. This is because we would expect some impacts to Elexon should it be placed in the public sector, for example, commercial contractual arrangements and procurement, and potentially to its staff and ability to recruit.**

**Ownership by electricity networks, NGET and/or DNOs, should be considered for this option, as well as for permanent ownership of Elexon.**

**We would expect some additional costs from a temporary fall-back option whether private or public sector, as two transfers would take place, but expect that any**

changes to commercial terms and procurement could be minimised or removed by remaining under private sector ownership.

We are concerned that the duration of the temporary option may also become an issue: once in public sector ownership under the FSO, it may appear more efficient or simple for Elexon to remain there rather than transfer out again to the private sector.

## **Question 6**

Are any other changes required to implement either of the two ownership options?

**Please provide your answer below:**

We have concerns over potential future liabilities that may not be covered by transfer of the current conditions which provide protection to the ESO. We therefore propose that this area is reviewed more thoroughly and suggest a change to the BSC with the intent to limit liability.

We question whether increased liabilities on new shareholders may arise through the federated ownership option plus any regulated status or additional roles Elexon may take on due to future code governance reform. We therefore question the assumption that the current arrangements under BSC Section C would still be fit for purpose.

We suggest an amendment to BSC Section C in order to expressly reflect the stated policy intent that the federated industry ownership model would not give rise to additional liabilities. Simple suggested wording being: *All liabilities incurred by BSCCo or any Subsidiary of BSCCo shall remain with BSCCo other than as expressly provided in the BSC.*

## **Question 7**

What are your views on the proposed licence and code changes set out above?

**Please provide your answer below:**

**The exact terms of any licence or code change would need to be scrutinised. We agree that the outlines provided convey the policy intention of the options. We would seek to ensure that potential future liabilities are limited within the BSC.**

**As our response to Q6, we question whether the federated ownership option plus any regulated status or additional roles Elexon may take on due to future code governance reform, may increase liabilities on its new shareholders. We therefore question the assumption that the current arrangements under BSC Section C would still be fit for purpose.**

**We suggest an amendment to BSC Section C in order expressly to reflect the stated policy intent that the federated industry ownership model would not give rise to additional liabilities. Simple suggested wording being: *All liabilities incurred by BSCCo or any Subsidiary of BSCCo shall remain with BSCCo other than as expressly provided in the BSC.***

## **Question 8**

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

**Please provide your answer below:**

**Consideration of costs and benefits is at a high level. Duplication of costs by industry parties should be considered as inefficient.**

**The only benefits considered are at a high and broad level: Elexon's continued effective operations and the FSO transition taking place in a timely fashion.**

**In Elexon's continued operations, we specifically support Elexon remaining agile and flexible to meet changing industry requirements, recruiting and retaining the best resources to meet the challenges ahead, and remaining fully accountable to industry. We consider that there may be increased benefits in private sector ownership than public sector for these areas.**

**Costs are considered as administrative only and either placed on government or industry. These costs cannot currently be identified as the scope and activities required are not clear. It is a fact though, that if Suppliers and Generators are chosen as future owners, costs will be incurred in future which currently do not exist. These costs will ultimately be passed to consumers and should be minimised.**

**With multiple shareholders, there is likelihood that costs will be duplicated, especially in the initial set up of arrangements when professional advisory services are required, and also with the entry and exit of parties in the Supplier/Generator group. Elexon may be able to coordinate advisory or provide some administrative services jointly to parties, reducing inefficiencies, but some will undoubtedly remain. We would expect Elexon's costs to be charged to specific parties (if non-funding BSC parties) or recovered through BSC funding.**

**Do you have any other comments that might aid the consultation process as a whole?**

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

[Click here to enter text.](#)

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☐

At BEIS we carry out our research on many different topics and consultations, and your views are valuable to us. Would you be happy for us to contact you again from time to time either for research or about other consultations?

☐Yes

☐No