

Consultation

New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

Publication date:	5 September 2023
Response deadline:	4 October 2023
Contact:	Robert Clay
Team:	Future System Operation
Telephone:	020 7901 7000
Email:	FSO@ofgem.gov.uk

We are consulting on new electricity supply and generation licence conditions to implement the new ownership arrangements for Elexon Limited (Elexon). The joint Department for Energy Security and Net Zero (the Department) and Ofgem "Response to the July 2022 Consultation on Elexon Ownership", published in March 2023 (the March 2023 joint Elexon ownership decision), set out our decision for these new arrangements.¹ These proposed conditions to support the transfer of ownership of Elexon are a consequence of the establishment of the Future System Operator (FSO). We are proposing to create new licence conditions to enable the Secretary of State and the Authority (Ofgem) to oblige relevant parties to hold a share in Elexon.

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

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We

¹ [The future ownership of Elexon - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Consultation on new electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

will publish the non-confidential responses we receive alongside a decision on next steps on our website at ofgem.gov.uk/consultations. If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

Consultation – New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

© Crown copyright 2023

The text of this document may be reproduced (excluding logos) under and in accordance with the terms of the [Open Government Licence](#).

Without prejudice to the generality of the terms of the Open Government Licence the material that is reproduced must be acknowledged as Crown copyright and the document title of this document must be specified in that acknowledgement.

Any enquiries related to the text of this publication should be sent to Ofgem at:

10 South Colonnade, Canary Wharf, London, E14 4PU.

This publication is available at www.ofgem.gov.uk. Any enquiries regarding the use and re-use of this information resource should be sent to: psi@nationalarchives.gsi.gov.uk

Contents

New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon	1
Executive Summary	6
Policy and context.....	6
Implementation approach	6
Additional implementation flexibility.....	6
Ongoing review	7
1. Introduction	8
What are we consulting on?.....	8
Consultation stages.....	8
How to respond	9
Your response, data and confidentiality	9
General feedback.....	10
How to track the progress of the consultation	11
2. Background	12
3. Proposed approach to implementation of industry ownership of Elexon	14
Policy on holding a share in Elexon	14
Implementation of our policy	14
Additional implementation flexibility.....	15
Maintaining the cohort of mandated shareholders and topping up	16
Initial cohort.....	16
Market changes.....	17
When to top up	18
Exit arrangements	18
Notification of changes	19
Review of shareholders.....	19
4. Proposed Licence Conditions	20
Approach.....	20
Purpose and effect of the licence condition.....	20
Timing	21
Suspension of a direction to hold a share.....	21
5. Next steps	22
Appendices	23
Appendix 1 – Explanatory note on the licence condition	24
Appendix 2 – Draft licence condition text for electricity supply and generation licences	25
Appendix 3 - Glossary	26
A	26
B	26

Consultation - New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

C	26
D	26
E.....	26
F.....	26
M	27
N	27
O	27
W.....	27
Appendix 4 – Privacy notice on consultations	28
Personal data	28

Executive Summary

Policy and context

We are consulting on new electricity supply and generation licence conditions to implement the new ownership arrangements for Elexon. The joint Department and Ofgem “Response to the July 2022 Consultation on Elexon Ownership”, published in March 2023 (the March 2023 joint Elexon ownership decision), set out our decision for new arrangements. These proposed conditions to support the transfer of ownership of Elexon are a consequence of the establishment of the Future System Operator (FSO). We are proposing to create new licence conditions to provide for the Secretary of State and the Authority to direct certain parties to hold a share in Elexon.

The March 2023 joint Elexon ownership decision stated that Elexon will remain in industry ownership and the shares in Elexon will initially be transferred to the 13 licensed BSC funding parties with a greater than 2% funding share in Elexon as of 1 January 2023.

This is an initial consultation on our implementation approach and new licence conditions to underpin the new ownership arrangements for Elexon. Other aspects of ownership including rights and responsibilities of the shareholders, management of the allocation and transfer of shares and treatment of liabilities will be set out in the Balancing and Settlement Code (BSC) and are the subject of a separate engagement exercise with BSC parties led by Elexon.

Implementation approach

We propose to introduce a new condition in both the electricity supply and generation licences that provides for the Secretary of State and the Authority to place an obligation on qualifying licensees to hold a share in Elexon to deliver these new ownership arrangements. These conditions would have no impact on the licensee until or unless the licensee were issued with a direction. We set out text for a licence condition that would be included in the electricity supply and the generation licences to implement the arrangements.

Additional implementation flexibility

In some circumstances, there may be practical reasons why a party other than one listed in the March 2023 joint Elexon ownership decision is mandated to hold a share in Elexon. Moreover, some intended shareholders have requested flexibility to allow them to delegate the legal responsibility for holding a share and associated administrative

Consultation - New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

requirements to another entity in the corporate group, other than the entity holding the supply or generation licence.

While the obligation to hold a share in Elexon will be placed on a company through a condition in the electricity supply or generation licences, funding shares will continue to be the initial basis of an obligation to hold a share in Elexon. In light of the requests for increased flexibility, we intend to provide flexibility and discretion in respect of which entity holds the licence obligation, and which entity discharges the obligation to hold a share on behalf of the licence holder.

We believe that this approach provides flexibility and discretion, while preserving accountability, and will allow companies to manage new Elexon ownership responsibilities in a way that minimises costs and administrative burdens.

Ongoing review

We intend to keep the shareholder cohort under review on an ongoing basis, once the initial cohort is put in place. In a scenario where the initial cohort changes and reduces (eg, due to market exit), we may identify new, additional funding share parties drawn from any of the 13 largest BSC funding parties not already qualifying as a funding share party at that time and issue new directions accordingly. The names of directed parties would be published.

1. Introduction

The section sets out the scope of this consultation, the stages of the consultation, and details of how to respond to this consultation.

What are we consulting on?

- 1.1 We are consulting on new licence conditions to underpin the new ownership arrangements for Elexon. We are proposing new licence conditions in the electricity supply and generation licences to provide for parties identified to become Elexon shareholders to be directed to hold a share by the Secretary of State or the Authority. The obligation to own a share will apply only to parties receiving a direction.
- 1.2 We are also consulting on a proposed approach to implementation that will allow the initial cohort of BSC funding parties with a greater than 2% funding share to implement the policy in a flexible, but effective, way.
- 1.3 We stated in the March 2022 joint Elexon ownership decision that ownership of Elexon would not confer control or create any liabilities due to the protections for and controls on shareholders to be set out in the BSC. Such related aspects of the new shareholder arrangements, as well as arrangements for the management of the allocation and transfer of shares will be set out in the BSC. These aspects are dealt with in a separate code modification process and do not form part of this consultation. This is the subject of a separate engagement exercise with BSC parties led by Elexon. Likewise, potential consequential amendments do not form part of this consultation.

Consultation stages

- 1.4 We have previously engaged with stakeholders identified in the March 2023 joint Elexon ownership decision as potential new shareholders, to seek their views on our draft proposals. This has informed the policy implementation approach set out in this consultation.
- 1.5 We now intend to have two stages of consultation, this consultation and a second consultation. The second consultation is intended to be carried out under the terms of the Energy Bill which give the Relevant Authority powers to modify

Consultation - New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

licences and codes for the purpose of establishing the Future System Operator (FSO), subject to the Energy Bill having received Royal Assent.²

- 1.6 This first consultation provides stakeholders with context to the changes and seeks initial views on the proposed modifications to the electricity supply and generation licences. Specifically, we are consulting on new licence conditions to underpin the new ownership arrangements for Elexon. We are also consulting on a proposed approach to implementation that will allow the initial cohort of BSC funding parties with a greater than 2% funding share to implement the policy in a flexible, but effective, way.
- 1.7 We intend to consult again to summarise stakeholder comments to this consultation, and present licence condition proposals with any amendments as appropriate. We also expect to include the relevant definitions that underpin the licence in this consultation (eg, Elexon).

How to respond

- 1.8 We want to hear from anyone interested in this consultation. Please send your response to FSO@ofgem.gov.uk and include "Elexon ownership" in the title.
- 1.9 We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.
- 1.10 We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

Your response, data and confidentiality

- 1.11 You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

² These are different powers relative to Ofgem's licence modification powers in section 11A of the Electricity Act 1989. The relevant clause references are 166 and 167. These are correct at the time of this publication but may be subject to change. Further information on the progress of the Energy Bill can be found here: [Energy Bill \[HL\] - Parliamentary Bills - UK Parliament](#)

Consultation - New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

- 1.12 If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you do wish to be kept confidential and those that you do not wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.
- 1.13 If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 3.
- 1.14 If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.
- 1.15 We intend to share all responses with the Department, in line with our duties, the joint nature of this project, and the potential for future joint consultations that may be informed by stakeholder feedback.

General feedback

1.16. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

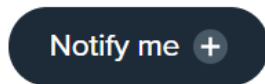
Please send any general feedback comments to stakeholders@ofgem.gov.uk

Consultation - New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website.

[Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations)

A dark blue modal window with a white close button (X) in the top right corner. Inside the modal is a white form with the text "Would you like to be kept up to date with [Consultation title]?" and "subscribe to notifications:". Below this is a label "Email" followed by a text input field. At the bottom left of the form is a dark blue "Submit" button with a white right-pointing arrow.

Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

Upcoming > **Open** > **Closed** (awaiting decision) > **Closed** (with decision)

2. Background

The section sets out the background to the new ownership arrangements for Elexon and our proposals for implementing these arrangements.

- 2.1 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 functions related to Electricity Market Reform (EMR) Settlement. Elexon is currently a wholly owned subsidiary of the National Grid Electricity System Operator (NGESO).
- 2.2 In April 2022, the joint Department and Ofgem response to the July 2021 consultation on a Future System Operator role (the April 2022 joint FSO Decision) set out the joint decision by the Department and Ofgem to create a publicly owned FSO. 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 a subsidiary of NGESO, the creation of the FSO as a publicly owned entity required us to also consider the future ownership of Elexon.
- 2.3 Following on from the April 2022 joint FSO Decision, in July 2022, the Department and Ofgem published the Elexon ownership consultation.³ This sought views on proposals for the future ownership of Elexon. We set out two leading enduring options for the ownership of Elexon: 1) public ownership as a subsidiary of the FSO, and 2) industry ownership with Elexon owned by a representative group of industry stakeholders. Under the preferred option of industry ownership, we considered potential combinations of BSC parties which could own Elexon. We also discussed proposed licence and code changes associated with each of the two leading ownership options. Following this, the Department and Ofgem published the March 2023 joint Elexon ownership decision.⁴
- 2.4 The March 2023 joint Elexon ownership decision set out a summary of responses, and key decisions as follows:
- Elexon will remain in industry ownership.

³ [Future Elexon Ownership Consultation | Ofgem](#)

⁴ [Elexon Ownership Government and Ofgem's response to consultation | Ofgem](#)

Consultation - New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

- The shares in Elexon will initially be transferred to the 13 licensed BSC funding parties with a greater than 2% funding share in Elexon as of 1 January 2023.
- These policies will require licence and code changes to support implementation.

2.5 The electricity supply and generation licences, as well as the BSC, will therefore need to be modified as part of the implementation of new Elexon ownership arrangements. This consultation deals with electricity supply and generation licence conditions that will enable an obligation to be placed on relevant industry parties to own shares in Elexon following direction by the Secretary of State or the Authority.

3. Proposed approach to implementation of industry ownership of Elexon

This section sets out our policy on holding a share in Elexon and our proposal for implementing this policy.

Questions

- Q1. Do you agree with our proposed approach to implementation, including our proposal for flexibility?
- Q2. Are there any other factors that we should consider to enable successful implementation?

Policy on holding a share in Elexon

- 3.1 We stated in the March 2023 joint Elexon ownership decision that shares will initially be transferred to the sub-set of licensed, BSC funding parties with a greater than 2% funding share in Elexon as of 1 January 2023. We also stated that after this initial transfer, licensed BSC funding parties would then have a voluntary option to request a share in Elexon. This would be subject to rules set out in the BSC, requirements for compliance with the BSC as set out in electricity supply and generation licences, and the revised Articles of Association of Elexon.
- 3.2 The March 2023 joint Elexon ownership decision sets out a methodology for identifying parties that meet the criteria for holding a share in Elexon. It also sets out the list of such parties qualifying initially to take a share. In addition, the March 2023 joint Elexon ownership decision sets out our intention that implementation be supported through a new condition in the electricity supply and the generation licences.

Implementation of our policy

- 3.3 We propose to introduce a new condition in both the electricity supply and generation licences that provides for the Secretary of State and the Authority to place an obligation on the licensee to hold a share in Elexon to deliver these new ownership arrangements. These conditions would have no impact on the licensee until or unless the licensee were issued with a direction.

Additional implementation flexibility

3.4 In some circumstances, there may be practical reasons for a party affiliated to a party listed in the March 2023 joint Elexon ownership decision to be mandated to hold a share in Elexon in their place. Moreover, some intended shareholders have requested flexibility to allow them to delegate legal responsibility for holding a share to a corporate affiliate with a supply or generation licence. This would, in turn, allow for the party with the legal responsibility to have flexibility to delegate the day-to-day responsibility for holding a share, including associated administrative requirements, to another corporate affiliate.

3.5 Taking account of this, we propose the following principles for implementation:

- Funding share will continue to be the driver of any obligation to hold a share;
- The obligation to hold a share in Elexon will be placed on a company through a condition in their electricity supply or generation licence;
- We will provide flexibility and discretion in respect of which entity holds the licence obligation, and which entity discharges the obligation to hold a share.

3.6 For ease, we propose the following definitions:

- **funding share party** - a BSC party that meets the qualifying threshold;
- **directed party** - a party that holds an electricity supply or generation licence and is either itself a funding share party or has a wholly owned affiliate that is a funding share party, and that receives a direction to hold a share;
- **designated party** - a BSC party that is a wholly owned affiliate of a directed party and has been nominated by the directed party to hold the share in Elexon. This may be the same as the directed party;
- **wholly owned affiliate** – either (a) a wholly owned subsidiary of the other party, (b) companies who are each wholly owned directly or indirectly by a common parent company, or (c) a parent company that wholly owns, directly or indirectly, the other company. Where the document refers to a wholly owned affiliate, the nature of the other company is specified;
- **qualifying threshold** - for the initial cohort, this is a BSC party with a funding share of over 2% as of January 2023. If the Secretary of State or the Authority decide to top up, the BSC parties that qualify would not need to have funding shares of over 2%, they would qualify by virtue of being one of the 13 BSC parties with the largest funding shares. The assessment of the 13

companies with the largest funding shares would be based on the most recent annual data as reported monthly at that time.

- 3.7 In any circumstances where a funding share party does not have a supply or generation licence, the Secretary of State or the Authority may direct a suitable wholly owned affiliate of the funding share party with a supply or generation licence to hold a share in Elexon. If there is more than one party eligible to be directed on the basis of being a wholly owned affiliate of one of the 13 BSC parties with the largest funding shares, the funding share party will be invited to nominate its preferred party. This nominated party may then be directed to hold a share in Elexon, based on the licence condition proposed in this consultation.
- 3.8 If this funding share party fails to nominate a directed party, the Secretary of State or the Authority will select an eligible party to be the directed party. If there are no eligible wholly owned affiliates of the funding share party to be the directed party, then no licensee will be mandated to hold a share in respect of that funding share party at that time. However, the position may be re-assessed if the Secretary of State or the Authority decides that the shareholder group should be topped up. Please see paragraphs 3.11 to 3.18 for further information.
- 3.9 The directed party may choose to fulfil their licence obligation by nominating one of their wholly owned affiliates that is a BSC party to discharge the responsibility for holding a share in Elexon on its behalf (ie, to carry out the administration of holding a share and any associated activities). There must be a clear line of accountability from the directed party to the designated party. As above, the directed party would retain responsibility for ensuring that the licence obligation and associated code obligations are being met.
- 3.10 We believe that this approach provides flexibility and discretion, while preserving accountability, and will allow companies to manage new Elexon ownership responsibilities in a way that minimises costs and administrative burden.

Maintaining the cohort of mandated shareholders and topping up

Initial cohort

- 3.11 As set out in the March 2023 joint Elexon ownership decision, it is intended that once a licensee is directed to hold a share in Elexon, they must hold a share on an enduring basis. This means that if a member of the initial funding share

cohort⁵ experienced a reduction in their funding share below 2% in the future, they would continue to provide the basis for a direction to hold a share in Elexon.

- 3.12 In section 3.3 of the March 2023 joint Elexon ownership decision we also stated that there is a possibility that, once we transfer shares to the initial cohort of shareholders, over time this group could reduce in size due to firms exiting the market to a sufficient extent that the shareholding became too small. We stated that to avoid this, the Secretary of State and the Authority would have the ability to require that any of the 13 largest BSC funding parties at any point in the future acquire a share to restore the number of mandated shareholders to up to 13. We refer to the process of restoring numbers of shareholders in the cohort as topping up.

Market changes

- 3.13 If a funding share party remained in the market, but a licensee who had previously been directed to hold a share on the basis of their affiliation with the funding share party were no longer able to hold a share, (for example if they left the market or had the relevant supply or generation licence revoked), our intention would be for a new direction to be issued to another wholly owned affiliate of the funding share party that is a BSC party and holds an electricity supply or generation licence if such an entity is available. We would offer the corporate group the option of nominating a preferred party in the first instance. Having identified a preferred party, we would then issue a new direction to that party. If there were no entities remaining in the corporate group that held an electricity supply or a generation licence, then the qualification to be directed based on the original funding share party would fall away.
- 3.14 The shareholder cohort would be kept under review on an ongoing basis. There may be scenarios where the initial cohort changes and reduces (eg, due to market exit). If necessary, either the Secretary of State or the Authority may identify new, additional funding share parties drawn from any of the 13 largest BSC funding parties not already qualifying as a funding share party at that time and issue new directions accordingly ie, we would top up. The over-arching intention behind this would be to maintain a resilient ownership structure.

⁵ Funding share party with a funding share of over 2% as of 1 January 2023, as identified in the March 2023 joint Elexon ownership decision.

When to top up

- 3.15 In deciding whether to top up we would take account of various factors including the diversity of the shareholder group in terms of mix of electricity suppliers and generators, the number of shareholders in the cohort at that point, and wider market conditions.
- 3.16 There would be no requirement for a party to meet a 2% funding threshold to be eligible to be directed to acquire a share for the purposes of topping up. They would qualify by virtue of being one of the 13 largest funding companies based on the most recent annual data as reported monthly at that time.
- 3.17 Any new funding share parties identified through topping up would be subject to the arrangements outlined above, including that if a funding share party does not have a supply or generation licence, the Secretary of State or the Authority would direct an eligible licensed wholly owned affiliate of the funding share party to hold a share in Elexon. The directed party would also be able to choose one of their wholly owned affiliates to hold the share.
- 3.18 We intend to provide transparency on the initial cohort of directed parties and any changes to this cohort by publishing the directed parties from time to time.

Exit arrangements

- 3.19 Scenarios that could be potential drivers of changes in the shareholder group include those set out below. This list of scenarios is not exhaustive.
- 3.20 If a funding share party leaves the market, any direction to them or any corporate affiliate to hold a share would cease to have effect. A wholly owned affiliate of the funding share party could no longer be subject to any requirement to hold a share based on the qualification of the original funding share party.
- 3.21 If a directed party that is not also a funding share party ceases to hold a relevant licence, the direction to them to hold a share will cease to have effect. If a directed party that is not also a funding share party ceases to be a wholly owned affiliate of the funding share party, the direction to them to hold a share will be suspended once the Secretary of State and the Authority are made aware of the change in affiliation. In these cases, if the funding share party has any other eligible wholly owned affiliate remaining, a new direction may be issued to that party. If there is more than one eligible wholly owned affiliate of the funding share party, the corporate group will be asked to choose a party to be the new directed party. If the corporate group does not choose a new directed party, the

Consultation - New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

Secretary of State and the Authority will have the ability to choose a party to be directed. If there are no eligible wholly owned affiliates of the funding share party, then the funding share party will cease to be in scope.

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

Notification of changes

- 3.23 Directed parties will be required by the licence condition to tell the Secretary of State and the Authority the name of the designated party, and they must inform the Secretary of State and the Authority if there is a change in the designated party.
- 3.24 If a directed party believes they should no longer be directed, (eg, they cease to have a corporate affiliation with a funding share party or cease to be wholly owned by the funding share party (but retain their licence), they may inform the Secretary of State and Ofgem who may then suspend the direction to hold a share.

Review of shareholders

- 3.25 As set out in the March 2023 joint Elexon ownership decision, we do not intend to conduct scheduled reviews of the cohort of the shareholders. However, we intend that any funding share party or directed party whose role in Elexon ownership were to change should notify the Secretary of State and the Authority. This would arise, for example if any directed party or funding share party left the market or if a directed party ceased to be a wholly owned affiliate of the funding share party.
- 3.26 The Secretary of State or the Authority may in response to any such changes update the status of any relevant direction and/or review the shareholder cohort. Following any such review, they may take steps to top-up the cohort through the topping-up mechanism.

4. Proposed Licence Conditions

This section sets out our approach to using licence conditions to implement the new Elexon ownership arrangements. It sets out the purpose of these licence conditions including providing for a direction to hold a share, suspension of a direction to hold a share and revocation and nullification of shares. It also sets out the effect of these licence conditions.

Questions

- Q3. Do you agree that the approach taken in the proposed licence condition serves the purpose required?
- Q4. Do you have any additional comments on the proposed licence condition?

Approach

- 4.1 We broadly intend to introduce a new condition in both the electricity supply and generation licences that provides for the Secretary of State and the Authority to place an obligation on the licensee to hold a share in Elexon. A licensee would be required to take no action until or unless they were issued with a direction. Parties would be directed in accordance with policy set out in section 3.3 of the March 2023 joint Elexon ownership decision.
- 4.2 The same condition would be introduced into both the electricity supply and the generation licence.
- 4.3 We will publish a list of the directed parties to provide transparency on decisions on parties directed to hold a share. We may update this from time to time to reflect any changes in the cohort of directed parties. For example, if parties leave the market and/or there is topping up. Draft text for a licence condition that provides for licensees to be directed to hold a share in Elexon is set out at Appendix 2.

Purpose and effect of the licence condition

- 4.4 The purpose of the licence condition is to provide for the licensee to be directed to hold a share in Elexon. The requirement to hold a share in Elexon would take effect from a date specified in the direction. The licensee may delegate responsibility for holding a share to one of their wholly owned affiliates which is a BSC party but will remain accountable for ensuring that a share is held and for associated BSC obligations.

Consultation - New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

- 4.5 Any party receiving a direction would be required to hold a share in Elexon from the date specified in the direction.
- 4.6 We intend to allow adequate time for all affected parties to prepare to comply with any direction to hold a share, including obtaining any approvals. We expect these licence conditions, as well the BSC modifications and the Elexon Articles of Association to be relevant for obtaining any approvals. Further, we expect affected parties to obtain timely approvals when relevant, and the Department and Ofgem will work with them to support this.

Timing

- 4.7 As above, we intend to use powers in the Energy Bill to make the necessary licence changes. We will therefore consult formally on the new licence conditions, using these powers to implement them, once Royal Assent has been achieved. Following any formal consultation, we will publish a notice of decision.
- 4.8 The licence conditions also create an obligation on the licensee to inform the Secretary of State and the Authority of any arrangements for delegation of the responsibility to hold a share, including the name of the designated party, and to inform the Secretary of State and the Authority if there are any changes in these arrangements. Examples of such changes would be if the directed party or the designated party left the market.

Suspension of a direction to hold a share

- 4.9 There may be circumstances where a direction to hold a share needs to be suspended. This may arise, for example if organisational changes render the direction out of date. For example, if a directed party ceases to be a wholly owned affiliate of the funding share party. Accordingly, the licence condition provides for a direction to hold a share to be suspended.
- 4.10 Provision is also made for the Secretary of State and the Authority thereafter to give to the licensee a notice ending the suspension and providing for the licensee again to be required to hold a share in Elexon. We would aim to allow adequate time for affected parties to prepare to comply with any reinstated obligation to hold a share. Provisions for the Secretary of State and the Authority to end and/or reinstate a party's requirement to hold a share could only have effect where a party has previously been directed to hold a share.

5. Next steps

This section describes the next steps following conclusion of this consultation.

- 5.1 Following the conclusion of this consultation, we will review and fully consider the responses we receive on the proposed licence conditions and related issues. Subject to responses received, we intend to publish a second consultation under the Energy Bill, subject to the Energy Bill having received Royal Assent.

Appendices

Index

Appendix	Name of appendix	Page no.
1	Explanatory note on the licence condition	24
2	Draft text for licence condition for electricity supply and generation licences	25
3	Glossary	26
4	Privacy notice on consultations	28

Appendix 1 – Explanatory note on the licence condition

A1.1 This licence condition will be introduced into the electricity supply licence and into the electricity generation licence. The same wording will be used in both licences.

A1.2 The purpose of this condition is to create an obligation on the licensee to own one share in Elexon, when directed to do so by the Secretary of State or the Authority.

A1.3 The effect of this condition is for the licensee to hold a share in Elexon from the date specified in the direction when a direction under this condition has been issued.

Option to delegate responsibility to hold a share.

A1.4 This condition also provides for the licensee to delegate the requirements of any direction under paragraph 1 of the licence condition to one of their wholly owned affiliates. This party must be a signatory to the BSC.

A1.5 This condition also creates an obligation on the licensee to inform the Secretary of State and the Authority of any arrangements for delegation under paragraph 3 of the licence condition, including the name of the party to whom any responsibility delegated, and to inform the Secretary of State and the Authority if there are any changes to these arrangements.

Appendix 2 – Draft licence condition text for electricity supply and generation licences

Section xx. Standard Licence Conditions

Condition xx: Elexon ownership

Obligation to own shares in Elexon:

1. The licensee must hold one share in Elexon if they are directed to do so by the Secretary of State or the Authority with effect from the date specified in the direction.
2. The licensee may delegate any responsibility for holding a share in Elexon to one of their wholly owned affiliates that is a signatory to the BSC.
3. Where the responsibility for holding a share in Elexon is delegated in accordance with paragraph 2, the licensee must inform the Secretary of State and the Authority of the name of the party to whom responsibility is delegated, and they must inform the Secretary of State and the Authority if the responsibility for holding a share is delegated to another wholly owned affiliate of the licensee in future.
4. The Secretary of State and the Authority may issue a direction suspending any requirement on the licensee to hold a share in Elexon.
5. The Secretary of State or the Authority may issue a direction to end the suspension set out in paragraph 4, requiring the licensee to hold a share in Elexon again with effect from the date specified in the direction.

Appendix 3 - Glossary

A

The Authority

The Gas and Electricity Markets Authority (GEMA)

B

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

C

Consultation on the Future Ownership of Elexon

The joint Government/Ofgem consultation, "The Future Ownership of Elexon", published 14 July 2022.

D

The Department

The Department for Energy Security and Net Zero and its predecessor, the Department for Business, Energy and Industrial Strategy

DESNZ

Department for Energy Security and Net Zero

E

Elexon

Elexon Ltd and its subsidiaries unless stated otherwise

F

FSO

Consultation - New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

Future System Operator

Funding share

“Annual funding share”, as defined in the BSC

M

March 2023 joint Elexon ownership decision

The joint Department for Energy Security and Net Zero (DESNZ) and Ofgem Response to the July 2022 Consultation on Elexon Ownership published in March 2023

N

NETA

New Electricity Trading Arrangements

NGESO

National Grid Electricity System Operator Ltd

O

Ofgem

The Office of Gas and Electricity Markets. It also refers to the Gas and Electricity Markets Authority, when relevant.

W

Wholly owned affiliate

Either (a) a wholly owned subsidiary of the other party, (b) companies who are each wholly owned directly or indirectly by a common parent company, or (c) a parent company that wholly owns, directly or indirectly, the other company. Where the document refers to a wholly owned affiliate, the nature of the other company is specified.

Appendix 4 – Privacy notice on consultations

Personal data

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

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

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

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

2. Why we are collecting your personal data

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

3. Our legal basis for processing your personal data

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

4. With whom we will be sharing your personal data

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

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

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

6. Your rights

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

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data

Consultation - New electricity supply and generation licence conditions to implement new ownership arrangements for Elexon

- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

7. Your personal data will not be sent overseas

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system.

10. More information For more information on how Ofgem processes your data, click on the link to our "[ofgem privacy promise](#)".