

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

Stage 01: Initial Written Assessment

P284: Expansion of Elexon's role via the 'contract model'

The current BSC provisions do not allow BSCCo (ELEXON) to perform non-BSC activities. Ofgem has consulted, and recently published its conclusions, on allowing ELEXON to diversify.

P284 aims to facilitate implementation of the 'contract model' supported by a majority of respondents and in line with Ofgem's view that "a formal separation between the BSCCo and a 'New ELEXON' is better able to protect the interests of BSC Parties". It will enable, but not require, the creation of such separation through a BSC services contract.

ELEXON recommends that:



- P284 is progressed as an Urgent Modification Proposal; and
- Should Ofgem not grant urgency, P284 undergoes an expedited Assessment Procedure and Report Phase.



High Impact:
BSCCo (ELEXON).



Medium Impact:
This Modification Proposal will be of interest to all BSC Parties and stakeholders. It is an 'enabling' change which does not in itself require a contract to be put in place.

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About This Document:

This is an Initial Written Assessment (IWA), which ELEXON will present to the Panel on 28 May 2012.

The Panel will consider the recommendations and will agree how to progress P284.

Further Information:

Attachment A to this document is the P284 Modification Proposal form, containing the Proposer's full views and suggested BSC legal text.



Any questions?

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1 Why Change?



The Modification Proposal

P284 will enable, but not require, the creation of a BSC services contract to separate BSCCo from 'New ELEXON'.

You can find a copy of the Modification Proposal and the Proposer's suggested BSC legal text in Attachment A.

What issue does the Proposer identify?

The current BSC provisions do not allow the Balancing and Settlement Code Company (BSCCo) to perform non-BSC activities.

BSC Section C1.2.2 states that:

"BSCCo shall have the powers, functions and responsibilities set out in or assigned to it in the Code, and shall not undertake any business or activity other than as provided for in the Code".

Because Annex X-1 of the Code defines the Balancing and Settlement Code Company (BSCCo) as meaning ELEXON Limited, BSC C1.2.2 therefore also restricts ELEXON as a company from undertaking any activities which are not set out in the Code.

Ofgem recently [consulted](#) on allowing ELEXON to diversify its activities and published its [conclusions](#) on 30 April 2012.

National Grid has raised P284 to facilitate implementation of the 'contract model' supported by a majority of respondents to Ofgem's consultation, and in line with Ofgem's view that *"a formal separation between the BSCCo and a 'New Elexon' is better able to protect the interests of BSC Parties"*.

2 Solution

What solution has the Proposer put forward?

The Proposer's P284 solution will:

- Enable, but not require, BSCCo to outsource some or all of the BSC services to a new BSC Agent (the BSC Services Manager) via a contract between BSCCo and 'New ELEXON';¹ and
- Ensure that the risks and costs arising from 'New ELEXON' pursuing or undertaking non-BSC activities are not borne by BSC Parties, including National Grid as the BSCCo Shareholder.

In the Modification Proposal form, the Proposer clarifies that:

- P284 is an 'enabling' change to the BSC which does not itself require a contract to be created;
- It is outside the scope of P284 to consider the appropriate terms of any such contract; and
- P284 will not amend the constitution of BSCCo or the obligations of National Grid as BSCCo Shareholder.

You can find the Proposer's full views in the Modification Proposal form (Attachment A), which includes the Proposer's suggested BSC legal text.

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¹ The Proposer uses the term 'New ELEXON' to represent the company which would carry out BSC activities under service contract with BSCCo.

Why does the Proposer believe that P284 better facilitates the Applicable BSC Objectives?

The Proposer believes that P284 will better facilitate the achievement of **Applicable BSC Objective (d)** because, in their view:

- It will ensure clear BSCCo accountability for the BSC arrangements following diversification of 'New ELEXON'; and
- If the contract arrangements are outsourced, and the provisions of BSC services are exposed to periodic competitive tender, this may deliver cost savings and benefits to BSC Parties.

3 Proposed Progression

Is a Workgroup needed?

We agree with the Proposer that a Workgroup should be formed to assess P284 further. We also recommend that any Workgroup phase includes the standard 15 Working Day (WD) industry consultation period.

We believe a two-month Workgroup phase (including this 15WD consultation) is feasible because:

- Ofgem has already considered and consulted upon the proposed contract model;
- BSC Parties and stakeholders are already familiar with the principles of P284 (with the majority of respondents to Ofgem's consultation supporting a contract model);
- P284 is an 'enabling' change and, as such, the Proposed Modification has a tightly-defined scope;
- The wording of the 'Issue or Defect' section of the Modification Proposal is likely to limit the scope of any Alternative Modification to variants of the contract model (i.e. excluding other types of model); and
- The Proposer has provided suggested legal text to help expedite the progression of P284.

This two-month Workgroup phase would therefore involve:

- One Workgroup meeting to:
 - Walk through and review the Proposer's solution;
 - Agree whether the draft legal text delivers the Proposer's intended solution and (if necessary) agree any changes to better deliver the Proposer's solution;
 - Agree whether to develop any Alternative Modification;
 - Agree initial views against the Applicable BSC Objectives; and
 - Agree a provisional Implementation Date;
- A 15 WD industry consultation on the above areas;
- A second and final Workgroup meeting to:
 - Discuss the industry consultation responses; and
 - Make the Workgroup's final recommendations to the Panel.



What are the Applicable BSC Objectives?

- (a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence;
- (b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System;
- (c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;
- (d) Promoting efficiency in the implementation of the balancing and settlement arrangements;
- (e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency for the Co-operation of Energy Regulators.

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Workgroup Terms of Reference and membership

We recommend that the Workgroup's Terms of Reference comprises the standard Terms of Reference for the [Governance Standing Modification Group](#) (GSMG), supplemented with the areas below.

We invite the Panel to agree the addition of these areas to the Workgroup's Terms of Reference, subject to any amendments and/or additions the Panel wishes to make.

Suggested additions to Workgroup's Terms of Reference
Walk through the Proposer's solution.
Agree whether the Proposer's suggested legal text delivers their intended solution and, if not, agree any changes to the legal text which are needed to better deliver the Proposer's solution.
Assess whether the Proposer's solution (the 'Proposed Modification') better facilitates the achievement of the Applicable BSC Objectives compared with the current BSC provisions.
Assess whether there is any Alternative Modification within the scope of P284 which would better facilitate the Applicable BSC Objectives compared with the Proposed Modification.
Agree a recommended Implementation Date for the Proposed Modification and any Alternative Modification.
Conduct a 15 WD consultation on the above before submitting final recommendations to the Panel.

Given the related subject matter, we believe it would be efficient to use the existing membership for [P281](#) 'Change of BSCCo Board of Directors and Chairman' as the starting point for P284 membership (although the two Modification Proposals are not dependant on each other, and the invite for P284 Workgroup membership will be open to all BSC Parties and other interested parties).

We note that the P281 Group will be holding its final meeting on 28 May 2012. For efficiency and expediency, we have therefore provisionally scheduled the first P284 Workgroup meeting to be held on 29 May 2012. We have already notified the P281 members and wider industry of this provisional meeting date.

Does P284 interact with any Significant Code Reviews?

We agree with the Proposer that P284 has no interaction with any ongoing SCRs.

Does P284 meet the Self-Governance Criteria?

We agree with the Proposer that P284 does not meet the criteria for progression as a Self-Governance Modification Proposal.

Although P284 is an enabling change, by permitting the outsourcing of BSC services it can be considered a material change to the Code's governance procedures.

Ofgem (on page 3 of its [conclusions letter](#)) also makes clear that it expects to have a role in the progression of any Modification Proposal to change BSCCo's governance, which is not consistent with a Self-Governance process.



What are Ofgem's...?

Self-Governance Criteria?

A Modification Proposal that, if implemented:

a) is unlikely to have a material effect on:

- i) existing or future electricity consumers; and
- ii) competition in the generation, distribution or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
- iii) the operation of the national electricity transmission system; and
- iv) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
- v) the Code's governance procedures or modification procedures, and

b) is unlikely to discriminate between different classes of Parties.

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Complexity, importance and urgency

BSC Section F1.2.2 requires the Panel to endeavour at all times to operate the Modification Procedures *"in an efficient, economical and expeditious manner, taking account of the complexity, importance and urgency of particular Modification Proposals"*.

The BSC contains two routes for expediting the progression of a Modification Proposal:

- **Through progression as an Urgent Modification Proposal in accordance with BSC F2.9.**

This route is only applicable if the Proposer or BSCCo and/or the Transmission Company recommends urgency. Where this is the case, the Panel is required to make a recommendation to Ofgem on whether urgency should be granted. The Panel is also required to recommend the urgent timetable to be followed should Ofgem agree. Ofgem makes the final decision on whether the Modification Proposal should be progressed as an Urgent Modification Proposal and, if granting urgency, approves the final urgent progression timetable. Ofgem has published [guidance](#) on the 'criteria' it applies when considering urgency.

With Ofgem's approval, the process and timetable for progressing an Urgent Modification Proposal can deviate from as much of the normal process as is appropriate in the circumstances. In accordance with BSC B4.6, this includes the ability to waive some of the normal restrictions on convening Panel meetings.

- **By exercising its ability to set the appropriate length of any Definition Procedure or Assessment Procedure under BSC F2.2.**

This route allows the Panel to expedite the normal progression process by determining *"the priority to be accorded to the Modification Proposal (as compared with other Pending Modification Proposals) and the timetable to apply for completion of the relevant procedure"*.

It also allows the Panel to *"exercise its discretion such that, in respect of each Modification Proposal, a Modification Report may be submitted to the Authority as soon after the Modification Proposal is made as is consistent with the proper definition and/or assessment and evaluation of such Modification Proposal, taking due account of its complexity, importance and urgency"*.

In accordance with BSC B4.1, this includes the ability to hold ad-hoc Panel meetings outside the normal monthly meetings.

If there is no recommendation, or Ofgem does not agree, to progress a Modification Proposal as an Urgent Modification Proposal, the BSC therefore still enables its progression to be expedited within the normal process. BSC F1.4.3 allows Ofgem to veto the priority or timetable set by the Panel.

On page 3 of its conclusions letter, Ofgem notes ELEXON's desire to participate in the Government's licence bid process for the Data and Communications Company (DCC) and states that *"we would expect this to be reflected in the associated timetable for progressing any necessary BSC modification proposals"*.

Although the Proposer is not recommending that P284 is progressed as an Urgent Modification Proposal, they note that it *"may require timely development and implementation to align with the government's timeline for creation of the Data and Communications Company"* and that *"the BSC Panel may wish to consider the timescales for progressing this Modification with reference to the timeline for the DCC bid process"*.



What are Ofgem's...?

Urgency 'criteria'?

In its [guidance](#), Ofgem states that an urgent modification should be linked to an imminent issue (which may be date related) or a current issue that if not urgently addressed may cause:

- (a) A significant commercial impact on parties, consumers or other stakeholder(s);
- (b) A significant impact on the safety and security of the electricity and/or gas systems; or
- (c) A party to be in breach of any relevant legal requirements.

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The timetable published by the Department of Energy and Climate Change (DECC) for the DCC bid process commences in Q2 2012. We believe that the necessary preparatory steps which 'New' ELEXON must take in order for it to be in a position to submit a DCC bid can be considered imminent (and possibly current). If the progression of P284 is not expedited, New ELEXON's ability to bid may be either precluded or significantly compromised. This could have not only a significant commercial impact on New ELEXON, but a detrimental effect on the competitiveness of the bid process (and thereby also potentially an adverse commercial impact on Suppliers and, ultimately, consumers).

We believe there is therefore an argument that P284 meets Ofgem's urgency criteria (a):

(a) 'An imminent issue (which may be date related) or a current issue that if not urgently addressed may cause a significant commercial impact on parties, consumers or other stakeholder(s)'.

We also note that Ofgem's [guidance](#) describes its criteria as non-exhaustive and states that each urgency request will be dealt with on a case-by-case basis. More broadly, we suggest that prolonging uncertainty over ELEXON's future governance and vires (and the associated effort spent by ELEXON and the industry in resolving this issue) may be detrimental to the efficient delivery of the BSC arrangements.

We are therefore recommending that P284 is progressed as an Urgent Modification Proposal, and invite the Panel to agree its recommendation to Ofgem on whether urgency is appropriate. You can find our recommended urgent timetable below.

If Ofgem does not agree to progress P284 as an Urgent Modification Proposal, we recommend that the Panel expedites its progression under the normal process. We provide this fallback timetable below, and invite the Panel to agree this now in order to avoid any delay once Ofgem's urgency decision is known.

Both timetables contain an identical two-month Workgroup phase, with the first Workgroup meeting on 29 May 2012. Under both timetables, the Panel still makes the final recommendation to Ofgem on whether P284 should be approved. The difference between them is that the urgent process allows for a single (Workgroup) consultation rather than the usual separate Assessment Procedure and Report Phase consultations, thereby delivering a significant time saving.

Recommended progression timetable

Under the expedited normal process, P284 would reach Ofgem for decision at the end of July 2012 providing that:

- The Panel agrees to accept the Workgroup’s Assessment Report as a late paper to its regular 12 July Panel meeting (the dates in brackets represent those that would apply if the Panel wished to hold a later ad-hoc Panel meeting to consider the Assessment Report);
- The Panel agrees to shorten the length of the second Report Phase consultation to 5 WD on the grounds that P284 will already have undergone a 15 WD Assessment Procedure consultation; and
- The Panel agrees to hold an ad-hoc Panel meeting to consider the Draft Modification Report.

The dates in brackets represent those that would apply if the Panel wished to consider the Workgroup’s Assessment Report at a separate ad-hoc Panel meeting in July. In this case, an additional ad-hoc meeting would still be needed to consider the Draft Modification Report, in order to deliver the Final Modification Report to Ofgem by the end of August 2012. Using the standard monthly Panel meetings for each report, and a 15 WD Report Phase consultation, would result in the final report not being issued to Ofgem until 14 September 2012.

Progression via Urgent Modification Proposal process	
Workgroup meeting 1	Tues 29 May 2012
Consultation starts	Mon 11 June 2012
Consultation closes	Fri 29 June 2012
Workgroup meeting 2	Tues 3 July 2012
Workgroup’s report submitted to Panel	Tues 10 July 2012
Panel meets to discuss Workgroup’s report and make its final recommendation	Thurs 12 July 2012*
Final Panel report submitted to Ofgem for decision	Fri 13 July 2012

Progression via expedited normal process	
Workgroup meeting 1	Tues 29 May 2012
Assessment Consultation starts	Mon 11 June 2012
Assessment Consultation closes	Fri 29 June 2012
Workgroup meeting 2	Tues 3 July 2012
Workgroup’s Assessment Report submitted to Panel	Tues 10 July 2012
Panel meets to discuss Assessment Report and submits P284 to the Report Phase	Thurs 12 July 2012* (Weds 18 July 2012+)
Report Phase consultation starts	Mon 16 July 2012 (Fri 20 July 2012)
Report Phase consultation closes	Fri 20 July 2012 (Thurs 9 August 2012)
Draft Modification Report submitted to Panel	Tues 24 July 2012 (Mon 13 August 2012)
Panel meets and makes final recommendation	Thurs 26 July 2012+ (Tues 21 August 2012+)
Final Modification Report submitted to Ofgem for decision	Fri 27 July 2012 (Weds 22 August 2012)

* Regular monthly Panel meeting

+ Ad-hoc Panel meeting

Estimated progression costs

Estimated ELEXON progression costs	Urgent process	Expedited non-urgent process
Meeting costs (including Workgroup member expenses)	£1k (based on two Workgroup meetings)	£1k (based on two Workgroup meetings)
Non-ELEXON legal and expert costs	£0	£0
Service Provider impact assessment costs	£0	£0
ELEXON resource	25 man days of effort, equating to approximately £6k	30 man days of effort, equating to approximately £7.2k

Estimate of industry assessment costs under Urgent Modification Proposal process					
Workgroup support	Est #mtgs	Est # att	Est effort	Est rate	total
	2	10	1.5	605	£18,150
Consultation response support	Est #con	Est # resp	Est effort	Est rate	total
	1	20	2.5	605	£30,250
Total					£48,400

Estimate of industry assessment costs under expedited normal process					
Workgroup support	Est #mtgs	Est # att	Est effort	Est rate	total
	2	10	1.5	605	£18,150
Consultation response support	Est #con	Est # resp	Est effort	Est rate	total
	2	20	2.5	605	£60,500
Total					£78,650

The estimated industry assessment costs are based on:

- The estimated number of Workgroup meetings and industry attendees per meeting, plus the estimated number of industry consultations and responses;
- The assumption that each industry attendee puts in 1.5 man days of effort per meeting, and that each respondent spends 2.5 man days in effort per consultation response; and
- A standard rate of £605 per man day of effort.

4 Likely Impacts

Impact on BSC Agent/service provider contractual arrangements

P284 will create the concept of the BSC Services Manager (a new BSC Agent) and a BSC Services Manager Contract. It doing so it will enable, but not require, BSCCo to outsource BSC services to this new BSC Agent.

Impact on BSC Parties and Party Agents

As a change to the BSC governance arrangements, P284 will be of interest to all BSC Parties and stakeholders. It is an 'enabling' change to the BSC which does not in itself require a BSC Services Manager Contract to be put in place.

Impact on Transmission Company

P284 has no impact on National Grid in its roles as the Transmission Company or BSCCo Shareholder.

Impact on ELEXON

P284 will amend the governance of BSCCo to enable, but not require, it to outsource BSC services via a BSC Services Manager Contract.

The actual decision whether to outsource BSC services, the exact terms of any BSC Services Manager Contract, and any consequential impact on 'New' ELEXON's structure and corporate governance are outside the scope of P284.

Impact on BSC

Section C 'BSCCo and its Subsidiaries'	Changes will be needed to permit, but not require, BSCCo to outsource BSC services via a BSC Services Manager Contract. See the Proposer's suggested draft legal text in Attachment A.
Section E 'BSC Agents'	Changes will be needed to introduce the concept of the BSC Services Manager (as a new BSC Agent) and a BSC Services Manager Contract. See the Proposer's suggested draft legal text in Attachment A.
Annex X-1 'General Glossary'	Some new defined terms, and some changes to existing defined terms, will be required. See the Proposer's suggested draft legal text in Attachment A.

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On the basis of this IWA, ELEXON invites the Panel to:

- **AGREE** that Modification Proposal P284 requires further consideration by a Workgroup;
- **AGREE** that the P284 Workgroup membership should use the existing P281 Workgroup membership as a starting point, but will be open to all BSC Parties and interested parties;
- **AGREE** any additions or amendments to the proposed Workgroup Terms of Reference;
- **AGREE** that P284 has no interaction with any ongoing Significant Code Review;
- **AGREE** that P284 does not meet the Self-Governance Criteria;
- **AGREE** a recommendation to the Authority as to whether P284 should be progressed as an Urgent Modification Proposal;
- **AGREE** the recommended progression timetable if the Authority determines that P284 should be progressed as an Urgent Modification Proposal;
- **AGREE** that, if the Authority determines that P284 should not be progressed as an Urgent Modification Proposal:
 - P284 will be submitted to a two-month Assessment Procedure and the Workgroup's Assessment Report will be submitted to the 12 July 2012 Panel meeting as a late paper; and
 - The Panel's subsequent Report Phase shall be expedited by reducing the Report Phase consultation period to 5 Working Days and by holding an ad-hoc Panel meeting to consider the Draft Modification Report.

Recommendation

We recommend that P284 is progressed as an Urgent Modification Proposal.

Should Ofgem not grant urgency, we recommend that P284 undergoes an expedited Assessment Procedure and Report Phase.

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