



Stage 03: Assessment Consultation

P290 'Enabling ELEXON to participate in roles in support of the Smart Energy Code (SEC) Panel'

P290 would amend the BSC to enable ELEXON to undertake roles that support the Smart Energy Code (SEC) Panel, in particular for the SEC Administrator and SEC Secretariat roles.

This Assessment Consultation for P290 closes:

5pm on Friday 15 February 2013

The Workgroup may not be able to consider late responses.



The Workgroup:

- Initially recommends **Approval** of P290



High Impact:

- BSCCo (ELEXON)
- BSC Parties (of interest, but no direct operational impact)

What stage is this document in the process?

01

Initial Written Assessment

02

Definition Procedure

03

Assessment Procedure

04

Report Phase

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About this Document

The purpose of this P290 Assessment Consultation is to invite BSC Parties' and other interested parties' views on the merits of P290. The P290 Workgroup will then discuss the consultation responses, before making a recommendation to the BSC Panel at its meeting on 14 March 2013 on whether or not to approve P290.

There are three parts to this document:

- This is the main document. It provides details of the solution, impacts, costs, benefits/drawbacks and proposed implementation approach. It also summarises the Workgroup's key views on the areas set by the Panel in its Terms of Reference.
- Attachment A contains the draft redlined changes to the BSC for P290.
- Attachment B contains the specific questions on which the Workgroup seeks your views. Please use this form to provide your response to these questions, and to record any further views or comments you wish the Workgroup to consider.

Further Information

More information is available in:

Attachment **A**: Draft Legal Text

Attachment **B**: Assessment Consultation Questions

For further information, please see the [P290](#) page of the ELEXON website.



Any questions?

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Why Change?

ELEXON cannot participate in the award process or deliver roles in support of the SEC Panel due to the current BSC drafting. This means that there is no opportunity to utilise ELEXON's experience and shared infrastructure (helping to defray BSC Party costs) for the benefit of industry and consumers.

Solution

The BSC would be amended such that ELEXON is permitted (subject to meeting Ofgem's four expansion conditions) to undertake activities outside of the BSC, specifically the SEC Administration and Secretariat role.

Impacts & Costs

P290 will impact BSCCo and the BSC. There may also be an impact on the National Grid Electricity Transmission Licence. The central implementation cost of P290 is £240, and the subsequent costs of a bid could be up to £110k.

There will be no direct operational impact on BSC Parties, but this would be of interest to them as P290 would change the scope of ELEXON's permitted activities and have implications for the funding of BSC services (in that costs may be defrayed).

Implementation

The Workgroup recommends that P290 is implemented 1 Working Day after the Authority's decision.

The Case for Change

By majority, the Workgroup initially believes that P290 would better facilitate Applicable BSC Objective (d), and therefore initially recommends that P290 is approved.

2 Why Change?

Background

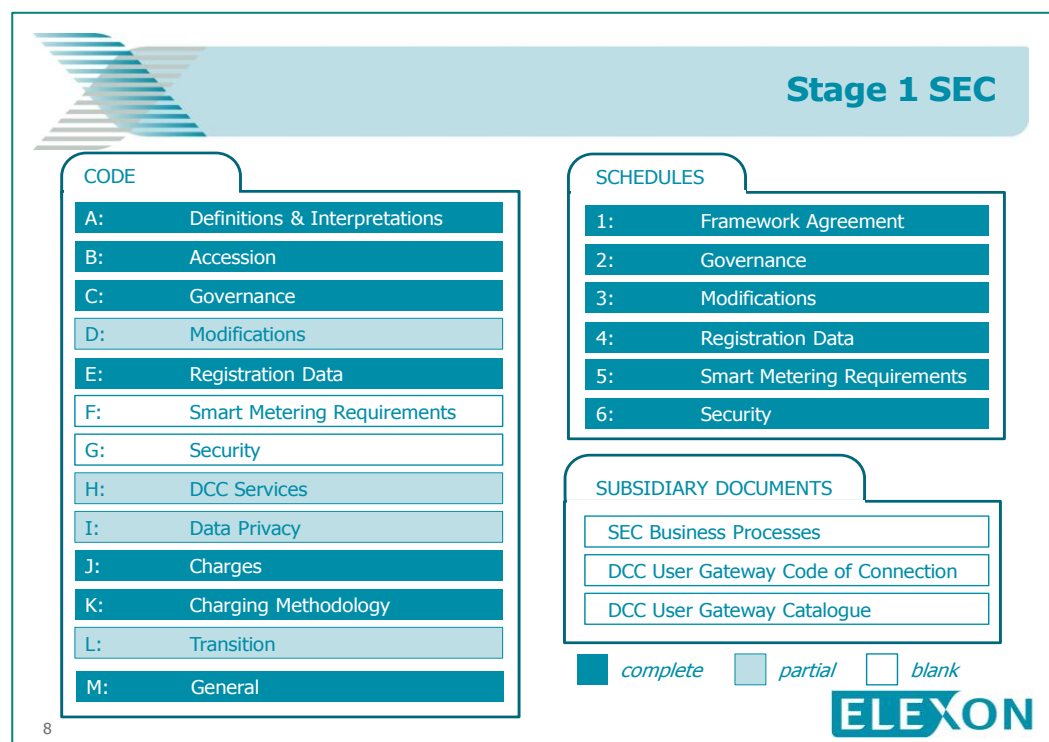
ELEXON administers the Balancing and Settlement Code (BSC) by fulfilling the role of BSC Administrator on a not-for-profit basis. Although ELEXON is a wholly owned subsidiary of National Grid (NGET), NGET does not have a place on ELEXON's Board and has no financial or other obligations or management control over ELEXON. ELEXON's costs are borne by industry and it has successfully reduced its overall running costs year on year¹. However, a restriction in the BSC prevents ELEXON from providing services to government or industry beyond the BSC.

Detailed discussions have been held over the last two years between the industry, the BSC Panel, Ofgem and ELEXON regarding the ability for ELEXON to provide other services within the energy industry. The full history and developments in this process can be found in Appendix 1 of this document.

The first draft of [P289 'Enabling ELEXON to participate in tendering for the DCC Licensee role via a subsidiary'](#) included provision for ELEXON to bid for and undertake roles associated with the support of the Smart Energy Code (SEC) Panel. This was subsequently removed as the Panel expressed concerns that, should P289 be rejected, ELEXON may then be unable to progress with any SEC support roles due to the inability to progress a similar Modification within three months. The Panel also expressed a view that any Modification Proposal to allow ELEXON to pursue SEC Panel support roles should be brought forward by industry, rather than raised by the BSC Panel.

Roles in support of the Smart Energy Code Panel

The Smart Energy Code (SEC) is a new Industry Code, created as part of the Regulatory Framework to support the smart metering arrangements. At a high level, the SEC looks similar to other Industry Codes, including the BSC:



What is the issue?

ELEXON cannot participate in the award process or deliver roles in support of the SEC Panel due to the current BSC drafting. This means that there is no opportunity to utilise ELEXON's experience and share infrastructure for the benefit of industry and consumers.



Smart Energy Code

A draft copy of the Smart Energy Code can be found [here](#).

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¹ In real terms, ELEXON's running costs have fallen year on year from £106.5m in 2001/02 to £33.9m (latest forecasted budget) for 2012/13.

The SEC is a critical document that sets out the rights and obligations of users (licensed and unlicensed) of the new smart services provided by the DCC. Like the BSC, the SEC will also set out further details relating to how licensees can meet their licence obligations, and will be supported by a suite of subsidiary documents, including technical specifications.

The SEC will be relatively unique as it is a cross-fuel Code, combining the communities of Gas and Electricity Suppliers, Network Operators and Transporters alongside other users.

A Panel will be established to oversee the SEC, comprised of gas and electricity industry representatives and other members. The Panel may establish committees, and it is suggested that there will be a separate Change Board.

The SEC Panel members will also comprise the Board of SECCo, which is a contracting vehicle for provision of SEC services. DECC has developed two support roles that will need to be in place to support the Panel from its inception, expected in July 2013. These are the SEC Administrator and SEC Secretariat roles, and DECC has noted that these roles could be performed by the same organisation. For ease of reference we refer to these roles as SECA within this document.

Version 1 of the SEC sets out some of the activities that SECA may undertake (including developing change reports, supporting Panel and committee meetings and managing accession). As of 24 January DECC has not published detailed information on the functions of SECA, but in its response to the 2011 DECC consultation on the SEC ELEXON set out the types of activities that are likely to be involved:

Likely activities involved under the SEC	
Secretariat	Administrator
<ul style="list-style-type: none"> Panel and Committee(s) Secretary Develop and maintain ToRs for Committees Meeting management and facilities Minute taking, action management, correspondence and record keeping Produce and publish reports Maintain Committee membership and Indemnification Manage election process Facilitate liaison with Industry Panels and Regulator Liaise with Code Administrator Consultation response drafting 	<ul style="list-style-type: none"> Accession Entry process Change management Exit Credit monitoring and Default management Reporting Manage Audit Manage Assurance Website management Helpdesk response Consultation response drafting Configuration management Manage change implementation Budget preparation Education and advice Liaise with Secretariat and DCC Compliance monitoring Business plan Facilitate liaison with Industry Panels, Regulator and Code bodies

The activities required to support the SEC and SEC Panel parallel those services provided by ELEXON as the provider of Code Administration and Secretariat services under the BSC.

The Proposer believes that the BSC should be amended to ensure that ELEXON can bring its expertise to any competitive field for the SECA and have the opportunity to utilise the expertise and share infrastructure for the benefit of industry and consumers.

What is the issue?

ELEXON cannot participate in the award process or deliver roles in support of the SEC Panel due to the current BSC drafting. This means that there is no opportunity to utilise ELEXON's experience and share infrastructure for the benefit of industry and consumers.

The key constraints currently imposed on ELEXON by the BSC include provisions which preclude ELEXON or its subsidiaries from undertaking work outside the BSC. This would prevent ELEXON or its subsidiaries from providing SEC services outside its core BSC activities, or holding interests in appropriate legal entities to deliver SEC services outside the BSC.



Modification Proposal Form

A copy of the Proposer's Modification Proposal Form can be found on the [P290](#) page of the ELEXON website.



Proposed solution

The proposed solution is to amend the BSC such that ELEXON is permitted (subject to meeting Ofgem's four expansion conditions) to undertake activities outside of the BSC, specifically the SEC Administration and Secretariat roles.

Should ELEXON be awarded any activities in support of the SEC Panel, these will be performed by a separate subsidiary organisation, which will be wholly-owned by BSCCo (i.e. BSCCo would be the only shareholder). This subsidiary would make a fair and reasonable contribution for use of any common or shared infrastructure, and such contributions will be used along with revenues (in the form of dividends) from the SEC activities to defray existing BSCCo costs for the benefit of BSC Parties.

Establishing a subsidiary organisation

Under P290, ELEXON will be able to undertake activities outside of the BSC, specifically the SEC Administration and Secretariat roles, via a subsidiary company, referred to as "SECACo" in this document. SECACo will be wholly owned by BSCCo for the benefit of BSC Parties, and would be a separate legal entity to ensure that all costs and liabilities incurred by SECACo will be kept separate from BSCCo's core BSC services.

If SECACo is awarded the SEC Administration and Secretariat roles, 100% of the dividends declared by SECACo will be distributed to BSCCo. These will be used for the benefit of BSC Parties, and would be allocated between them in accordance with their Funding Shares, thereby representing a cost-saving to BSC Parties. The declaration of dividends by SECACo will be subject to the approval of the BSCCo Board.

BSCCo will have no financial liability or obligation to SECACo, subject to the provision of the SEC Tender Costs outlined below.

The BSCCo Board will appoint the initial chairman of SECACo, who will, in consultation with the BSC Panel, appoint other initial directors. BSCCo will not be allowed to place SECACo in breach of any of its legal requirements and, subject to this, SECACo will comply in all material respects with the UK Corporate Governance Code. ELEXON would be prohibited from disposing of SECACo, as per (existing) BSC Section C3.4.5(c).

Funding of SEC support tenders

Subject to the following conditions, ELEXON would be allowed to incur costs, expenses and other outgoings in connection with the planning, preparation and negotiation of a contract relating to the award of roles supporting the SEC ("SEC Tender Costs"). Costs would be treated as ELEXON costs and would be drawn from BSC Parties in accordance with the existing BSC cost recovery mechanism². These conditions are:

- i) Third party costs incurred in connection with the Tender exercise (e.g. professional advisor costs) will be limited to £50,000;
- ii) Overheads (e.g. personnel costs) incurred in connection with the Tender exercise will be met by BSCCo and will be limited to £60,000;

What is the solution?

The BSC would be amended such that ELEXON is permitted (subject to meeting Ofgem's four expansion conditions) to undertake activities outside of the BSC, specifically the SEC Administration and Secretariat role.

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² There is sufficient underspend in the 2012/2013 Annual Budget to cover potential Tender Costs.

- iii) SEC Tender Costs must be at arm's length and on normal commercial terms³;
- iv) SEC Tender Costs will be subject to ELEXON's statutory audit;
- v) If ELEXON is successful in tendering for roles in support of the SEC, SECACo will repay the aggregate SEC Tender Costs to BSCCo within a period of the lifetime of the contract or five years, whichever is shorter. These costs will, in turn, be reimbursed to BSC Parties in accordance with their Funding Shares;
- vi) If ELEXON is unsuccessful in tendering for roles in support of the SEC, the BSCCo Board will write off the SEC Tender Costs in respect of that unsuccessful bid; and
- vii) ELEXON will provide reports to the BSCCo Board at regular intervals on Tender Costs (excluding confidential and/or commercially sensitive information).

If ELEXON is awarded any role in support of the SEC, the BSCCo Board will agree procedures to ensure that any common or shared costs are allocated fairly and reasonably between BSC and SEC users.

Continuity of BSC services

To ensure there is no degradation in ELEXON's BSC services, ELEXON will be under an explicit BSC obligation to ensure that at all times it has sufficient dedicated resources (including personnel) to fully discharge its BSC responsibilities.

Legal text

The proposed redlined changes to the BSC to deliver the P290 solution can be found in Attachment A.

The Workgroup elected to model the proposed legal text for P290 on that for P289 due to the significant similarity between the two solutions. This draft legal text reflects the same changes made to the P289 text as a result of the P289 consultation and Panel discussion.

Assessment Consultation Question

Do you agree with the Workgroup that the draft legal text delivers the intention of P290?

Please provide your rationale.

The Workgroup invites you to give your views using the response form in Attachment B

³ This provision reflects, in part, Standard Condition B9 of NGET's transmission licence.

Are there any alternative solutions?

The Workgroup considered whether there were any alternative solutions that would better facilitate the Applicable BSC Objectives than the proposed solution.

Private investor

One Workgroup member highlighted a potential alternative solution that had been considered under P289 whereby a private investor would be allowed to invest in the subsidiary organisation. This member believed that this would resolve the issues around funding ELEXON's participation in the SEC award process and avoid the need for BSC Parties to incur any costs. However, other Workgroup members noted that any private investor would want a share in the new company or significant control over service delivery and allocation of assets and dividends, which would reduce the benefits that BSC Parties would receive as a portion of any profits made would be received by the private investor and not passed on to BSC Parties.

An investor would also want some control over the company, including seats on the Board, which would make it incompatible with the concept of any SEC subsidiary being a wholly-owned subsidiary of BSCCo established for the benefit of BSC Parties. It was commented that this arrangement would be more akin to a joint venture than a subsidiary company, and that the only real benefit that BSCCo would get out of such an arrangement would be sharing overheads and resources between the BSC and SEC activities, and that even that could be lost if the investor sought to, for example, move the SEC activities to its separate offices. It was also felt that the governance arrangements would not work under this solution and it could also make future changes harder as an investor may be unwilling to accept changes that would affect the governance of the company.

Overall, the Workgroup felt that, while this alternative solution would remove the need for BSC Parties to bear the costs of ELEXON participating in the SEC award process, it would also remove any other benefits that they may receive. In addition, members did not believe that an investor is likely to emerge at such short notice that would allow ELEXON's participation in the process, especially as the size of the service and any potential returns are likely to be very modest compared to other contracts (especially the DCC). The Workgroup therefore concluded that this solution may be unworkable and elected not to develop it any further.

BSCCo Board as the SECACo Board

The Workgroup also considered the other potential alternative highlighted under P289 where the BSCCo Board would form the Board of the subsidiary organisation. It was noted that, under P290, the BSCCo Board would be responsible for appointing the Board of the subsidiary organisation, but would be forbidden from doing anything that would put that organisation in breach of its obligations. However, depending on the requirements for the SECACo Board, it may be possible for the BSCCo Board to self-appoint under the proposed solution, which would achieve the same outcome as this potential alternative solution. The Workgroup therefore concluded not to take this alternative any further.

P284

The Workgroup noted that [P284 'Expansion of Elexon's role via the 'contract model''](#) sought to enable ELEXON to carry out wider activities by making it an Agent of, rather than effectively being, the BSCCo. This would mean that, whilst the BSCCo remains restricted to carrying out the activities set out in the BSC, the newly separated ELEXON Company would be free to seek additional work while continuing to provide BSC services to the BSCCo under contract.

The changes made to the BSC following the approval of P284 in September 2012 introduced an enduring option for the BSCCo Board to outsource some or all of BSCCo's powers, functions and responsibilities to a new BSC Agent (the BSC Service Manager). As part of this, the BSCCo Board would need to create a service description of all the activities that it was outsourcing to the BSC Services Manager. An Alternative Modification to enable this option is not therefore required as these provisions already exist. The outsourcing of the BSC services would require the separation of BSCCo from ELEXON, enabling the new entity (ELEXON) to pursue new roles outside of the BSC.

More information on the Workgroup's discussions on this can be found in Section 6.

Conclusions

The Workgroup did not consider there to be any other potential alternatives, and so believes that there are no alternative solutions that would better facilitate the Applicable BSC Objectives than the proposed solution.

However the Workgroup acknowledged that Parties may have developed their thinking in more detail on how an Alternative Modification could work, in particular how to introduce appropriate governance arrangements that would satisfy the requirements of BSC Parties, BSCCo and SECACo. The Workgroup asks that Parties provide detailed explanation of any alternatives they may have to assist in its assessment.

Assessment Consultation Question

Do you agree with the Workgroup that there is no Alternative Modification within the scope of P290 which would better facilitate the Applicable BSC Objectives than the Proposed Modification?

Please provide your rationale and, if 'No', please provide full details of your Alternative Modification(s) (including an explanation of any proposed governance structures that support your solution) and your rationale as to why it/they better facilitate the Applicable BSC Objectives than the Proposed Modification.

The Workgroup invites you to give your views using the response form in Attachment B

4 Impacts & Costs

Estimated central implementation costs of P290

The total central implementation cost for P290 is £240. This comprises:

- £240 (1 man day) in ELEXON effort.

These costs are for the implementation project and updating the relevant BSC Sections.

Costs associated with a bid

The estimated costs of ELEXON participating in the SEC award process would be up to £110k. This comprises:

- A maximum of £50k in third party costs incurred in connection with the Tender exercise (e.g. professional advisor costs); and
- A maximum of £60k in ELEXON effort in preparing and submitting a bid.

P290 impacts

Impact on BSC Parties and Party Agents

No direct operational impact, but would be of interest to BSC Parties as P290 would change the scope of ELEXON's permitted activities and have implications for the funding of BSC services (in that costs may be defrayed).

Impact on Transmission Company

The Transmission Company believes there may be an impact on the National Grid Electricity Transmission Licence as a result of P290. The Transmission Company considers that the activities that would be added to the scope of permitted activities under P290 are not within the scope of the balancing and settlement arrangements that are required to be in force by the Licence (as currently set out). Further information will be sought through a Transmission Company Impact Assessment.

Impact on ELEXON

Area of ELEXON	Impact
ELEXON's Vires	ELEXON would be permitted to undertake roles for services that support the SEC.
Release Management	ELEXON will manage the implementation project.

Impact on Code

Code Section	Impact
Section C	Changes will be required to implement the solution. See draft legal text in Attachment A.
Section X – Annex X-1	

5 Implementation

Recommended Implementation Date

The Workgroup recommends an Implementation Date for P290 of:

- 1 Working Day following the Authority's decision.

The Workgroup considers that P290 would be a Code-only change, with no impact on central systems or on BSC Parties or Party Agents. Therefore, it believes that P290 can be implemented 1 Working Day following the Authority's decision, if approved. Some Workgroup members have noted that the Panel elected to recommend a 5 Working Day lead time for P289. They were unsure of the rationale but consider that this may be related to the expedited process that this Modification underwent, and so do not believe that this would be necessary for P290.

Assessment Consultation Question

Do you agree with the Workgroup's recommended Implementation Date?

Please provide your rationale.

The Workgroup invites you to give your views using the response form in Attachment B



Would the SEC activities require a subsidiary company?

The Workgroup considered the most appropriate arrangements for carrying out the SEC activities. It was noted that forming a subsidiary organisation had been the preferred solution to P289, as this was the most appropriate route for the DCC activities given the size and risks involved with those. However, the Proposer had been silent on the preferred model for P290, as the size and risks in relation to the SEC roles are unknown at this point but are likely to be much smaller than those for the DCC.

The Workgroup considered whether it may be more appropriate to provide greater flexibility under how a successful SECA bid could be delivered. For example the solution could allow the BSCCo Board to decide whether the SEC activities should be carried out by BSCCo directly or by a subsidiary company, in a similar fashion to the way the BSC is silent on how the Warm Homes scheme is delivered. The phrasing used for the Warm Homes scheme is permissive in that it allows the BSCCo Board to determine whether the Warm Homes activities are done by BSCCo itself or through a subsidiary organisation, rather than prescribing a particular route. The Workgroup noted that the Warm Homes scheme is currently carried out by BSCCo as it was deemed disproportionate to form a subsidiary given the size and risks of the activities involved.

Some Workgroup members felt that this may be an appropriate route for P290, as it is not yet clear what the magnitude of the SEC roles will be. If the size is small, in that only a few people would be required to discharge all the relevant activities, then forming a subsidiary could be disproportionate. On the other hand, should the scale be larger, forming a subsidiary may be more appropriate. If a particular model was hard-wired into the solution, this could run the risk of making any bid uncompetitive, as the costs and burdens of forming a subsidiary organisation for activities that may only require a small number of people may be disproportionate. One Workgroup member noted that should the separate company grow over time then the costs and risks associated with it would also increase. However, they felt that allowing the BSCCo Board to make the decision would effectively cover both bases, as the Board would be able to re-evaluate the size of the SEC activities at a later date and change the structure to match the situation, making the solution more flexible.

Some Workgroup members thought that this seemed a sensible solution, but were concerned about the risks that would be involved with such a situation, as the BSCCo Board would have to make the decision on behalf of BSC Parties. They wondered what the appropriate threshold would be for a subsidiary organisation to be required, and noted that it would be in the control of the BSCCo Board to determine whether such a threshold had been met. The main risks involved with having the SEC activities being carried out by BSCCo would be that it would then be exposed to financial liability, which it would not be if the activities were contained in a separate subsidiary. These Workgroup members felt that BSC Parties may prefer the security that would come with the subsidiary model and this would be more suitable for BSC Parties to reduce any exposure (however small it may be).

The Workgroup noted that other organisations that manage multiple contracts often do so through a single entity, rather than form separate subsidiaries for each, in order to share resources and knowledge. However, it was noted that forming a subsidiary organisation would not necessarily prevent such sharing from taking place, and that it would be up to ELEXON to determine how it would manage its resources as part of any bid, as long as it ensured that the BSC activities remain fully resourced at all times. It was also highlighted that the bid process would most likely be a full and formal procurement, and that the

Recommendation

By majority the Workgroup initially recommends approval of P290.

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resultant contract would be a for-profit contract between SECCo (comprised of the SEC Panel) and the eventual winner.

The Workgroup considered that the role of the SECCo is likely to be more analogous to that of BSCCo than to some of the smaller Code Administrators. The scope of the SEC roles have yet to be announced by DECC, but likely activities would include the secretariat function to the SEC Panel, change management, accession, entry processes, assurance and reporting. If a working assumption was used that the roles under the SEC would be similar to those under the BSC then this would imply a larger size. Workgroup members felt that, on that basis, it would be better to be cautious and propose a subsidiary model for the P290 solution, rather than provide a provision for the BSCCo Board to determine the approach. It was also highlighted that allowing the SEC activities to be carried out by ELEXON under the BSC would count as a change of scope, which the Proposer's representative confirmed was not their intention, and which would also require a change to the Transmission Licence (see below).

One Workgroup member queried whether, under the P284 solution, the SEC activities could be outsourced to a new company. In particular, they wondered whether the BSC services that would be common with the SEC (the Code Administration and Secretariat functions) could be outsourced to a new and separate company, which could then also deliver the SEC roles, thus building on any synergies between the two sets of activities. It was noted that the original proposal put to the BSCCo Board under P284 was that all of the services provided by BSCCo would be outsourced, but this was rejected by the Board as it felt this would not provide good value for BSC Parties. There is nothing in the Code that would prevent only part of the BSCCo's services to be outsourced, but this could only be done for the services provided by BSCCo; activities undertaken by any of its subsidiaries cannot currently be outsourced. Consequently, there is nothing in the Code that would prevent such a solution from happening under the existing rules. However, the current timescales and circumstances makes this approach unviable, and allowing the SEC activities to be outsourced at a later point would require them to be done by BSCCo, which would be counter to the arguments being put forward that the SEC activities should be carried out by a subsidiary.

Overall, the Workgroup concluded that requiring a subsidiary organisation to be formed to carry out the SEC activities would be the most appropriate solution to P290.

Assessment Consultation Question

Do you agree with the Workgroup that, if ELEXON were to undertake the SEC activities, these should be carried out by a subsidiary company?

Please provide your rationale.

The Workgroup invites you to give your views using the response form in Attachment B

Would changes be required to the Transmission Licence?

The Transmission Company noted as part of its assessment of P289 that changes to the Transmission Licence would be required if it was approved, and the Transmission Company representative repeated that view for P290. It is their view that the Licence provides the details about the scope of BSC activities, and that anything that is not focussed on the core BSC activities would be outside of this scope. They note the example

of ELEXON being awarded the Warm Homes scheme, where a change to the Transmission Licence was made in parallel with the changes to the BSC to ensure that allowing the BSCCo to undertake the Warm Homes scheme would be within scope of the Licence. They feel that activities in relation to the SEC would be outside the scope of the existing Licence wording as the SEC activities would not relate to BSC activities. Therefore, if P290 was approved, a corresponding change would be required to the Licence to ensure that the SEC activities would be within scope.

As part of the assessment of P289, external legal advice was sought by ELEXON on this matter, which presented arguments why a change to the Licence would not be required should ELEXON undertake work in relation to the DCC, and, in ELEXON's opinion, these arguments would also apply in this case⁴. However, the Transmission Company believes that there are more compelling arguments why a change to the Licence is necessary. The Transmission Company and the Workgroup agree that this question is one that Ofgem would need to answer when it makes its decision on P290 (and potentially a view would be available to the Workgroup when Ofgem makes its determination on P289). The Workgroup therefore agreed to note this matter and the views of the external legal advice and the Transmission Company, and to await Ofgem's decision.

The Workgroup noted the advice from the Transmission Company representative that a change to the Transmission Licence would require a minimum period of approximately 84 days to progress. If Ofgem makes a decision on P290 by the end of April 2013⁵, then this would mean that corresponding changes to the Transmission Licence would not be made until late July 2013. The Workgroup queried whether this would impact any bid made by ELEXON in relation to the SEC roles. ELEXON responded that this would be around the time that DECC would be expected to award the roles, but considers that it is unlikely to matter to DECC whether the changes have been made at that point as long as they were being progressed, and it would be known if the Licence changes were going ahead from Ofgem's determination on P290.

Could ELEXON win both the DCC and the SEC roles?

One Workgroup member asked for clarity on whether ELEXON would be able to win both the DCC and the SEC roles. It was confirmed that this would not be possible as DECC has specifically ruled out allowing one organisation to carry out both roles. However, it was noted that there is nothing to stop anyone from bidding for both, although the BSCCo Board would ultimately have to decide whether ELEXON should pursue both, and, if it was successful in proceeding to the later stages of both awards, which one it wanted to progress with delivering. It is expected that both awards will be made in the Summer of 2013, so it is possible that such a decision would not need to be made until then, unless ELEXON is rejected from one or both processes prior to that point or is unable to continue with either bid.

One Workgroup member highlighted that at least one of the sets of costs (either for the DCC bid or the SEC bid) would ultimately be written off, as it would not be possible to succeed in both. The Workgroup noted that no costs had yet been incurred in relation to a SEC bid (see below). However, if both roles are pursued, some of the costs for bidding would be written off (i.e. whatever costs had been spent up to the point ELEXON was withdrawn or did not progress to the next stage).

⁴ For full details of this advice, please see the P289 Final Modification Report.

⁵ P290 is due to be sent to Ofgem for decision in mid-April 2013.

What are the funding arrangements for a SEC bid?

The Workgroup discussed the funding arrangements for ELEXON's bid for the SEC roles. Members noted that a provision for a maximum of £50k in third party costs had been provided in the Modification Proposal, but that no internal costs had been provided in the Modification Proposal. ELEXON confirmed that it estimated the internal costs would be capped at £60k, and that, to date, no costs have been incurred in relation to a SEC bid as the process has not yet been formally launched. However, costs will start to be incurred once the process begins. It was felt that costs for the initial qualification phase would not be significant.

Similarly to P289, a provision will be included in the legal text for P290 that these costs should be repaid to Parties should ELEXON win the SEC roles, and also that the costs would be written off if ELEXON did not. However, it was considered that, unlike for the DCC, the length of the initial contract for the SEC roles may be short, at around two to three years. This initial period is likely to require more resource as the processes are developed and bedded in, but would stabilise after a couple of years, at which point DECC may want to re-tender the contract. The Workgroup questioned why the initial contract would be so short, and felt that any bidders would want a contract of sufficient length to ensure they could recoup their costs, but again noted that it will not be known what DECC intends to do until the bid process is formally launched.

The Workgroup commented that it expects ELEXON to include its bid costs in the price it offers for the SEC role to ensure that the costs would be fully recouped over the lifetime of the contract, regardless of its length. This would be normal practice for any organisation participating in a competitive bid process, as they would want to ensure they don't make a loss should they win the contract. This way, BSC Parties can be certain that their costs would be fully recouped should ELEXON win the SEC roles. ELEXON confirmed that it would be obliged to bid in such a way that Parties' costs would be recovered. One Workgroup member highlighted that Parties should be fully repaid over the lifetime of the contract, but that this should be capped at five years should the contract be for longer to minimise the number of BSC Parties who may not be fully repaid due to exiting the market during that period. The Workgroup agreed with this approach.

The Workgroup queried the defrayed costs that would arise from P290 should ELEXON win the SEC roles. As the size of the SEC roles is currently unknown, it is not currently possible to estimate these benefits. However, assumptions can be made, such as ELEXON remaining at its current offices and being able to utilise the existing facilities, any shared resources and expertise.

Assessment Consultation Question

Do you believe the funding arrangements for ELEXON participating in the SEC award process are appropriate?

Please provide your rationale.

The Workgroup invites you to give your views using the response form in Attachment B

Is there benefit in ELEXON participating in the SEC bid process?

Some members of the Workgroup considered that there would be benefits in ELEXON participating in the SEC bid process. They believe that ELEXON's participation would result in a better, more robust service due to the competitive pressure its participation would add. Having more competitors in the bid process is key to securing the best provider, and even if ELEXON is unsuccessful, its participation would aid in this process. These members also note the benefits of the knowledge, experience and expertise that ELEXON would bring to the role if it was successful, as a result of running similar services under the BSC to those that will be run under the SEC, and feel that this would also make it worthwhile for ELEXON to participate.

Other Workgroup members disagree, believing that there would already be enough competitors in the process to ensure it is fully competitive. They also have concerns over the issue of mandatory funding. They note that BSC Parties would be required to fund ELEXON's bid, irrespective of whether they agree with ELEXON's participation, and that should ELEXON fail then these costs would not be recouped.

Assessment Consultation Question

Do you believe there would be benefit in ELEXON participating in the SEC bid process?
Please provide your rationale.

The Workgroup invites you to give your views using the response form in Attachment B

Should Service Level Agreements be introduced?

One Workgroup member considered whether Service Level Agreements (SLAs) would be needed under P290, to ensure that, should ELEXON expand its services, Parties would have reassurance that there would be no degradation in the BSC services it currently provides. They were unsure what such SLAs would look like, but felt that some sort of measure should be considered to allow Parties to identify deficiencies, and asked Workgroup members for their views. They noted that there is currently no recourse available should ELEXON not meet its obligations, which is not an issue while ELEXON is limited to BSC activities, but may need to be reconsidered should it expand. They considered introducing the ability to remove Board members or members of the Executive.

Other Workgroup members were less concerned on this issue. They could not see why SLAs would be needed under P290 or what they would be. The legal text for P290 contains the obligation that ELEXON must ensure the BSC activities are fully resourced at all times, and this would effectively form the SLA. It was also highlighted that both the Board and the Panel currently receive regular reports from ELEXON on its performance and that of its Agents and service providers. If the Board or the Panel does not believe that current monitoring and reporting arrangements are adequate then they may request further information.

One Workgroup member commented that the introduction of SLAs in this way would impact the relationship between ELEXON and BSC Parties. They felt that if Parties wanted to examine these relationships between ELEXON and Parties then a Modification or Standing Issue should be raised to examine this, but this would be too big a change under P290 given the size and scope of this Modification.

The Workgroup noted that the risk of degradation to BSC services would be greater under P289 than under P290 and that no SLAs had been introduced for P289 beyond the requirement to keep BSC activities fully resourced at all times. It was therefore considered unnecessary to introduce them here.

What are the Workgroup's views against the Ofgem Expansion Criteria?

The Workgroup considered whether P290 would meet the four Expansion Criteria put forward by Ofgem as needing to be met ahead of any expansion of ELEXON's remit. Members felt that the reasons as to why these would or would not be met would be the same as those given under P289, given the similarity of the two Modifications, and these views are summarised below. For more details of the P289 Workgroup's views, please see the P289 Final Modification Report.



What are Ofgem's Expansion Criteria?

(a) BSC Parties should benefit from any diversification

(b) The arrangements should not place disproportionate risk on BSC Parties

(c) Standards of Service under the BSC should be maintained

(d) ELEXON's BSC role should not give it any undue competitive advantage in a contestable activity

Does P290 meet the Ofgem Expansion Criteria?		
Ctrr	Satisfies Criteria	Does Not Satisfy Criteria
(a)	<ul style="list-style-type: none"> Potential cost reductions through the sharing of fixed overheads. Participation in new business profits. Creation of a new competitor in the SEC bid process. Mitigate risks of an adverse impact of Settlement arising from a SEC failure. 	<ul style="list-style-type: none"> Cost reduction and benefit of SEC profit only if bid successful (uncertain benefit vs. definite cost). SEC process already benefited from ELEXON input on Settlement, no further significant benefit available. SEC development, SEC bid process and competence of other bidders already mitigates risk to Settlement. Expansion not related to BSC activities. Only benefit if BSC party when dividends arise.
(b)	<ul style="list-style-type: none"> Separate legal entities for non-BSC activities. No pledging or transfer of assets. No guarantees. 	<ul style="list-style-type: none"> Repayment of Parties' initial funding depends on success of bid (though funding is capped).
(c)	<ul style="list-style-type: none"> No change to existing service standards. New obligation to ensure BSC is always properly resourced. 	<ul style="list-style-type: none"> Possibility of degradation of BSC services due to sharing of resource and interaction with SEC activities (no specific concerns identified).
(d)	<ul style="list-style-type: none"> Within-group services to be at arms-length on commercial terms. Ofgem acknowledged this test was met if tests (a) and (b) were met. 	<ul style="list-style-type: none"> None.

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Assessment Consultation Question

Do you believe that P290 meets the Ofgem Expansion Criteria?

Please provide your response and rationale against each criterion.

The Workgroup invites you to give your views using the response form in Attachment B

What are the Workgroup's views against the Applicable BSC Objectives?

The following table contains the Proposer's and the Workgroup's views against each of the Applicable BSC Objectives:

Does P290 better facilitate the Applicable BSC Objectives?		
Obj	Proposer's Views	Other Workgroup Members' Views ⁶
(a)	<ul style="list-style-type: none"> • Neutral – No impact. 	<ul style="list-style-type: none"> • No – SEC activities would not be permitted under the Transmission Licence. Allowing ELEXON to perform roles outside of the BSC would be detrimental to the Transmission Company discharging its licence requirements. • Neutral (majority) – No impact.
(b)	<ul style="list-style-type: none"> • Neutral – No impact. 	<ul style="list-style-type: none"> • Neutral – No impact.
(c)	<ul style="list-style-type: none"> • Neutral – No impact. 	<ul style="list-style-type: none"> • No – BSC Parties would be required to fund ELEXON's bid irrespective of whether they support its participation. • No – Potential issues around SLAs and potential service degradation. • Neutral (majority) – No impact. • Neutral – Allowing an ELEXON group company to compete for SEC roles would not promote competition in the generation and supply of electricity.
(d)	<ul style="list-style-type: none"> • Yes – ELEXON's participation in the SEC award process will result in a more robust service due to its experience and the competitive pressure its participation would add. • Yes – BSC Parties and ELEXON have an interest in ensuring the new services are performed to a high standard in order to safeguard Settlement. • Yes – If ELEXON were to win the 	<ul style="list-style-type: none"> • Yes (majority) – Agree with Proposer. • No – BSCCo should focus on the activities set out in the BSC in pursuance with the objectives as per the Transmission Licence. • Neutral – Conditional on ELEXON winning the SEC roles. Efficiency could be improved if it did, but unnecessary costs would be incurred if it did not.



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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⁶ Shows the different views expressed by the other Workgroup members – not all members necessarily agree with all of these views.

Does P290 better facilitate the Applicable BSC Objectives?		
Obj	Proposer's Views	Other Workgroup Members' Views ⁶
	SEC roles, costs could be defrayed and BSCCo costs could be offset by revenue generated from the SEC activities.	
(e)	• Neutral – No impact.	• Neutral – No impact.

By majority, the Workgroup initially believes that P290 does better facilitate the Applicable BSC Objectives, and therefore initially recommends that P290 is approved.

Assessment Consultation Question

Do you agree with the Workgroup's initial view that P290 does better facilitate the Applicable BSC Objectives than the current baseline?

Please provide your rationale with reference to the Applicable BSC Objectives.

The Workgroup invites you to give your views using the response form in Attachment B

Appendix 1: History of the developments and discussions relating to ELEXON's ability to provide other services

In 2010 ELEXON first communicated its belief that its expertise and experience should be applied more widely for the benefit of industry, government and, ultimately, the consumer as part of its 2011/12 Business Plan. This section summarises the history of the developments in relation to ELEXON's ability to provide services beyond the BSC.

Issue 40

As a result of responses received to the Business Strategy consultation in February 2011, and an industry workshop in March 2011, [Issue 40 'Review of ELEXON Governance and Funding Arrangements for New Business Opportunities'](#) was raised by E.ON in March 2011. Issue 40 considered options for an appropriate governance framework to allow BSCCo to pursue business development opportunities which it was precluded from under the Code. The Issue 40 Group was tasked with considering and developing a number of viable governance proposals which could form the basis for one or more future Modifications.

The Issue 40 Group also considered:

- The extent to which ELEXON should be permitted to pursue new business development opportunities;
- The process for setting budgets, authorising expenditure and ensuring effective accountability to BSC Parties;
- Funding arrangements and the extent to which costs and risks should be allocated to BSC Parties that benefit from new business developments;
- How surplus income generated from new business development opportunities are used, including:
 - consideration of repayments to Parties required/choosing to fund such activities; and/or
 - reductions to BSCCo Charges;
- The separate accounting and ring fencing of new business activities from existing BSC activities, and whether new organisation or ownership structures are required;
- The respective roles of the Board and BSC Panel, the Transmission Company and Trading Parties (for the above); and
- An appropriate regulatory regime.

The Issue 40 Group discussed three potential models, which in summary are:

- **Model A:** the creation of a new umbrella holding company to be the parent of an ELEXON Group. BSCCo would become a wholly owned subsidiary of this new holding company (rather than National Grid), but is otherwise unchanged in structure, funding, role or governance and remains cost pass through/non-profit making. New business ventures would be competed for and delivered as ring-fenced subsidiaries of the new holding company.
- **Model B:** the creation of a new company to procure and manage a BSC services company which would provide all the services that BSCCo does today, but under a contestable commercial services contract. The ownership, governance, funding and profit status of ELEXON Limited would be changed. The BSC ServeCo contract would include a profit margin and appropriate incentives to reduce charges.

- **Model C:** the existing governance and funding of BSCCo as a wholly owned subsidiary of National Grid remains. All future roles would be undertaken by ELEXON under this structure via incremental modification of the BSC.

The Issue 40 Group concluded that Model C should not be progressed. However, Models A and B could potentially be used to enable ELEXON to undertake a wider set of business activities. The Group preferred Model B.

Ofgem consultation

Parallel and separate to Issue 40, Ofgem commissioned an independent advisor (Richard Morse) to deliver a report on any issues that might arise from ELEXON diversification and how such issues could be addressed. The Morse Report was published on 29 July 2011, six weeks before the Issue 40 report was published (in September 2011).

Following the Morse Report, Ofgem issued a consultation in November 2011 on the potential expansion of ELEXON's scope and vires to allow it to take on additional work beyond that set out in the BSC. Ofgem acknowledged that the main driver for ELEXON's diversification was the role of the DCC and considered that "there may be some synergies between the processes currently run by ELEXON and the anticipated role of the DCC, as well as the potential for cost savings from the more efficient use of its fixed assets and other resources. Consumers may therefore benefit from Elexon's participation in the competition to undertake the DCC role."

The November consultation set out four expansion conditions that would need to be satisfied before any expansion could occur, with the aim of protecting BSC Parties and ultimately consumers. These expansion criteria were:

- (a) BSC Parties should benefit from any diversification;
- (b) The arrangements should not place disproportionate risk on BSC Parties;
- (c) Standards of service under the BSC should be maintained; and
- (d) ELEXON's BSC role should not give it any undue competitive advantage in a contestable activity.

The consultation also identified two possible restructuring models (the 'contract model' and the 'subsidiary model') that could satisfy the expansion conditions. Ofgem's preliminary view was that while either of the two models would be viable, the 'contract model' would most effectively meet the expansion conditions.

On 30 April 2012 Ofgem concluded that ELEXON should be allowed to do more if the expansion criteria are satisfied, and reaffirmed their view that a contract model appeared most likely to effectively mitigate the size and nature of risks associated with ELEXON undertaking an activity such as the DCC.

As part of their conclusions Ofgem also acknowledged the concerns raised by several consultation respondents that a contract model may be more expensive to implement and therefore suggested that there may be more proportionate means of allowing a limited expansion of ELEXON's activities without requiring its separation from the BSCCo in the form of the BSC Board.

P284

As a result of the Ofgem conclusions letter National Grid raised [P284 'Expansion of Elexon's role via the 'contract model''](#) in May 2012. P284 sought to amend the BSC to enable the BSCCo Board to outsource its activities to a new entity ('New ELEXON') under a for-profit contract, if it chose to do so. P284 was approved by Ofgem in September 2012.

Decision of the BSCCo Board

On 27 November, the BSCCo Board concluded that, whilst ELEXON diversification will undoubtedly bring longer term benefits to consumers, the industry, government and to staff, the proposed contract model could not meet one of Ofgem's four expansion conditions and therefore the contract model could not be pursued at this time.

The condition that the Board could not resolve was "BSC Parties should benefit from diversification". This proved impossible when considering a shift from a not-for-profit to a for-profit service, which would be coupled with increased overheads arising from the need for two companies (customer and provider) where there had been only one in the past. The arising costs could not be outweighed by profit share and overhead reduction arising from new work that, by its nature, could not at this time be quantified or guaranteed.

The Board, recognising the benefits of diversification and the specific opportunity of the DCC Licence Award, requested that ELEXON explore how to enable participation in the Licence Award. How to resolve matters was discussed at a subsequent meeting of the Board on 5 December 2012.

Following its meeting on 5 December 2012 a paper was circulated to the Board asking that they:

- **RECOMMEND** to the BSC Panel that a BSC Modification is raised, on the grounds of efficiency, to enable ELEXON to bid for the DCC; and
- **RECOMMEND** to the BSC Panel that in light of the pressing timescales, the Modification is progressed as Urgent.

On the grounds that a Modification was limited solely to the DCC and SEC roles, and did not compromise delivery of the BSC services, the recommendations were supported by three of the four non-executive directors. The BSCCo Board subsequently requested that the BSC Panel raise a Modification.

P289

On the request of the BSCCo Board, the Panel raised [P289 'Enabling ELEXON to participate in tendering for the DCC Licensee role via a subsidiary'](#) at its meeting on 13 December 2012.

The Panel recommended to ELEXON that the SEC role be removed from P289 as Members expressed concerns that, should P289 be rejected, ELEXON may then be unable to progress with any SEC support roles due to the inability to progress a similar Modification within three months. ELEXON agreed with this, and the SEC element was removed from the Modification Proposal. The Panel also expressed a view that any subsequent Modification Proposal to allow ELEXON to pursue SEC Panel support roles should be brought forward by industry, rather than raised by the BSC Panel.

The Panel progressed P289 under an expedited timetable, and made a final recommendation on 15 January 2013 that P289 should be rejected. P289 is currently with Ofgem for decision.

P290

As a result of the SEC roles being removed from the scope of P289, SmartestEnergy raised [P290 'Enabling ELEXON to participate in roles in support of the Smart Energy Code \(SEC\) Panel'](#) on 3 January 2013. P290 is being progressed under a normal timetable, and is due to be sent to Ofgem for its decision in April 2013.

Appendix 2: Workgroup Details

Workgroup's Terms of Reference

Specific areas set by the BSC Panel in the P290 Terms of Reference

Would there be benefit in ELEXON participating in the SEC bid process?

If successful, would there be benefit in ELEXON undertaking the SEC role?

Does the Modification meet the four Ofgem expansion criteria? In particular:

- Do you understand the monies at risk?
- Are the funding arrangements appropriate?

What changes are needed to BSC documents, systems and processes to support P290 and what are the related costs and lead times?

Would changes be required to the Transmission Licence for P290?

Are there any Alternative Modifications?

Does P290 better facilitate the Applicable BSC Objectives than the current baseline?

Assessment Procedure timetable

P290 Assessment Timetable

Event	Date
Panel submits P290 to Assessment Procedure	15 Jan 13
Workgroup Meeting 1	16 Jan 13
Assessment Procedure Consultation	24 Jan 13 – 15 Feb 13
Workgroup Meeting 2	22 Feb 13
Panel considers Workgroup's Assessment Report	14 Mar 13

Workgroup membership and attendance

P290 Workgroup Attendance		
Name	Organisation	16 Jan 13
Members		
David Jones	ELEXON (<i>Chair</i>)	✓
David Kemp	ELEXON (<i>Lead Analyst</i>)	✓
Jo Alexander	SmartestEnergy (<i>Proposer's Representative</i>)	✓
Mari Toda	EDF	☎
Colette Baldwin	E.ON	✗
Eric Graham	TMA	✓
Tim Collins	Centrica	✓
Man Kwong Liu	IBM	✓
Steve Wright	Npower	✓
Shafqat Ali	National Grid	✓
Lisa Waters	Waters Wye Associates	✗
Andy Colley	SSE	✗
Attendees		
David Ahmad	ELEXON (<i>Legal</i>)	✓
David Osborne	ELEXON	✓