

Consultation Responses and Elexon comments

BSC Changes to implement Elexon's ownership change

E L E X O N

This informal Consultation was issued on 5 September 2023, with responses invited by 4 October 2023. This consultation was conducted by Elexon as a part of a process led by the Department for Energy Security and Net Zero (the Department) and Office of Gas and Electricity Markets (Ofgem) to confirm that the proposed BSC modification meets the policy intent on the future ownership of Elexon, which was set out in the [March 2023 Joint Elexon Ownership Decision](#). The Department has reviewed the responses to this informal Consultation and Elexon's commentary below and has added its own commentary, under the column heading "DESNZ Comments", as appropriate, where they consider that the comments relate to their policy on Elexon ownership. Using powers under the Energy Act 2023, the Department and Ofgem will in due course formally consult on the proposed BSC modification, which will, in turn where appropriate, take account of the responses received to the informal consultation, as discussed in this document.

Consultation Respondents

Respondent	Role(s) Represented
TotalEnergies	Generator, Supplier
Uniper	Generator
E.ON Next Energy Limited	Supplier
RWE Generation UK plc	Generator
SSE Energy Supply Limited	Generator, Supplier
ESO	System Operator

Respondent	Role(s) Represented
Centrica	Supplier
ScottishPower	Generator

Question 1: Do you agree that the draft BSC legal text, in Attachment A, delivers the intent of the Elexon ownership policy decision?

Summary

Yes	No	Neutral/No Comment	Other
7	0	0	1

Responses

Respondent	Response	Rationale	Elexon Comments	DESNZ Comments
TotalEnergies	Yes	-		
Uniper	Yes	The draft legal text delivers the intent of the Elexon ownership policy decision.		
E.ON Next Energy Limited	-	There is omission of any reference to support Shareholders for financial costs.	Annex C-3 1.12 entitles shareholder representatives to be reimbursed for the cost of attending shareholder meetings. This replicates the entitlement of Panel and Committee members to be reimbursed for their costs in attending meetings of these bodies.	<ul style="list-style-type: none"> The costs of becoming a Elexon shareholder, and of being an Elexon shareholder are not considered material-. Therefore, it is not considered necessary to provide support for these costs.

Respondent	Response	Rationale	Ellexon Comments	DESNZ Comments
RWE Generation UK plc	Yes	<p>RWE notes that Annex C is the sole provision of the Code that regulates the rights and obligations of the Shareholders, in their capacity as Shareholders.</p> <p>We also acknowledge that there may need to be a transfer of shares to the initial Mandatory Parties prior to the licences having been changed by the Energy Act 2023.</p> <p>RWE considers that the draft text delivers for the most part the intent of Ellexon's ownership policy decision; the provisions setting out the process for becoming a new shareholder, requirement to ensure the independence of BSCCO, and prohibition of transfer have all been captured.</p> <p>We would however like to see some of the drafting clarified which we have commented on in section 4 as whilst the principle of the text is there, the drafting is cumbersome and unclear in some places.</p> <p>Finally we welcome the lifting of the protections afforded currently to NGESO in terms of legal requirements and liabilities and assigning the same protections to Shareholders.</p>		

Respondent	Response	Rationale	Elexon Comments	DESNZ Comments
		As above, we have made some further observations on the drafting of the definitions and other parts in section 4.		
SSE Energy Supply Limited	Yes	<p>Yes. However, we would highlight the following:</p> <ul style="list-style-type: none"> We do not consider the tax provision (C-3 1.9) is necessary given that the number of shareholders currently in place (and expected to be in place in the future) removes this risk. We consider this can be removed. We welcome the acknowledgement (C-3.1.12) that shareholders may incur –and can recover – reasonable expenses. We consider that there is potential for future changes to be more complex (e.g., transition towards licensed code managers under the Energy Code Reform workstream) and/or less predictable (e.g., shareholders will be mandated to implement any change approved by the Panel). We would welcome this clause being extended to cover, for example, the provision of legal advice 	<ul style="list-style-type: none"> On the first point, we agree with this analysis but other shareholders have asked for these provisions to be extended to the new shareholders. Therefore, since we see no risk in including the provisions, we are proposing to maintain the tax provisions. Given the constraints on shareholders, and the protections for shareholders under company law (as recognised in Annex C-3 1.6), there are no circumstances where shareholders should need to incur expenses e.g. for legal advice. We would suggest that, if Code Reforms involve a change of role for shareholders, that this issue is revisited at that time. 	<ul style="list-style-type: none"> As noted above, the costs of becoming a Elexon shareholder, and of being an Elexon shareholder are not considered material. Therefore, it is not considered necessary to provide support for these costs. As is the case currently under National Grid ownership, the financial exposure to all liabilities of Elexon sits with BSC parties (under funding arrangements in the BSC) and not with the shareholder. This will continue to be the case going forward. Elexon continues to discuss with National Grid any pensions arrangements arising from Elexon's change in ownership. Whilst these discussions are underway, we do not anticipate sharing any outcomes with prospective shareholders as the

Respondent	Response	Rationale	Elexon Comments	DESNZ Comments
		<p>procured jointly on behalf of all shareholders.</p> <ul style="list-style-type: none"> We would welcome further details being published on liabilities that may be incurred by funding parties generally as a consequence of this policy decision. In particular, we would expect this to provide further details on pension arrangements (including the timescales around resolving NG scheme participation, and how any existing liabilities will be managed). This will ensure all industry parties can assess and prepare accordingly for any impacts of this decision. In the interests of industry transparency, we consider that Elexon should maintain a publicly-accessible list of shareholders (e.g., on their website) and that any changes in the shareholding should be communicated to industry parties through existing communication methods. 	<ul style="list-style-type: none"> Elexon will publish a list of its shareholders. 	<p>discussions are of a confidential nature.</p> <ul style="list-style-type: none"> Ofgem will publish a list of the directed parties to provide transparency on decisions about the parties directed to hold a share. Ofgem 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.

Respondent	Response	Rationale	Elexon Comments	DESNZ Comments
ESO	Yes	<p>We support this proposal in delivering the transfer of Elexon into industry ownership as ESO transitions to the Future System Operator (FSO).</p> <p>We note that the changes remove the current provisions making clear that ESO has no liability or obligation to provide financial support to Elexon. We do not currently have concerns with this approach, but this will depend upon the details of the transfer scheme transferring ownership of Elexon from ESO to industry and may need to be revisited before the final changes are made.</p> <p>In terms of the timing of ownership transfer, our view is that it would be preferable for it to take place ahead of the establishment of the FSO, the role to which the ESO (referred to as NGESO or the NETSO in the BSC) will be transitioning, as this will be the most effective way of decoupling any risk to either transfer.</p> <p>We would further note that there is a need to consider what licence requirements relating to the BSC should continue to apply to the ESO and, subsequently, the FSO as well as any potential for transitional arrangements ahead of FSO licensing should this be required by the timing of the transfer.</p>		<ul style="list-style-type: none"> Queries regarding licence changes will be addressed in the relevant licence consultations.

Respondent	Response	Rationale	Elexon Comments	DESNZ Comments
		<p>(We have raised this point in response to Ofgem's linked consultation on licence changes.)</p> <p>We would also note that there will be a need to build on the BSC changes set out in this modification to achieve the transition to the FSO and that these modifications will have to be developed in parallel and as a composite final version.</p>		
Centrica	Yes	-		
ScottishPower	Yes	Subject to the comments below, and on the basis of the information we have been provided with to date, it appears that the draft BSC legal text delivers the intent of the Elexon ownership policy decision.		

Question 2: Do you agree that the draft Articles of Association text, in Attachment B, delivers the intent of the Elexon ownership policy decision?

Summary

Yes	No	Neutral/No Comment	Other
6	1	0	1

Responses

Respondent	Response	Rationale	Elexon comments
TotalEnergies	No	<p>The proposed Articles of Association are over generous with regard to Directors' remuneration. Instead of their remuneration being decided by the Company in general meeting, Article 30 says they will be entitled to such remuneration as the Directors determine, both for their services to the Company as Directors, and also for any other services which they undertake for the company. Article 30 has been drafted on the basis that the standard Article 82 of Table A is deleted.</p> <p>Article 82 of Table A states "The Directors shall be entitled to such remuneration as the Company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to have accrued from day to day".</p> <p>Therefore I would suggest that in the draft Articles, Article 30 should be deleted, and the reference in Article 2 which states that Article 82 of Table A shall not apply, is also deleted.</p>	<p>We note that this Article is an existing provision so reflects the position as it stands vis-à-vis the remuneration of directors.</p> <p>This article was introduced into the Articles through Modification P324 as part of a wider set of governance changes that were supported by the BSC Panel and approved by Ofgem.</p> <p>Given Elexon's independence, it would not be appropriate for the cohort of BSC Parties that constitute Elexon shareholders to be able to determine the remuneration of Elexon's directors. However, Elexon has robust governance procedures in place, which we report on every year in our Annual Report and Financial Statements (published on Elexon's website), which ensures that no director can vote on a resolution in which they have an interest relating to remuneration.</p>

Respondent	Response	Rationale	Elxon comments
		This would therefore reinstate Article 82 of Table A, set out above.	In addition, any amounts paid to directors in their capacity as directors are published in the Annual BSC Report (also published on Elxon's website).
Uniper	Yes	The draft text updates the Articles of Association to reflect changes in law.	
E.ON Next Energy Limited	-	<p>Comment 1:</p> <p>It appears the memorandum of association is to be deleted with this amendment to the articles (which we have no objection to) but the confirmation that "The liability of the members shall be limited" does need to be transposed into the articles in the usual way. This is reflected in paragraph 1.6.1 of the Annex to the BSC Code (as amended) but does also need to be reflected in the articles of association of Elxon.</p> <p>Comment 2:</p> <p>Article 8 (Transfer of Shares) – Given the BSC Code allows for the Mandated party to change its nominee shareholder, the articles of association of Elxon should require the directors to register any transfer provided such transfer is in accordance with the provision of the Code. We agree that the directors should have discretion to refuse any proposed transfer which is not in accordance with the code</p>	<p>Comment 1:</p> <p>We will add the following to the Articles of Association:</p> <p>The liability of the members is limited to the amount, if any, unpaid on the shares held by them.</p> <p>Comment 2:</p> <p>Article 8, relating to the directors discretion as to whether to register a transfer of a share, is stated to be subject to the provisions of the Code. Annex C-3 1.4.2 requires Elxon to register a transfer by a Mandated Party to its delegate (unless the Authority presents us from doing so). Accordingly, we don't believe any change to the Article is needed to achieve this outcome.</p>
RWE Generation UK plc	Yes	RWE has no substantive comments, albeit we refer to our observations on the drafting in section 4 and would welcome clarification on the sections that are unclear	

Respondent	Response	Rationale	Elexon comments
SSE Energy Supply Limited	Yes	SSE has no further comment on the draft Articles of Association.	
ESO	Yes	<p>While the Articles of Association are treated as part of the BSC and are therefore included in this modification and will be part of a decision on this, amendment of these should also be approved under the current ownership model by the ESO Board.</p> <p>We are content to support these changes, on the understanding that these changes will be introduced to deliver the transfer to industry ownership alongside the changes to Section C of the BSC (rather than before the transfer).</p>	
Centrica	Yes	-	
ScottishPower	Yes	Subject to the comments below, and on the basis of the information we have been provided with to date, it appears that the draft Articles of Association text delivers the intent of the Elexon ownership policy decision.	

Question 3: Do you have any further comments?

Summary

Yes	No	Neutral/No Comment	Other
4	4	0	0

Responses

Respondent	Response	Rationale	Elexon comments	DESNZ Comments
TotalEnergies	Yes	In relation to question 2 we are worried about reputational damage to Elexon owners if the AOA was to remain as consulted on. We would also have no levers to resolve it.	The Articles of Association can be amended through the BSC Modification Process, and this would be the mechanism through which BSC Parties could seek to change existing parts of the Articles of Association. However, please note that, as per the comment above, giving Parties the right to determine directors' remuneration would pose questions for the independence of the board.	
Uniper	Yes	The draft legal text adequately provides the construct of a BSCCo Nominee and a relevant process to deal with the transfer of shares in described circumstances. It is noted that this is very similar to the wording included in the REC.	The BSCCo Nominee will be appointed by the Elexon board. It is expected that the nominee will be an employee of Elexon, most likely the company	

Respondent	Response	Rationale	Elxon comments	DESNZ Comments
		Nonetheless it remains unclear as to how this share transfer will be implemented in practice. What type of organisation is considered to be an appropriate nominee? Further thought should be given to this share transfer process and guidelines published to provide both clear instruction to BSCCo directors and reassure future Elxon shareholders.	secretary (being an officer of the company). In accordance with paragraph 1.4.6 in the annex, all rights associated with any shares held by the nominee are suspended so will not represent any risk to shareholders.	
E.ON Next Energy Limited	No	No further comments.		
RWE Generation UK plc	No	-		
SSE Energy Supply Limited	No	SSE has no further comments.		
ESO	Yes	Above we make reference to the timing of the changes. We note that, to the extent that the transfer will require the issuing of further shares in advance of the transfer, the current restrictions in the BSC prevent this. There may therefore be a need for the relevant changes to be implemented in two stages. We would be happy to discuss the timing and choreography of these changes further.	We believe that all of the governance steps, including changes to the Code, changes to the Articles, issuing of shares and transfer of shares, can take place in one stage, subject to the steps taking place in a notional order (e.g. the amendments to the BSC/Articles taking place prior to issuing new shares	

Respondent	Response	Rationale	Elexon comments	DESNZ Comments
Centrica	Yes	<p>We understand that Ofgem intends to use its powers under the Energy Bill to direct this BSC change. As this will be one of, if not, the first code change to be enacted via this process, it is unclear how it will be achieved. We would request more clarity regarding the process to be followed to implement any direction to change the BSC. The use of a new process also adds inherent risk of administrative or other failings, and unintended consequences. It is therefore key that all affected stakeholders will have the opportunity to respond to the consultation under the Energy Bill powers. We consider that the consultation period should not be less than 28 days to give stakeholders sufficient time to provide informed and meaningful feedback.</p> <p>Stakeholders will also require a reasonable period before any changes to the BSC take effect, to obtain necessary board approvals in respect of holding an Elexon share, and to ensure processes are in place to maintain the shareholding. Approvals would be based upon an understanding of the final policy and processes. We believe that a 56-day 'standstill' period would be sufficient.</p> <p>We request that our suggested consultation and standstill period be aligned with what will be applied by Ofgem to modify the electricity supply and generation licences as both changes are inherently linked.</p>		<ul style="list-style-type: none"> The powers we will be using in the Energy Act 2023 do not require a minimum standstill period for the licence to come into effect. The transfer scheme, licence and code changes will be consulted on at the same time and the consultations will be open for 28 days. Given that the prospective shareholders will be mandated by licence to hold a share, and the transfer will be enacted via a transfer scheme, no shareholder approvals are needed.

Respondent	Response	Rationale	Elexon comments	DESNZ Comments
ScottishPower	No	No Comments		

Redlined Legal Text

BSC Section C 'BSCCo and its Subsidiaries'

Respondent	Location	Comment	Elxon comments
RWE Generation UK plc	C3 1.81.1	Drafting needs to be clearer, as whilst the principle of the paragraph is understood, the final 3 lines and words in brackets are cumbersome making it difficult to understand.	This the wording replicates wording that applies to the current shareholder protections. We are proposing to leave this unchanged in order to avoid a situation where other shareholders are concerned that we are proposing changes are not prima facie necessary
RWE Generation UK plc	C3 1.5.2(b)	Propose in the penultimate line <i>"of its rights in its capacity as a Party under the Code"</i> .	Amendment made
SSE Energy Supply Limited	Annex C-3, 1.1.1 (c)	This refers to a 'Mandated Licensee' whereas the remaining drafting refers to a 'Mandatory Licensee'.	Amendment made
SSE Energy Supply Limited	Annex C-3, 1.4.3	As above, this clause refers to both Mandated and Mandatory Licensees.	Amendment made
ESO	SECTION A 2.3 Disputes as to admission	This clause requires the ESO on direction by Ofgem to admit a Party Applicant as a party to the Framework Agreement if it has met the necessary conditions and the BSCCo has failed to do so. Does this remain appropriate if the ESO no longer owns Elxon? If the clause is to allow Ofgem to compel admittance in a way that it could not do with an unlicensed party (i.e. Elxon) then it probably is required.	This requirement derives from the ESO's obligations under the Licence in relation to the BSC, which will remain following the transfer, and are not related to ESO's shareholding in Elxon.

BSC Section C 'BSCCo and its Subsidiaries'

ESO	SECTION B 4.4.5	Currently reads "The Panel Member appointed by the NETSO shall not cast a vote in relation to any decision to be taken pursuant to Section F in relation to any Modification Proposal." Suggest that this clause is deleted as it would appear appropriate that the ESO should be able to vote on matters once it no longer owns Elexon.	We understand that this provision relates to concerns at the time of NETA that derived from NG's role in the market and is not related to NGESO's shareholding in Elexon.
ESO	SECTION C 1.1.1	Currently reads: "This Section C sets out: (a) provisions as to the constitution of BSCCo and the obligations of the BSCCo Shareholder;" Suggest this should be amended to read: (a) provisions as to the constitution of BSCCo and share capital of the BSCC	Amendment made
ESO	SECTION C 2.	Title currently reads: "CONSTITUTION OF BSCCO AND OBLIGATIONS OF THE NETSO AS BSCCO SHAREHOLDER" Suggest this title is amended to read: CONSTITUTION OF BSCCO AND SHARE CAPITAL OF BSCCO	Amendment made
ESO	ANNEX C-3 1.3.1	Currently reads: "Subject to paragraph 1.2.3, as soon as possible after being directed to do so by the Authority or the Secretary of State (or, where relevant, nominated pursuant to standard condition [XXX]), each Mandated Party will apply to become a Shareholder. Any Mandated Party from time to time that is not a Shareholder shall apply to become a Shareholder. Upon any such application, BSCCo shall either:	It's normal practice for a board to have discretion to refuse to register shareholders. Please note that this right only applies to Eligible Parties, not Mandatory Parties, In addition, in practice, we would only expect to do this in consultation with Ofgem.

BSC Section C 'BSCCo and its Subsidiaries'

		<p>(a) procure the transfer to such Mandated Party of one Share then held by a nominee in accordance with paragraph 1.4; or</p> <p>(b) allot to such Mandated Party one Share.</p> <p>1.3.2 Where BSCCo has agreed to register the transfer of a Share, or approved the allotment of a Share, to an Eligible Party, BSCCo shall either:</p> <p>(a) procure the transfer to such Eligible Party of one Share then held by a nominee in accordance with paragraph 1.4; or</p> <p>(b) allot to such Eligible Party one Share, provided that BSCCo may, in its discretion, refuse to register the transfer of a Share to an Eligible Party, or to allot a Share to an Eligible Party."</p> <p>As in the final sentence of this section, can the BSCCo refuse a direction in this matter? To consider.</p>	
ESO	ANNEX C-2 3.2.1	<p>Currently reads: "Each General Meeting and any part of any Annual BSC Meeting dealing with Resolutions shall be chaired by the BSCCo Chair, except:</p> <p>(c) if the entire Board is the subject of a Binding Resolution, the NETSO attendee will chair the meeting."</p> <p>This is worth consideration or at least noting. Probably to remain as is.</p>	We considered amending this and concluded that it was not necessary to change it as a result of the ownership change so was outside the scope of the Energy Bill powers to direct a change here.
ESO	ANNEX X-1: GENERAL GLOSSARY "BSCCo Shareholder"	<p>Currently reads: "means the NETSO in its capacity as holder of all of the issued share capital of BSCCo;"</p> <p>Suggest changing this to read:</p>	We will make this amendment

BSC Section C 'BSCCo and its Subsidiaries'

		"BSCCo Shareholder": means the shareholders appointed following the process set out in ANNEX C-3: BSCCO GOVERNANCE. If the definition is not used outside section C could instead delete it entirely.	
ESO	ANNEX X-1: GENERAL GLOSSARY "Code"	Currently reads: "means this Balancing and Settlement Code, as from time to time modified by the NETSO in accordance with the Transmission Licence; and references to the Code include the Code as given contractual force and effect by the Framework Agreement" This is a point to note as also set out under our further comments above, that the ESO as the NETSO and as currently licensed is the only party that is actually able to change the code; an area ultimately to address under Code Manager licensing	Agreed that this is not a point that would be appropriate to address under the current ownership changes
ScottishPower	C2	"CONSTITUTION OF BSCCO AND OBLIGATIONS OF THE NETSO AS BSCCO SHAREHOLDER" - The reference to NETSO in the heading appears to have been overlooked.	Amended
ScottishPower	C-1, 3.2.1(c)	"if the entire Board is the subject of a Binding Resolution, the NETSO attendee will chair the meeting." - Is this clause still appropriate in the 13 shareholder model?	This provision was introduced into the Code through modification P324. We can't find any explanation in the P324 documents that state that this requirement was included in the Code because NGESO was Elexon's shareholder. Consequently, since any changes made to the Code through this process need to relate to the change of ownership because that is the scope of the Energy Bill power, we felt it was prudent to leave this unchanged.

BSC Section C 'BSCCo and its Subsidiaries'

ScottishPower	Clause 3.4.3	<p>"Enter into any borrowings in a cumulative aggregate principal amount exceeding £10,000,000" – please could Elexon confirm how the £10m cap has been established?</p>	<p>This provision is a pre-existing part of the Code and isn't impacted by the ownership change. We will therefore provide an explanation outside of the ambit of the ownership consultation</p>
ScottishPower	Clause 5.2.4	<p>"A Party may not make a claim against BSCCo in respect of an actionable breach if the amount of the Party's loss resulting from such breach is less than £50,000" – please can Elexon provide further clarity on the definition of "party" and "party's" for the purposes of this clause?</p>	<p>This provision is a pre-existing part of the Code and isn't impacted by the ownership change. We will therefore provide an explanation outside of the ambit of the ownership consultation</p>
ScottishPower	Clause 5.2.5	<p>"The aggregate cumulative amount payable by BSCCo to all Parties in respect of actionable breaches under this paragraph 5.2 for which payments (of damages or otherwise) fall to be made by BSCCo in any BSC Year shall not exceed £3,000,000" – please can Elexon:</p> <ul style="list-style-type: none"> • provide further clarity on the definition of "parties" for the purposes of this clause and throughout; • confirm if clause 2.6 (Reference to NETSO) will be removed and therefore the removal of clause 5.2.1 as a consequence? 	<p>Section C2.6 is being removed (though most of the provisions are now replicated in the annex relating to the new shareholders. C5.2 limits Elexon's liability vis-à-vis BSC Parties. The principles which underpin this provision were established at the time of NETA i.e:</p> <p><i>Due to the no profit/no loss status of BSCCo, any successful claims against BSCCo will ultimately be borne by Trading Parties and the general approach of excluding liability is to reflect the fact that, in most cases, any such claims would be matched by offsetting increases in BSCCo charges. However it is recognised that where there is significant individual loss suffered, it would be appropriate to allow a claim against BSCCo to be pursued in such exceptional circumstances. It is accepted that making BSCCo liable under these</i></p>

BSC Section C 'BSCCo and its Subsidiaries'

			<p><i>circumstances will place appropriate incentives and a level of accountability on the management of BSCCo</i></p> <p>NETSO's role as BSCCo shareholder has never formed part of the rationale for the limitations on Elexon's liabilities, so we are not proposing to amend C5.2.1 as a result of the ownership change.</p>
ScottishPower	Clause 7.1.1	This clause deals with the discharge of powers, functions, and responsibilities. In order to consider whether this clause meets the intended policy objective, it would be helpful to understand the group structure of Elexon. Can this information please be provided?	This provision is a pre-existing part of the Code and isn't impacted by the ownership change. We will therefore provide an explanation outside of the ambit of the ownership consultation
ScottishPower	Annex C3 1.6.2	Given the clearly stated policy intent that Elexon (BSCCo) shareholders will have no obligation to finance the BSCCo, we consider that the text "other than as expressly provided in the Code" should be removed from the end of this clause.	Amended
ScottishPower	Annex C3 1.9	Taxation and other payments – We would question the relevance of these clauses given that under the proposed arrangements shareholders will have a shareholding of less than 75% and therefore will not be in a capital gains group.	We agree with this analysis but other shareholders have asked for these provisions to be extended to the new shareholders. Therefore, since we see no risk in including the provisions, we are proposing to maintain the tax provisions.

Elxon's Articles of Association

Respondent	Location	Comment	Elxon comments
TotalEnergies	Please see answers to Q2 and Q3	Please see answers to Q2 and Q3	
RWE Generation UK plc	16.3	Propose :“On a show of hands or by poll, votes may be made either personally or by proxy”.	Amended
RWE Generation UK plc	17.8	Propose “ If a proxy notice is not executed by the person appointing the proxy, the proxy notice must be accompanied by written evidence that the person who executed it has the authority to execute it on the appointer's behalf”.	Amended
RWE Generation UK plc	18	Propose “Subject to the provisions of the Act, the articles and to any directions given by special resolution, the business of the company shall be managed in accordance with the Code by the directors who may exercise all the powers of the company”.	The purpose of the reference to the Code is to reflect that shareholders can only pass special resolutions to the extent permitted by the Code so we don't agree that this proposed amendment is needed. In addition, the requirement for BSCCo to act in accordance with the Code is contractual (under the BSC) - it's not and never has been a direct rule for the Directors under the Articles.
RWE Generation UK plc	37.1(C)	Reference to article 4 is misplaced	Amended
RWE Generation UK plc	37.1 (D)	typo – “possibly”	Amended

Elexon's Articles of Association			
RWE Generation UK plc	37.1 (E)	Drafting is confusing	Amended
RWE Generation UK plc	37.6 (E)	"the directors may revoke or vary their authorisation at any time but no such action will affect anything done by the conflicted director prior to revocation provided that the directors actions were in accordance with the terms of the previous authorisation".	Amended
RWE Generation UK plc	37.7	Drafting of final paragraph is unclear	Clarified
RWE Generation UK plc	37.8	Change "was" for "is"	Amended
ScottishPower	Interaction between the Code and the Articles	We understand that it is only Section C of the Code which prevails over the Articles, not the entire Code. Please can Elexon confirm this is correct? Can Elexon explain how this would work in practice on the basis that the front end of the Code contains provisions for the Panel, the Nomination Committee and quorums etc.?	<p>All of the provisions of the Code that relate to Elexon's governance arrangements are contained in Section C. There is no overlap between other Code Sections and the Articles. In the case of the examples given:</p> <ul style="list-style-type: none"> - whilst the Panel fulfils an important role for BSC governance, the provisions relating to Panel governance are entirely separate from the provisions relating to Elexon's corporate governance; - the nomination committee is described in Section C so prevails over the Articles. However, please note that, as is normal for companies generally, the Articles do not

Elxon's Articles of Association

			<p>comment on board committees (the management of board business is largely delegated to the board under the Articles)</p> <ul style="list-style-type: none"> - board quorum is set out in the Articles, not in the BSC as per the above, quorum for Panel meetings is different from Board governance
ScottishPower	Companies' lien (removal of section)	Could Elxon provide an explanation for the removal of this clause?	The Code requires all shares to be fully paid up, or for the share price to be payable on demand, and that no premium can be paid in respect of the shares. The lien provisions therefore seemed unnecessary.
ScottishPower	Right to remove resolution in writing (removal of section)	Could Elxon provide an explanation for the removal of this clause?	We assume this is a reference to Article 15? In which case, this has been superseded by the definition of "writing" to allow more modern forms of communication in order to facilitate shareholder resolutions (if ever required)
ScottishPower	Power of directors (amended from number of directors)	Could Elxon provide an explanation for the addition of the reference to the code in the standard section 70 Table A wording?	The purpose of the reference to the Code is to reflect that shareholders can only pass special resolutions to the extent permitted by the Code
ScottishPower	Resolution in writing // directors' interest	Could Elxon provide an explanation of the drafting amendments	In keeping with other provisions in the AoA where references to written resolutions have been updated, this change reflects the same approach for directors' resolutions as it would be inconsistent for different rules to apply. The new wording substantially mirrors the wording in RECCo's AoA.

Elxon's Articles of Association

As regards directors interests, these reflect different conflict provisions under the Companies Act 2006 and broadly mirror RECCo's articles of association.

This change was considered necessary because the BSC requires Elxon to appoint industry directors and where Elxon will also have industry shareholders, there is more likelihood of potential conflicts of interests that need to be managed.