P390 'Allowing extensions to ELEXON's business and activities, subject to additional conditions'

This Modification seeks to introduce conditions into the BSC, subject to which ELEXON could undertake additional activities and business for the benefit of industry and the consumer, including conditions previously agreed in respect of other permitted activities.

ELEXON recommends P390 is progressed to the Assessment Procedure for an assessment by a Workgroup.

This Modification is expected to impact:

- BSC Parties
- ELEXON as the Balancing and Settlement Code Company (BSCCo)

Phase

- Initial Written Assessment
- Definition Procedure
- Assessment Procedure
- Report Phase
- Implementation

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About This Document

This document is an Initial Written Assessment (IWA), which ELEXON will present to the Panel on 12 September 2019. The Panel will consider the recommendations and agree how to progress P390.

There are two parts to this document:

- This is the main document. It provides details of the Modification Proposal, an assessment of the potential impacts and a recommendation of how the Modification should progress, including the Workgroup's proposed membership and Terms of Reference.
- Attachment A contains the P390 Proposal Form.

Contact
Ivar Macsween

020 7380 4270

ivar.macsween@elexon.co.uk



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1 Why Change?

Background

ELEXON Vires

ELEXON "vires" set out what ELEXON is allowed to do and are described under BSC Section C 'BSCCo and its Subsidiaries', with subsection 1.2 'Role and powers, functions and responsibilities of BSCCo' stating in 1.2.2 that:

"Subject to the further provisions of this Section C, BSCCo shall have the powers, functions and responsibilities set out in or assigned to it pursuant to the Code, and shall not undertake any business or activity other than as provided for in the Code."

As a result of these provisions, each time an opportunity arises where ELEXON might be able to extend the company's business beyond those activities contemplated in the Code, a Modification (either following the BSC's Modification Procedures or directed by the Secretary of State under statutory powers) is required to implement a change in the vires.

Previous Extensions of ELEXON's Vires

Ofgem have already approved two Modifications to extend ELEXON's vires and the scope of activities that ELEXON is permitted to undertake:

- Code manager for the Retail Energy Code – permitted via P365; and
- Gas Performance Assurance Framework Administrator (PAFA) – permitted via P330.

P365 'Enabling ELEXON to tender for the Retail Energy Code (REC)'

Hudson Energy raised P365 'Enabling ELEXON to tender for the Retail Energy Code (REC)' on 19 January 2018.

P365 enabled the ELEXON Board to decide whether or not to bid for the role of REC administrator (and perform the role if the contract is awarded to ELEXON).

This would be done via a separate not for profit subsidiary - REC Administrative Service Company (RECASCo) - with the cost of bidding for that role funded by ELEXON up to a maximum of £100,000. These bid costs would be BSCCo Costs so would be funded by BSC Parties. If ELEXON bids for this role and is successful then the funding provided by ELEXON would become repayable to ELEXON (and therefore also returned to Parties).

The BSC changes enabled by the implementation of P365 ensured that BSCCo is ring-fenced from any enduring operational costs and risks associated with performing the role of REC administrator.

At high level, the changes resulting from P365:

- Established REC administration as a Permissible Activity under the BSC and established the appropriate legal entity, RECASCo;
- Detailed the arrangements under which ELEXON/BSCCo may provide a loan or grant credit to RECASCo for the purposes of bidding for the REC administration role, together with the requirement for cost to be ring-fenced;

What is BSCCo?

The Balancing and Settlement Code (BSC) is a legal document which defines the rules and governance for the balancing mechanism and imbalance settlement processes of electricity in Great Britain. ELEXON is known as the Balancing and Settlement Code Company (BSCCo) and administers the BSC.

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- Detailed the arrangements for the repayment of any loan and what will happen in the event that RECASCo is unsuccessful in its bid; and
- Confirmed the shareholder arrangements with RECASCo and its relationship with ELEXON/BSCCo.

It should be noted that the proposed solution to P365 repeated the implementation approach developed during the assessment of P330 and the arguments set out in Ofgem's decision letter where the detailed rationale behind their decision to approve P330 is set out.

P330 'Allowing ELEXON to tender for the Uniform Network Code Gas Performance Assurance Framework Administrator (PAFA) role'

Scottish Power raised P330 'Allowing ELEXON to tender for the Uniform Network Code Gas Performance Assurance Administrator (PAFA) role' on 1 December 2015. Ofgem approved P330 on 2 June 2016. P330 enables ELEXON to bid to become the Gas Performance Assurance Framework Administrator (PAFA). The changes resulting from P330 were substantially identical to those described above in relation to P365.

Ofgem's decisions to approve P330 and P365

Due to the parallels between P330 and P365, and this Modification Proposal P390, it is worth highlighting the reasons for Ofgem's decision to approve P330 and P365.

P330 decision

In its P330 decision letter, Ofgem stated that it had previously considered the case for allowing ELEXON to diversify its activities under P284.

In accepting BSC Modification P284 'Expansion of ELEXON's role via the 'contract model'' in September 2012, Ofgem set out its view that whilst there might be benefits of diversification, robust arrangements had to be put in place to mitigate any additional risk to the BSC and BSC Parties. Ofgem considered that the following criteria would have to be met:

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

Ofgem also stated that it would be appropriate for the ELEXON Board and BSC Parties more generally to give further consideration to a more limited diversification under the existing structure.

Regarding Ofgem's wider statutory duties, Ofgem stated in its P330 decision letter that whilst the benefits of ELEXON's participation in the gas PAFA tender might not directly be of consideration for the BSC Objectives, that it considered that the existence of additional bidders in the Gas PAFA tender should improve the extent and quality of the competition for that contract.

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P365 decision

In approving P365, Ofgem also referred to the P284 criteria and noted that it expected the BSCCo Board to satisfy itself that the first three criteria were met, whilst acknowledging that the last criterion was more appropriately a matter for the Authority and the approach taken to the REC manager procurement.

The decision letter also noted that one of the P365 consultation responses stated that P365 could have been wider in scope, enabling ELEXON to tender for any suitable opportunity that arises, and Ofgem suggested that this was something that might be considered in the future.

Examples of non-BSC work administered by ELEXON due to an extension of ELEXON's vires

P330 as referred to above, was approved by Ofgem in June 2016. ELEXON participated in the tender process to appoint the Gas PAFA but withdrew when the tender effectively required ELEXON to guarantee the liabilities of the ELEXON subsidiary, which was to provide the gas assurance services.

P365 as referred to above, was approved by Ofgem in April 2018. ELEXON intends to enter the tendering process when it commences (currently anticipated to be November 2019).

ELEXON's vires has also been extended in recent years by the Secretary of State directing changes to the BSC. These changes have been directed under specific powers granted to the Secretary of State through legislation and related to:

- the administration of the Warm Homes Discount Scheme; and
- acting as the Settlement Services Provider for Contracts for Difference and the Capacity Market as part of Electricity Market Reform (EMR).

It should be noted that, subsequent to the Secretary of State's direction, ELEXON's role as operator of the Warm Home Discount Scheme was secured through competitive tender and the continuation of ELEXON's EMR settlement role is subject to periodic review and value for money assessments by ELEXON's customer, the Low Carbon Contracts Company (LCCC). The most recent value for money review was undertaken in the first half of 2019.

As explained in the 2018/19 Annual BSC Report, this EMR settlement activity is ring fenced from BSC activities and is conducted via a separate subsidiary of ELEXON — EMR Settlement Ltd (EMRS). EMRS costs are borne by the LCCC and the ESC and not by BSC Parties. However, because EMRS occupies the same premises as ELEXON and uses ELEXON's shared services, EMRS makes a fair contribution to these costs based on headcount. This has resulted in around £726,000 in 2018/19 of ELEXON's fixed costs to be charged to LCCC and ESC, which would otherwise have been borne by BSC Parties.

The ELEXON Board

The management of ELEXON as the Balancing and Settlement Code Company (BSCCo) is overseen by the ELEXON Board, which comprises an independent Chair, five independent Non-Executive Directors and the Chief Executive Officer. Of the independent non-executives, two are also independent from the electricity industry whilst three are appointed because they have relevant experience and/or of the industry.

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The ELEXON Board is scheduled to meet on ten occasions each year, and will meet at other times where necessary. These meetings include main Board meetings, strategy meetings and committee meetings.

The Board publishes a circular every six months to keep Parties informed of the issues that the Board is currently focussed on.

Accountability

The ELEXON Board is ultimately accountable to BSC Parties.

BSC Parties can vote to remove ELEXON's directors at the Annual BSC Meeting or at a General Meeting of Voting Parties, which can be requested at any time.

BSC Parties also have the right to request a vote, at an Annual BSC Meeting or a General Meeting, on non-binding resolutions, which will be advisory in nature for the Board.

What is the issue?

The BSC restricts the activities of ELEXON. The Proposer notes that this is the case even when those activities would be of benefit to BSC Parties, industry generally and the consumer.

This has resulted in Parties to the BSC raising specific Modification Proposals to allow ELEXON to extend its "vires" with certain conditions as to ring-fencing of risk and how costs and benefits will be treated.

In the past, specific Modifications or explicit Secretary of State directions have been necessary to enable ELEXON to provide the Warm Homes Discount Reconciliation service, EMR settlement, and participate in gas assurance and REC manager appointment processes.

Despite receiving industry support for taking on new activities, such individual Modifications to extend ELEXON's vires are time consuming and can be an unnecessary distraction for industry.

The Proposal notes that they can also result in ELEXON being unable to pursue an opportunity within a required timeframe as each time an opportunity arises where ELEXON might be able to extend the company's activities a Modification Proposal is required to agree a change in the vires.

This is inefficient and an unnecessary distraction for industry and the Proposal notes that it could hamper ELEXON's ability to respond to a new business opportunity that would be beneficial to BSC Parties and the consumer.

Under the last specific Modification (P365), which amended the ELEXON vires to allow ELEXON to bid for the Retail Energy Code Manager role, one Party suggested that the Proposal did not go far enough. They suggested that the ELEXON Board should be allowed to investigate any opportunity, which they felt allowed them to deliver the BSC services in a more efficient way.

Further, in its decision letter on P365, the Authority agreed that this was perhaps something that could be considered in future.

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2 Solution

Proposed solution

A framework that mirrors the protections incorporated within the previously approved Modifications P330 and P365 (which are themselves based on tests introduced by Ofgem), plus the introduction of new, additional conditions, would increase efficiency whilst still providing the necessary safeguards for the consumer and BSC Parties.

It is proposed that the ELEXON Board would be able to make decisions on which opportunities to pursue, subject to all of these conditions. ELEXON would also be required to report annually to BSC Parties on new activities that they had undertaken in that year, as well as the benefits that had been accrued by BSC Parties such as through defrayed BSC Costs.

If BSC Parties were ever dissatisfied with the decisions of the Board, they still retain the right to remove (or threaten to remove) one or more of the ELEXON Board Directors.

Protections and conditions

This proposal seeks to change the BSC to allow ELEXON to undertake additional activities provided certain conditions are met. These conditions include all of the conditions introduced in previous Modifications to ELEXON's vires, plus new additional conditions to provide additional safeguards.

Conditions previously included for P330 and P365, Warm Homes Reconciliation and CfD and CM settlement:

Conditions previously included	How achieved
BSC Parties should benefit from any diversification	New activity to contribute its fair share to the existing BSC overheads, so defraying costs for BSC Parties for their benefit. In addition any new activity will provide opportunities to staff to work on a wider range of activities, which will help ELEXON to retain, attract and develop its people for the benefit of industry. BSC Parties will not fund any use of ELEXON staff on work for the separate companies following the start of the new activity commencing. Resource usage for such work will be recorded and transfer payments made from the new or existing separate company to ELEXON. Note EMR activity has contributed £3.5m over the last 5 years.
The arrangements should not place disproportionate risk on BSC Parties	New activity(ies) will be ring fenced either in a new separate company or an existing separate company and ELEXON will not guarantee the obligations or liability of the new activities. Note that this is greater separation and protection than is provided by other organisations that undertake Code administration services and which also undertake other activities within that same Code services company
Standards of service under the BSC should be maintained	ELEXON will ensure and report that there is no adverse impact on the standards of service ELEXON provides to BSC Parties. Note during the years of delivering the WHD (6 years) and EMR (5 years) there is no evidence of a deterioration in ELEXON's services.
Expenditure prior to start of activity has to	Expenditure will be funded in the first instance by ELEXON from sums collected through the existing BSC annual budget mechanism, which is funded by BSC funding-parties.

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be repaid within 5 years of start of activity	Note cost of bidding for WHD recovered in cost of WHD services over the contract period. Costs of early activity on CfD and CM settlement borne by DECC via a grant. Note: This is repayable to BSC Parties within 5 years of the new activity commencing. If ELEXON funds a role that does not successfully commence then, as with P330 and P365, ELEXON would most likely have to write-off the funding.

Proposed additional conditions:

Proposed new Condition	Detail of Condition
Geographical limitation	• Activity must be related to the UK
Sector limitation	• Gas, electricity, heat and transport sector
Type of role	• Demonstrable link to core competencies
Where any new activity is undertaken or won by ELEXON, including on a 'for profit' basis, then ELEXON would deliver that activity through a 'Permissible Affiliate' (a subsidiary of ELEXON) in accordance with the provisions of the BSC	• If any new activities undertaken by the Permissible Affiliate resulted in a profit then any sums available for distribution would be paid as a dividend to ELEXON which would consequently offset BSC Party charges
Cost at risk (preparation and bid costs) in any year to be no more than 1% of that year's approved budget	• 1% is considered an appropriate amount to represent a business development budget. • Note: where any bid is unsuccessful then the amount of this budget spent on that bid will not be recoverable and will effectively be funded by BSC Parties

The ELEXON Board will take the decisions whether to bid for and agree to undertake work, subject to the conditions outlined above.

This proposal would vest decisions on what ELEXON's activities and business should be with the ELEXON Board. The Board would have to determine whether the various conditions were satisfied. These conditions include all the conditions previously applied for P330 and P365, plus the new additional conditions, to safeguard the interests of BSC Parties.

Applicable BSC Objectives

In the view of the Proposer this Modification will better facilitate Applicable BSC Objective (d) as:

- sharing the fixed costs of ELEXON across other activities allows costs to the BSC Parties to be defrayed; and
- participating in the tendering process for other activities will provide a view to BSC Parties of the competitiveness of ELEXON in delivering its existing obligations and be used to consider efficiencies that could be achieved from ELEXON and other like bodies; and

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- any new activity will provide opportunities to staff to work on a wider range of activities, which will help ELEXON to retain, attract and develop its people for the benefit of industry.

Implementation approach

As a document-only change with no expected system impacts, this Modification is recommended for implementation 5 Working Days after Authority Decision, to realise the benefits of the P390 solution at the earliest opportunity.

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3 Areas to Consider

In this section, we highlight areas, which we believe the Panel should consider when making its decision on how to progress this Modification Proposal, and which a Workgroup should consider as part of its assessment of P390. We recommend that the areas below form the basis of a Workgroup's Terms of Reference, supplemented with any further areas specified by the Panel.

Previous proposals to amend ELEXON Vires

In considering this Proposal it would be beneficial for previous individual Modifications to be looked at, including P330 and P365.

P330 and P365 have included provisions for a separate subsidiary to ensure that there is ring-fencing of any enduring operational costs and risks associated with performing additional roles, beyond delivering the BSC activities. Therefore, there are already agreed arrangements as to how any additional activities and business would be managed.

Areas to consider

We believe that during the Assessment Procedure of this Modification, the Workgroup may wish to consider:

- Whether the safeguards proposed by P390 in addition to those developed during P330 and P365 are appropriate;
- Whether there will be a direct impact on BSC Parties resulting from implementation of the P390 solution;
- What mechanisms should be put in place to ensure BSC Parties benefit from the activities of ELEXON's subsidiaries;
- How to ensure that ELEXON is not cross-subsidising the subsidiaries; and
- Will the proposed solution have an effect on consumers?

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4 Proposed Progression

Next steps

This Modification should be assessed by a Workgroup and submitted into the Assessment Procedure.

Workgroup membership

We recommend that the Workgroup assessing this Modification Proposal has expertise in the following areas:

- knowledge of the wider energy and code governance arrangements;
- knowledge of the ELEXON business and governance model; and
- previous proposals to amend ELEXON Vires.

Please note that we intend to invite an ELEXON employee to act as a Workgroup attendee to represent the views of ELEXON. This attendee will not have any voting rights in regards to the solution for P390.

Self-Governance

ELEXON and the Proposer recommends that this Modification should not be progressed as a Self-Governance Modification because it does not meet the Self-Governance Criteria (as set out in the Transmission Licence and repeated in BSC Annex X-1: 'General; Glossary').

The Modification, if implemented, is expected to amend the Code's governance procedure and therefore should not be a Self-Governance Modification, with a material impact identified on criterion (v) relating to "the Code's governance procedures or modification procedures".

Additionally, criterion (a) (i) which relates to the impact on "(i) existing or future electricity consumers" is expected to be materially impacted. The benefits that could accrue from ELEXON bidding and winning other work could result in a defraying of material costs to BSC Parties.

Additionally, while impacts on BSC Parties are expected to be relatively small as a direct result of implementation of the Modification, ELEXON and the Proposer believe it would be sensible to seek explicit confirmation from the Authority.

Timetable

Proposed Progression Timetable for P390	
Event	Date
Present Initial Written Assessment to Panel	12 Sep 2019
Workgroup Meeting	W/B 30 Sep 2019
Workgroup Meeting	W/B 21 Oct 2019

What are the Self-Governance Criteria?

A Modification that, if implemented:

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

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

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Proposed Progression Timetable for P390	
Event	Date
Assessment Procedure Consultation	18 November – 6 December 2010
Workgroup Meeting	W/B 16 December 2019
Present Assessment Report to Panel	9 Jan 2020
Report Phase Consultation	13 Jan –29 Jan 2020
Present Draft Modification Report to Panel	13 Feb 2020
Issue Final Modification Report to Authority	17 Feb 2020

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5 Likely Impacts

Industry impacts and costs

We do not anticipate any immediate implementation impacts or costs to BSC Parties or Party Agents as P390 only seeks to allow for ELEXON to be able to undertake additional activities and business. Therefore, the effort required to implement P390 is expected to be minimal.

Impact on BSC Parties and Party Agents	
Party/Party Agent	Potential Impact
All BSC Parties	No material impact is anticipated upon implementation of this Modification. However, BSC Parties will be indirectly impacted as a result of the changes to ELEXON vires. As ELEXON operates on a not for profit basis, Parties may be asked to fund any bids submitted following implementation.

Impact on the NETSO
There is no direct impact however, the NETSO may have an interest as a BSC Party.

Impact on BSCCo	
Area of ELEXON	Potential Impact
ELEXON will be required to implement the proposed changes to the BSC should the Modification be approved.	

Impact on BSC Settlement Risks
Impact on the Settlement Risks will be considered during the Assessment Procedure.

Impact on BSC Systems and processes	
BSC System/Process	Potential Impact
No impacts anticipated.	

Impact on BSC Agent/service provider contractual arrangements	
BSC Agent/service provider contract	Potential Impact
None anticipated.	

Impact on Code	
Code Section	Potential Impact
BSC Section C 'BSCCo and its Subsidiaries'	Changes will be required to implement the proposed solution.

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Impact on Code	
Code Section	Potential Impact
BSC Section X Annex X-1 'General Glossary'	

Impact on Code Subsidiary Documents	
CSD	Potential Impact
None anticipated.	

Impact on other Configurable Items	
Configurable Item	Potential Impact
None anticipated.	

Impact on Core Industry Documents and other documents	
Document	Potential Impact
None anticipated.	

Impact on a Significant Code Review (SCR) or other significant industry change projects
None anticipated. We have requested that Ofgem class this as an SCR Exempt Modification.

Impact on Consumers
No detrimental impact on consumers is anticipated, however there are potential beneficial impacts that could accrue from ELEXON bidding and winning other work resulting in a defraying of material costs to BSC Parties.

Impact on the Environment
None anticipated.

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6 Recommendations

We invite the Panel to:

- **AGREE** that P390 progresses to the Assessment Procedure;
- **AGREE** the proposed Assessment Procedure timetable;
- **AGREE** the proposed membership for the P390 Workgroup; and
- **AGREE** the Workgroup's Terms of Reference.

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Appendix 1: Glossary & References

Acronyms

Acronyms used in this document are listed in the table below.

Acronym	
Acronym	Definition
BSC	Balancing and Settlement Code
BSCCo	Balancing and Settlement Code Company
DCUSA	Distribution Connection Use of System Agreement
EMR	Electricity Market Reform
IWA	Initial Written Assessment
MRA	Master Registration Agreement
PAFA	Performance Assurance Framework Administrator
REC	Retail Energy Code
RECAS	REC Administrative Services
RECASCo	REC Administrative Service Company
SCR	Significant Code Review
SPAA	Supply Point Administration Agreement
UNC	Uniform Network Code

External links

A summary of all hyperlinks used in this document are listed in the table below.

All external documents and URL links listed are correct as of the date of this document.

External Links		
Page(s)	Description	URL
2	BSC Section C 'BSCCo and its Subsidiaries'	https://www.elexon.co.uk/the-bsc/bsc-section-c-bscco-subsidiaries/
3	P365 'Enabling ELEXON to tender for the Retail Energy Code (REC)'	https://www.elexon.co.uk/mod-proposal/p365/
4	P330 'Allowing ELEXON to tender for the Uniform Network Code Gas Performance Assurance Administrator (PAFA) role'	https://www.elexon.co.uk/mod-proposal/p330/
4	P284 'Expansion of ELEXON's role via the 'contract model''	https://www.elexon.co.uk/mod-proposal/p284/
6	Low Carbon Contracts Company	https://www.lowcarboncontracts.uk/

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