



Stage 03: Assessment Report

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

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

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

P284 aims to facilitate implementation of the 'contract model', which is supported by a majority of respondents and is in line with Ofgem's view that formal separation of BSCCo and a 'New ELEXON' would better protect BSC Parties' interests. The changes proposed by P284 would enable, but not require, such separation via a BSC services contract.



Modification Group recommends:

Rejection of both P284 Proposed and Alternative Modification



High Impact:

BSCCo (ELEXON)

Medium Impact:



Though P284 is an 'enabling' change, which does not itself require the contract model to be put in place, it is likely to be of interest to all BSC Parties and stakeholders.

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P284 Assessment Report

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About this document:

This document is an Assessment Report, which ELEXON will present to the Panel on 12 July 2012, on behalf of the P284 Modification Group. The Panel will consider the recommendations on the final page, and agree an initial view on whether or not this change should be made.

This document provides details of the solution, impacts, costs, benefits and the potential implementation activities associated with this change. It also sets out the Modification Group's discussions, which resulted in this solution.

Why Change?

The current BSC provisions do not allow the BSCCo to perform non-BSC activities. In order to allow ELEXON to diversify, BSCCo and ELEXON need to be formally separated. The implementation of a contract model would allow that to happen.

Solution

The P284 solution would enable, but not require, BSCCo to outsource some or all of the BSC services to a new BSC Agent called the BSC Services Manager. This would be done via a contract between BSCCo and the service provider. A new Service Description would be approved prior to the appointment of any initial BSC Services Manager.

Alternative Solution

The Alternative solution is identical to the Proposed except it also requires a contractual framework to be consulted upon, and for both the BSCCo Board and Authority to be satisfied that any contract meets the Authorities pre-requisites conditions prior to the appointment of any initial BSC Services Manager.

Impacts & Costs

As a change to the BSC governance arrangements, P284 Proposed and Alternative will be of interest to all BSC Parties. However, since it is an 'enabling' change we do not anticipate that implementation of P284 will impact BSC Parties.

Implementation

Both Proposed and Alternative Modifications will be implemented 1 WD after an Authority decision.

The Case for Change

The majority of the Group believe that either the Proposed or Alternative better facilitates the Objectives, as they believe the risks associated with the change do not outweigh the benefit which is believed to be marginal at best.

The Group unanimously support the Alternative over the Proposed as it provides greater security and transparency removing some of the risk associated with the change.

Recommendations

The Workgroup recommends that neither the Proposed or Alternative is approved.

2 Why Change?

Issue identified by the Proposer

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

BSC Section C1.2.2 states that:

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

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

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

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

Proposed solution

The P284 solution would enable, but not require, BSCCo to outsource some or all of the BSC services to a new BSC Agent called the BSC Services Manager. This would be done via a contract between BSCCo and the service provider (i.e. 'New ELEXON'¹).

P284 is not just an enabling change; it also seeks to protect BSC Parties by ensuring that neither they nor National Grid, as the Shareholder, are exposed to risks and costs arising from ELEXON pursuing or undertaking non-BSC activities.

The P284 solution would be given effect by the legal text provided in Attachment A. In order to make it easier to digest, we have broken down the changes P284 will introduce as follows:

- BSCCo may delegate some or all of its powers, functions and responsibilities under the BSC to a BSC agent (the 'BSC Services Manager').
- Additionally the BSC Clearer will be enabled to discharge powers, functions and responsibilities via the BSC Services Manager.
- It specifies that any BSC Services Manager will be a BSC Agent.
- It specifies broadly the rights which may be transferred to the BSC Services Manager for it to perform its role and the effect in BSC terms of the discharge of its functions.
- It sets out the process for a new Service Description to be approved prior to the appointment of any initial BSC Services Manager.
- Provisions relating to the Chief Executive of BSCCo will be amended so that the BSCCo Board may choose whether to appoint a Chief Executive, but the scope and responsibilities of such role remain unchanged.
- In order to preserve independence it specifies that no organisation can perform both the role of BSC Services Manager and any other BSC Agent, and that no BSC Party can perform the role of BSC Services Manager.
- Existing definitions of "Affiliate", "BSC Agent" and "BSCCo" will be amended, and new definitions for "BSC Services Manager" and "Relevant Affiliate" will be added to Section X.

The aim of these changes is to ensure that the organisation appointed as BSC Services Manager can perform any of the activities currently performed by BSCCo while:

1. maintaining the provisions in the BSC that safeguard the delivery of the Code arrangements; and
2. ensuring neither the BSC arrangements nor BSC Parties can be exposed to any risks or incur any costs as a result of any activities of the BSC Services Manager service provider that are outside the BSC.

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

Proposer's justification against the Applicable BSC Objectives

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

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

Scope of P284

The Proposer clarifies in the Modification Proposal that P284 is an enabling change, and would only amend the Code to enable the contract model to be introduced. They highlight that as such the terms of any contract are outside the scope of P284.

While acknowledging that it is outside the scope of P284, the Workgroup noted that it believed that Parties should be consulted on the BSC Services Manager Service Description before it is approved and that the process of developing the BSC Services Manager Contract should be as clear and transparent as possible. Furthermore, that any contract should reflect the BSC Services Manager Service Description.

As such the Workgroup encourages the BSCCo Board to provide information to industry participants and/or present information to the BSC Panel on the process that is going to be undertaken when establishing a contract including the engagement with industry participants.

The Contract Model

P284 would not itself implement the delivery of the 'contract model', but it is important for Participants responding to this consultation to understand what the contract model is and how it will work. An explanation of the contract model is included in Appendix 1 of this consultation document.

4 Alternative Solution

As part of their deliberations on P284 the Workgroup have developed an Alternative Modification. The Alternative solution is identical to the Proposed solution except it provides further safeguards that any contract signed by BSCCo and the BSC Services Manager will not put BSC Parties at risk.

The Alternative solution includes two additional safeguards, a contractual framework consultation and Authority oversight and approval. Further information on how the Group developed this Alternative can be found in section 9 of this document.

Contractual Framework

In addition to the provisions described in the Proposed Modification, before an initial Service Manager is appointed:

- A contractual framework will be developed by the BSCCo Board and consulted upon.
- The contractual framework will include key contractual areas and principles. For example; BSC Agent Contracts would remain owned and maintained by BSCCo.
- These key principles must be of sufficient detail to allow Parties to make an informed decision as to whether or not the contract would provide sufficient safeguards.
- The contractual framework will be issued for consultation to Parties and the BSC Panel and any views considered by the BSCCo Board. The BSC Panel should also provide any necessary advice to the BSC Board on the drafting of the contract framework.

Authority oversight

As part of the Ofgem conclusions letter issued on 30 April 2012, four pre-requisite conditions were set out. These conditions are:

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

Under the P284 Alternative solution, before an initial Service Manager is appointed both the BSCCo Board and the Authority must be satisfied that the contract meets these pre-requisite criteria.

Both provisions of 'contractual framework' and 'Authority oversight' as outlined above will only apply to the initial BSC Services Manager contract. Any future procurement or contract change will undergo the same process applicable to any other BSC Agent.

Why not included this in the Proposed Modification?

The Proposer was asked by the Group whether or not they wished to include such provisions in the Proposed Modification. Whilst supportive of the principles, the Proposer was unsure if or how you could put such provisions into the Code. They did not wish to overcomplicate their Proposed solution with obligations, however sensible, which may not be workable or binding.

5 Impacts & Costs

As a change to the BSC governance arrangements, P284 Proposed and Alternative will be of interest to all BSC Parties and stakeholders. However, since it is an 'enabling' change to the BSC which does not in itself require a BSC Services Manager Contract to be put in place we do not anticipate that implementation of P284 will impact BSC Parties or other industry participants.

Our view of the likely impacts of P284 Proposed and Alternative are set out below.

Estimated implementation costs are £240 equating to one man day effort.

Likely impacts

Impact on BSC Agent/service provider contractual arrangements

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

Impact on BSC Parties and Party Agents

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

Impact on Transmission Company

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

Impact on ELEXON

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

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

Impact on BSC

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

6 Implementation

Implementation Approach

Implementation of P284 should have no direct impact on BSC Parties or other participants and only very minimal impact on ELEXON (to make the required Code changes). The Workgroup therefore recommends that both P284 Proposed and Alternative be implemented 1 Working Day following approval by the Authority.

7 Terms of Reference

The P284 Workgroup's Terms of Reference comprise the standard Terms of Reference for the [Governance Standing Modification Group](#) (GSMG), supplemented with the specific areas set out below.

P284 Workgroup Terms of Reference

Walk through the Proposer's solution.

Agree whether the Proposer's suggested legal text delivers their intended solution and, if not, agree any changes to the legal text which are needed to better deliver the Proposer's solution.

Assess whether the Proposer's solution (the 'Proposed Modification') better facilitates the achievement of the Applicable BSC Objectives compared with the current BSC provisions.

Assess whether there is any Alternative Modification within the scope of P284 which would better facilitate the Applicable BSC Objectives compared with the Proposed Modification.

Agree a recommended Implementation Date for the Proposed Modification and any Alternative Modification.

Conduct a 15 WD consultation on the above before submitting final recommendations to the Panel.

Consider the following areas specified by the Panel:

- What safeguards do the Industry need to be in place before the BSC Service Managers contract is signed;
- Consider why the legal drafting suggests removing the provisions relating to the Chief Executive of BSCCo and whether this is appropriate.
- Consider whether the reference in E4.2 to the 'BSC Services Manager' as a person appointed by BSCCo is appropriate.
- How does P284 actually achieves the 'unlocking' of BSCCo/ELEXON's vires?
- The relative merits of enabling or requiring the introduction of the contract model.

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P284 Background and DCC Interaction

Under the BSC Modification process changes to the Proposed solution can only be made if agreed by the Proposer. The Proposer explained that they were open to the Workgroup considering and developing the solution, using the suggested legal text as a straw man. They reiterated that P284 is an enabling change for the contract model and as such other potential models for ELEXON's diversification are out of scope of P284; as is the actual contract between BSCCo and the BSC Services manager.

National Grid, as the Proposer, also noted that this Modification should not add to or amend National Grid's role, obligations or activities, and that National Grid's Licence obligations and relationships with BSC Parties and BSCCo would remain the same under the provisions proposed by P284. Contracts with BSC Agent Service Providers will continue to be between BSCCo and the Service Providers, though New ELEXON would provide expertise in establishing the contracts as part of its role (e.g. procurement, contract negotiation).

The Group discussed the DCC licence award process and timescales, noting that this is a significant driver in ELEXON's aspirations to diversify. The key DCC process milestones are the submission of PQQ in the Qualification Stage in early August 2012, and the submission of response in the Proposal Stage in October 2012. It is critical for ELEXON (or New ELEXON, as the case may be) to have certainty around the provisions and outcome of P284 to enable it to participate effectively in the DCC Award Process, and to ensure that the outcome of P284 is known before the early August PQQ deadline (i.e. not on the day).

The Workgroup acknowledged that these timescales are a consideration for P284; to the extent that the ability to participate in the DCC award process will have significant impact on the potential benefits of P284. However, the Workgroup agreed that it was of paramount importance to ensure that any provisions introduced by P284 do not jeopardise BSC obligations or the protection of the BSC arrangements and BSC Parties. The Workgroup's assessment of P284 would absolutely not be compromised to meet DCC timescales at the expense of introducing risk to the security of the BSC or BSC Parties.

Board transparency

The Group questioned the transparency of the process of the BSCCo Board developing a contract for the provision of BSC services in parallel with the assessment and progression of P284. In order to get a better understanding of what the BSCCo Board intends to do, the Group requested that the Chairman of BSCCo Board present an overview of the process, including the proposed engagement with industry participants, to the BSC Panel.

A Workgroup member commented that Modification P281 would potentially deliver improvements to the transparency, composition and accountability of the BSCCo Board that would provide Parties with greater confidence in BSCCo Board decisions (under the current arrangements or the contract model). However, the Member noted that the P281 provisions would not have a practical effect until after the anticipated P281 implementation date of December 2012.

What safeguards need to be in place?

Workgroup members commented that Code provisions introduced to enable introduction of the contract model must be sufficiently rigorous and detailed to ensure that there is no possibility that a company (i.e. 'New ELEXON') can be set up that Parties have no control

over (via BSC obligations transferred through a service contract) and which can engage in other business that has the potential to expose Parties or the BSC arrangements to risk and/or without sufficient oversight.

The Workgroup acknowledged that the details of a contract between BSCCo and New ELEXON as the BSC Services Manager is outside the scope of P284, but agreed that such a contract should not take effect without an agreed Service Description setting out the obligations and activities of the BSC Services Manager role.

The creation and approval of such a Service Description is outside the scope of P284, but the Workgroup believed that provisions introduced by P284 must specify that the contract is based on a finalised and approved Service Description. The Proposer considered that this was a sensible measure, and agreed to incorporate it into the P284 Proposed solution.

A Workgroup member queried whether the introduction of a contract for a service provider to deliver the BSC Services Manager role would necessitate a procurement exercise, and therefore questioned whether New ELEXON could be immediately installed as BSC Services Manager. This point was considered under Issue 40, and the Ofgem representative confirmed that Ofgem had taken legal advice and the conclusion was that procurement is not obligatory because the contract relates to neither a utility nor a public service.

Optional or Mandatory outsourcing?

Under the P284 Proposed solution, it is optional for BSCCo to outsource some or all BSC services to a service provider (BSC Services Manager). A Workgroup member suggested an alternative would be to make it mandatory for BSCCo to outsource some or all of its services to the BSC Services Manager. The rationale for this alternative is that if it is considered that there are benefits associated with outsourcing then it should be mandatory for BSCCo to outsource to guarantee that the benefits will be realised. It was also felt that this would remove the necessity for further modifications work should opportunities other than the DCC arise in the future.

The Workgroup considered this suggestion, but noted that this approach would remove flexibility from the solution and would remove the possibility of BSCCo performing BSC services itself (i.e. bringing them back 'in-house') even if this was the best option in future. The Workgroup also believed that obligating BSCCo to outsource would create the risk of a situation arising where a monopoly service provider (as the only organisation willing and/or able to fulfil the BSC Services Manager role) could impose unreasonable demands on BSCCo, potentially to the detriment of the BSC arrangements and/or the BSC Parties that fund the arrangements.

The Workgroup therefore agreed that mandatory outsourcing should not be pursued as a P284 Alternative, but felt it was prudent to seek industry views on this matter as part of the Assessment Procedure industry consultation.

Legal Text

The Workgroup considered the suggested legal text drafting attached to the P284 Modification Proposal in order to confirm that it delivers the P284 Proposed solution and identify any other issues.

The Workgroup noted that the aim of the legal text is to enable BSCCo to outsource some or all of the BSC services currently delivered by BSCCo. This is accomplished by introducing the concept of a new BSC Agent, the BSC Services Manager, into the Code.

The Workgroup noted that the suggested legal text would be updated to reflect the Workgroup's agreement that the BSC Services Manager contract must be based on an approved Service Description relating to the role.

How does the Text unlock the vires?

BSCCo would still only be able to undertake activities specified in the BSC. However, the legal text allows ELEXON to 'unlock the vires' by creating the role of the BSC Services Manager and allowing BSCCo to outsource its obligations to this new BSC Agent. Whilst the obligations and restrictions on BSCCo would remain the same, the company who delivers the BSC Services Manager role (i.e. New ELEXON) would be allowed to pursue activities outside the BSC. This solution does not change the vires of the BSCCo, but enables the creation of a new entity to deliver BSC activities whilst allowing it to pursue non-BSC activities; this ensures that neither the BSC arrangements nor BSC Parties can be exposed to any risks or incur any costs as a result of ELEXON providing non-BSC services.

Why is the CEO removed?

The removal of the CEO in the legal text (Section E4.6) had raised some questions by both the Panel and the Group. The Workgroup noted that the rationale for the suggested removal in the draft legal text was that a much smaller BSCCo might not automatically need a Chief Executive, but there was nothing in the BSC to stop the appointment of a CEO. However, the Workgroup considered that if a BSCCo Chief Executive was appointed it would be appropriate for such appointment to continue to be governed by requirements in the Code. The Workgroup therefore agreed that the legal text should be updated to reflect that the BSC Board may choose whether to appoint a BSCCo Chief Executive, rather than the CEO role being removed entirely.

Is the BSC Services Manager a person?

The Workgroup considered that the reference in E4.2.1 to the 'BSC Services Manager' as a person appointed by BSCCo was a normal approach to legal drafting of this nature and did not require a person, rather than an organisation, to fulfil the role. The Workgroup therefore agreed that the wording should be retained.

Extension and Renewal

E4.3.1(a) of the suggested legal text specifies that *'BSCCo may, subject to and in accordance with this paragraph 4, at the expiry or termination of any BSC Services Manager Contract, extend or renew the contract or conduct a procurement to select and appoint a successor BSC Services Manager'*.

The Workgroup believed that there was a potential issue around the implied timing of processes due to the phrase 'at the expiry or termination' because action should be taken before actual termination of the contract. The Workgroup also believed that as worded the paragraph implies that the contract could be extended or renewed without any other action by BSCCo (e.g. putting the contract out to tender or at least investigating options other than the current incumbent of the BSC Services Manager role). The Workgroup did not believe this to be appropriate because it would not promote the realisation of benefits associated with outsourcing under the contract model such as efficiency and improvements driven by competition between incumbent and prospective service providers.

Initial views against the Applicable BSC Objectives

The initial majority view of the Workgroup was that the P284 Proposed Modification **would better facilitate achievement** of the Applicable BSC Objectives compared with the existing baseline.

The Workgroup unanimously agreed that the only Objective relevant to P284 is Objective (d), which relates to the promotion of efficiency in the implementation and administration of the BSC arrangements.

The **majority** of the Workgroup identified the following **benefits against Objective (d)**, though some members felt the benefits to be marginal:

- Delivery of clear accountability of BSCCo;
- Potential future cost savings and benefits to Parties if provisions of BSC services is outsourced and subject to periodic competitive tender;
- Outsourcing under the contract model could increase efficiency while maintaining protection of the BSC Arrangements; and
- Increased flexibility in the delivery of the BSC arrangements.

The **minority** of the Workgroup identified either **no benefit or detrimental impact against Objective (d)**:

- The current standard of service delivered under the current arrangements is satisfactory. Any identified benefits are uncertain to be achieved and there are a number of risks associated with the change. As such the risks associated with the proposal outweigh the benefits against Objective (d); and
- Competition between possible service providers has the potential to improve efficiency, but ELEXON is the only competitor at present, and division of resources between BSCCo and New ELEXON may not be beneficial - therefore overall neutral or slightly detrimental to achievement of Objective (d).

The P284 Workgroup discussed responses to the P284 consultation in order to reach their recommendation and a view on whether or not any alternative modifications were required. The discussions of the Group are summarised below.

Safeguards and industry protection

The Group noted that the majority of concerns raised by industry respondents involved ensuring that BSC Parties were protected from any diversification of ELEXON. This included ensuring that Parties did not fund any additional work that the new BSC Services Manager might undertake, and that the roles and functions of BSCCo would still be delivered to a sufficient quality.

The Group echoed the concerns raised in the responses and stated that whilst it was supportive of ELEXON doing more and diversifying they wanted to safeguard Parties from any financial risk. Especially if “new ELEXON” went ‘belly up’. The Group agreed they did not have any issues with the Modification; it was what would happen once the Modification was in place which was the concern.

In order to mitigate such concerns the Panel had asked the group to consider what safeguards should be put in place to ensure any contract signed with the BSC Services manager would offer the protection and security required by the industry. Previously the Group had agreed that the requirement to develop a Service Description before any contract was signed should be included as part of the Modification. Having reviewed the consultation response the Group considered what further safeguards should be put in place. They concluded that the Authority should have oversight off the contract to ensure it met the criteria detailed in its open letter, and that a contractual framework should be consulted upon.

Contractual Framework

The Group believed that it was essential for the industry to see elements of the contract so that they could gain a better understanding of how it would work and how it would protect Parties. It was noted that it would not be possible to share all of the contract details, but that the principles of the contract should be made available.

The Group discussed how best to make this happen and agreed that a contractual framework should be shared with the industry. The contractual framework would include Heads of Terms (key principles) on which the contract would be based (e.g. BSC Agent Contracts would remain owned and maintained by BSCCo). These key principles should be of sufficient detail to allow Parties to make an informed decision as to whether or not the contract would provide sufficient safeguards. The Group suggested that such a framework should include things like:

- How services are to be maintained;
- What incentive is there for improvement/efficiency
- How could the BSC Service Manager be removed if it performed unsatisfactorily
- What would happen if the role were ever bought back into BSCCo

The Group debated if the Panel should be consulted on the contractual framework, or if they should have approval of it. The point was raised that to have the Board’s contractual framework agreed by a third Party was not normal business practice and that it may create added complexity when trying to put a contract together. The Group however felt

that this circumstance was not an ordinary business situation, and as such there was no reason why the Panel should not approve the contractual framework. It was noted by a Group member that the situation would be similar to that of the panel signing off the BSC strategy before the Board puts it in place. Another Group member commented that if the Panel and Parties had oversight of the contract framework, alongside Ofgem, that this should provide enough information and comfort that any contract would provide the proper security for Parties.

The Group debated the issue, but concluded that if the Authority were to have an overview of the contract framework, and that any contract would be subject to the Authority confirming it met the 4 criteria set out in its open letter (see below) then it should be sufficient that the Panel are consulted. The Group did also note that the Panel should provide any necessary advice and support to the Board on the contractual framework.

Authority Confirmation

Whilst the Group were discussing what they would like to see in a contract framework, that would provide security to the industry, the four Ofgem pre-requisite conditions (as stated in the conclusions letter issued on 30 April 2012) were raised.

The Group believed that if the contract met these criteria, and that both the Board and the Authority were satisfied that was the case, then that should provide the assurance the industry are looking for.

The Group believed that both Authority confirmation and a contractual framework consultation should form part of the P284 solution.

A question was raised as to why the BSC Services Manager should be treated any differently from other BSC Agents and if such provisions were necessary. The Group agreed that it should be treated differently in its initial incarnation as it had the potential to have a large impact on the industry and all implications of this new BSC Agent should be thought through. The Group also cited examples where they felt previous contracts across the industry had been rushed into and that we should learn lessons from these rather than repeating the mistakes. The Group did agree that although stricter requirements were needed at the initial set up of the BSC Services Manager, once it was in place it should be treated the same as any other BSC Agent.

Any other Alternatives?

The Group had previously discussed a potential Alternative solution which would have made outsourcing some or all of BSCCo function mandatory rather than optional. When the Group discussed this at the first meeting, the majority felt that it was not a sensible thing to do as it removed flexibility in BSCCo bringing such functions back 'in house'. It also might create the situation where a monopoly service provider could impose unreasonable demands on BSCCo. Ultimately the Group did not believe this solution should be progressed, but decided to ask a question on this potential alternative as part of the consultation. Responses to the consultation supported the Groups views with the large majority supporting optionality over mandatory for the reasons already stated.

The Group believed that an Alternative solution should be put forward including the Authority confirmation and a contractual framework consultation as discussed above.

Implementation Approach

The Group debated whether or not 1 working day was sufficient enough time for implementation. Group members believed that it would require more time than just 1 day to put in place the necessary safeguards before a contract was signed.

The Group were reminded that whilst this was a valid concern, the P284 solution would ensure that such safeguards were in place before a contract is signed. P284 is an enabling change and the go-live date of P284 is not the go-live date of any new contract. P284 enables a contract to be created, but stipulates before any contract is signed the criteria, in the Proposed or Alternative solution, must be met. Therefore 1 working day was a reasonable timeframe to mandate that certain activities must take place before a contract is signed.

As noted above the Group had considered the impact a mandatory outsourcing would have on the applicable objectives compared to an optional outsourcing as proposed. Whilst the Group agreed that a mandatory requirement would be detrimental to the objectives, they acknowledged that it was difficult to argue against the Applicable Objectives on an enabling change which may never take place. The Group acknowledged the argument that there was benefit in merely having the option, but reiterated that they would have like to have seen a coherent package of work progressing ELEXONs diversification.

Proposed vs. current arrangements

The majority view of the Workgroup is that P284 Proposed Modification **would not better facilitate achievement** of the Applicable BSC Objectives compared with the existing baseline.

The **majority** of the Workgroup identified either **no benefit or detrimental impact against Objective (d)**:

- The current standard of service delivered under the current arrangements is satisfactory. Any identified benefits are uncertain to be achieved and there are a number of risks associated with the change. As such the risks associated with the proposal outweigh the benefits against Objective (d); and
- Competition between possible service providers has the potential to improve efficiency, but ELEXON is the only competitor at present, and division of resources between BSCCo and New ELEXON may not be beneficial - therefore overall neutral or slightly detrimental to achievement of Objective (d)

A minority of the Group also believed that P284 Proposed would be **detrimental impact against Objective (c)**:

- If the company undertaking the role of BSC Services Manager also undertook work in another field which later became part of the BSC. The BSC Services Manager would have either an unfair advantage in any procurement of the new function under the BSC, or could make unreasonable demands on BSC if they were the only party able to undertake the role.

The **minority** of the Workgroup identified the following **benefits against Objective (d)**, though some members felt the benefits to be marginal:

- Delivery of clear accountability of BSCCo;
- Potential future cost savings and benefits to Parties if provisions of BSC services is outsourced and subject to periodic competitive tender;
- Outsourcing under the contract model could increase efficiency while maintaining protection of the BSC Arrangements; and
- Increased flexibility in the delivery of the BSC arrangements.

Alternative vs. current arrangements

Overall the Group believed that the greater oversight and industry involvement mitigated a lot of their concerns, and noted that if the provisions of P284 were used (i.e. a contract signed with a BSC Services Manager) then there might be some marginal benefit against objective (d). However, overall the majority view of the Workgroup is that P284 Alternative Modification **would not better facilitate achievement** of the Applicable BSC Objectives compared with the existing baseline.

The **majority** of the Workgroup believed that the **Alternative Modification was neutral** against the Applicable Objectives as placing an enabling 'line' into the BSC does not make a difference against the current arrangements until it is enabled. Furthermore, if a contract is put in place with a BSC Services Manager after following the process in the Alternative Solution, then BSC Parties interests will be secure and they will not notice a difference in BSC functions. If there is no difference it is simply maintain the status quo which does not better facilitate the Objectives.

The **minority** of the Workgroup believed there to be a **detrimental impact against Objectives (c) and (d)**:

- The current standard of service delivered under the current arrangements is satisfactory. Any identified benefits are uncertain to be achieved and there are a number of risks associated with the change. As such the risks associated with the proposal outweigh the benefits against Objective (d); and
- Competition between possible service providers has the potential to improve efficiency, but ELEXON is the only competitor at present, and division of resources between BSCCo and New ELEXON may not be beneficial - therefore overall neutral or slightly detrimental to achievement of Objective (d)
- If the company undertaking the role of BSC Services Manager also undertook work in another field which later became part of the BSC. The BSC Services Manager would have either an unfair advantage in any procurement of the new function under the BSC, or could make unreasonable demands on BSC if they were the only party able to undertake the role

The **minority** of the Workgroup identified the following **benefits against Objective (d)**, though some members felt the benefits to be marginal:

- Delivery of clear accountability of BSCCo;
- Potential future cost savings and benefits to Parties if provisions of BSC services is outsourced and subject to periodic competitive tender;
- Outsourcing under the contract model could increase efficiency while maintaining protection of the BSC Arrangements; and
- Increased flexibility in the delivery of the BSC arrangements.

Proposed vs. Alternative

The Group **unanimously** agrees that the **Alternative is better** than the Proposed.

The Group believe that the additional safeguards and transparency placed into the Alternative solution reduces the risks of an unfavourable contract being created and better ensures BSC Parties do not face risk. However, it should be noted that some Workgroup Members characterised this as a choice between two options which do not better facilitate the applicable objectives. Therefore, it was felt that the Alternative was the “least worst” of the two solutions developed.

11 Recommendations

The P284 Workgroup invites the Panel to:

- AGREE an initial recommendation that Proposed Modification P284 should not be made;
- AGREE an initial recommendation that Alternative Modification P284 should not be made;
- AGREE an initial Implementation Date for both the Proposed and Alternative Modification of 1 Working Day following an Authority decision;
- AGREE the draft legal text for P284 Proposed Modification;
- AGREE the draft legal text for P284 Alternative Modification;
- AGREE that Modification Proposal P284 be submitted to the Report Phase; and
- AGREE that ELEXON should issue P284 draft Modification Report for consultation and submit results to the Panel to consider at its meeting on 26 July 2012.

12 Further Information

More information is available in:

Attachment **A**: Legal Text Proposed

Attachment **B**: Legal Text Alternative

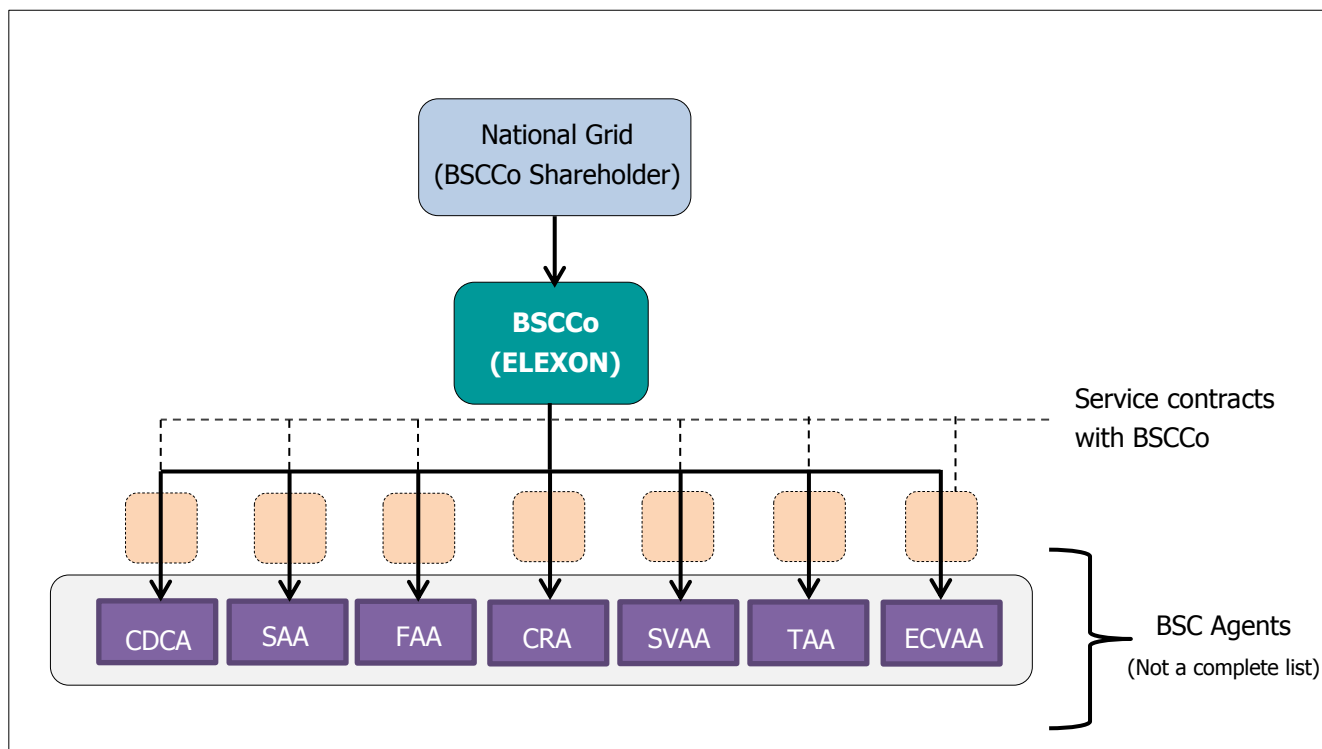
Other documentation relating to P284 can be found on the [P284 page](#) of the ELEXON website. Consultation responses are available from this webpage.

Appendix 1: What is the 'Contract Model'?

Existing Structure

BSCCo is a wholly owned subsidiary of the National Grid plc, and are tasked with delivering the obligations and functions contained within the BSC. Not all functions of the BSC are delivered 'in house' by BSCCo and some services are delivered by separate companies, known as BSC Agents. BSCCo own and maintain the contracts between BSCCo and the BSC Agent.

Current Code provisions state that the BSCCo cannot undertake non-BSC activity. Section X of the Code defines ELEXON to be the BSCCo. This means that ELEXON cannot undertake non-BSC activity.



The Contract Model

Under the contract model (illustrated below) a new BSC Agent called the 'BSC Services Manager' would be created. The BSC Services Manager would be obligated to perform some or all of the functions required of BSCCo. It is envisaged that the BSC Services Manager role would be provided by a new service provider, which in this appendix and throughout this document is referred to as 'New ELEXON'.

The obligations to complete BSCCo functions would be placed on New ELEXON via a service contract between New ELEXON and BSCCo (in the same way that BSC obligations are placed on other BSC Agents service providers via their service contracts) based on a BSC Services Manager Service Description.

As a contracted Service Provider, New ELEXON would be able to pursue and perform activities outside the BSC (which it is subject to solely due to its contract with BSCCo). The intention is for the necessary staff to transfer from ELEON to New ELEXON to deliver he required obligations. Transfer of ELEXON staff to New ELEXON would not be done under

any process introduced by P284 or otherwise codified but would proceed as a matter of course under normal law outside the BSC.

BSCCo would be able to appoint another service provider instead of New ELEXON or could choose not to appoint a service provider and discharge its BSC obligations itself, as it sees fit.

