

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

This Modification seeks to enable ELEXON to participate in the process to appoint the Retail Energy Code (REC) administrator which is expected to occur in the near future.

This Report Phase Consultation for P365 closes:

5pm on Tuesday, 27 February 2018.

The Panel may not be able to consider late responses.



The BSC Panel initially recommends **approval** of P365

This Modification is expected to impact:

- Trading Parties

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About This Document

This is the P365 Draft Modification Report, which ELEXON is issuing for industry consultation on the BSC Panel's behalf. It contains the Panel's provisional recommendations on P365. The Panel will consider all consultation responses at its meeting on 8 March 2018, when it will agree a final recommendation to the Authority on whether or not the change should be made.

There are three parts to this document:

- This is the main document. It provides details of the solution, impacts, costs, benefits/drawbacks and proposed implementation approach.
- Attachment A contains the draft redlined changes to the BSC for P365.
- Attachment B contains the specific questions on which the Panel seeks your views. Please use this form to provide your responses to these questions, and to record any further views/comments you wish the Panel to consider.

P365
Report Phase Consultation

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Why Change?

Ofgem has indicated that in the near future a competitive award process will be undertaken to appoint a body to administer the new Retail Energy Code (REC).

Section C of the BSC currently precludes ELEXON from undertaking any business or activity which is not prescribed and provided for in the BSC. These restrictions prevent ELEXON from participating in any REC administrator appointment process.

Solution

This Modification proposes to amend the BSC to enable ELEXON to tender for the REC administrator role, should the ELEXON Board decide to.

Impacts & Costs

The central implementation cost to deliver the solution to P365 is £240. This is derived from one working day of implementation effort to deliver the document only changes as a result of the P365 solution.

Bid costs

P365 will impact the Trading Parties that fund BSC Costs. Trading Parties will initially fund ELEXON's bid costs. The funding will take the form of a grant or loan provided by the Balancing and Settlement Code Company (BSCCo) to the REC Administrative Services Company (RECASCo) (see page 5), on such terms as the ELEXON Board may approve, and will not exceed the sum of £100k.

In the event that ELEXON is unsuccessful, bid costs will not be repaid to Trading Parties. However, if successful, ELEXON's bid costs will be repaid. Furthermore, securing the REC administrator role will enable certain existing ELEXON overheads to be defrayed, reducing the ongoing charges paid by Trading Parties.

Implementation

P365 is proposed for implementation in an ad hoc document only release, 5 Working Days following determination by the Authority.

Recommendation

The BSC Panel unanimously believes that the P365 Proposed Modification better facilitates Applicable BSC Objective (d). The Panel's initial unanimous recommendation is that this Proposed Modification should be **approved**.

Retail Energy Code

On 21 September 2017, Ofgem published their consultation '[Delivering Faster and More Reliable Switching: proposed new switching arrangements](#)'. The consultation proposed that the current code governance framework for switching is fragmented, with many processes and central systems operating differently for the electricity and gas markets.

Under the current code governance framework, switching arrangements and related central systems changes are primarily governed by:

- the Master Registration Agreement (MRA) for electricity; and
- the Supply Point Administration Agreement (SPAA) and the Uniform Network Code (UNC) for gas.

There are also some supporting elements of the switching process that are contained in other codes such as the BSC and the Distribution Connection Use of System Agreement (DCUSA).

Ofgem noted the opportunity that the switching programme provided to consolidate these into a more coherent and logical arrangement, and to form the new REC.

What is the issue?

Ofgem has indicated that in the near future a competitive award process will be undertaken to appoint a body to administer the new REC.

Section C of the BSC currently precludes ELEXON from undertaking any business or activity which is not prescribed and provided for in the BSC. These restrictions prevent ELEXON from participating in any REC administrator appointment process.

If not addressed these restrictions will:

- Limit the pool of experienced code administrators that are able to participate in the competitive process;
- Limit the full range of commercial/operating models from being evaluated;
- Increase the potential for further fragmentation in the provision of code administration services; and
- Limit the opportunity for ELEXON to further defray its costs to Trading Parties (it is noted that this final point is subject to successfully securing the REC administrator role).

Proposed solution

[P365 'Enabling ELEXON to tender for the Retail Energy Code \(REC\)'](#) was raised by Hudson Energy on 19 January 2018.

P365 seeks to enable 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 will be done via a separate not for profit subsidiary (RECASCo) which will be funded by ELEXON (through BSC Parties).

ELEXON operates on a not for profit basis, therefore if the ELEXON Board determines a bid should be submitted, the costs incurred in submitting a bid will be borne by BSC Parties. Any bid costs will be capped at £100k.

The proposed changes ensure that ELEXON is ring-fenced from any enduring operational costs and risks associated with performing the role of REC administrator.

The changes proposed by P365 reflect the legal precedent introduced by approved Modification [P330 'Allowing ELEXON to tender for the Uniform Network Code Gas Performance Assurance Administrator \(PAFA\) role'](#), which enabled ELEXON to tender for the PAFA role.

Other non-BSC work administered by ELEXON

ELEXON has taken on non-BSC roles in recent years, namely the administration of the Warm Homes Discount Scheme and as the Settlement Services Provider for the Electricity Market Reform (EMR). Participation in both of these government schemes resulted from 'directions' from the Secretary of State, rather than via a Modification process. It should be noted that subsequent to the direction, the operation of the Warm Home Discount Scheme was secured through competitive tender.

Approved Modification P330

More recently, the ability for ELEXON to seek to become the Gas Performance Assurance Framework Administrator (PAFA) was the subject of Modification Proposal [P330 'Allowing ELEXON to tender for the Uniform Network Code Gas Performance Assurance Administrator \(PAFA\) role'](#) which was approved by Ofgem on 2 June 2016.

The proposed solution to this Modification Proposal repeats 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.

Proposed solution

P365 proposes to use [BSC legal text developed under P330](#), but modified to reflect the REC administrator role, in this Modification Proposal.

The proposed solution to this Modification will require changes to the following BSC sections:

- Section C: BSCCo and its Subsidiaries, Annex C-1: Permissible Activities; and
- Section X: Definitions and Interpretation, Annex X-1: General Glossary.

At high level, the changes to Annex C-1 will:

- Establish REC administration as a Permissible Activity and establish the appropriate legal entity RECASCo;
- Detail the arrangements under which 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;
- Detail the arrangements for the repayment of any loan and what will happen in the event that RECASCo is unsuccessful in its bid; and
- Confirm the shareholder arrangements with RECASCo and its relationship with BSCCo.

At high level, the changes to Annex-X1 will include, but not be limited to, the following definitions:

- Aggregate RECAS (REC Administrative Services) Tender Costs;
- RECAS Tender;
- RECAS Tender Costs;
- RECAS Tender Recovery Period;
- RECASCo;
- RECASCo Board;
- RECASCo Shareholder; and
- RECAS Role.

Estimated central implementation costs of P365

The central implementation cost to deliver the solution to P365 is £240. This is derived from one working day of implementation effort to deliver the document only changes as a result of the P365 solution.

Indicative industry costs of P365

We are not anticipating any industry costs for the implementation of this Modification.

This Modification Proposal will impact the Trading Parties that fund BSC Costs. Trading Parties will initially fund ELEXON's bid costs. In the event that ELEXON is unsuccessful, bid costs will not be repaid to Trading Parties.

However, if successful, ELEXON's bid costs will be repaid. Furthermore, securing the REC administrator role will enable certain existing ELEXON overheads to be defrayed, reducing the ongoing charges paid by Trading Parties.

P365 impacts

Impact on BSC Parties and Party Agents

Party/Party Agent	Potential Impact
Trading Party	<p>This Modification Proposal will impact the Trading Parties that fund BSC Costs. Trading Parties will initially fund ELEXON's bid costs. In the event that ELEXON is unsuccessful, bid costs will not be repaid to Trading Parties.</p> <p>However, if successful, ELEXON's bid costs will be repaid. Furthermore, securing the REC administrator role will enable certain existing ELEXON overheads to be defrayed, reducing the ongoing charges paid by Trading Parties.</p>

Impact on Transmission Company

None identified.

Impact on BSCCo

Area of ELEXON	Potential Impact
None identified.	

Impact on BSC Systems and processes

BSC System/Process	Potential Impact
None identified.	

Impact on BSC Agent/service provider contractual arrangements

BSC Agent/service provider contract	Potential Impact
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None identified.

Impact on Code

Code Section	Potential Impact
Section C	Redlining amendments as proposed by the solution to this Modification Proposal.
Section X	

Impact on a Significant Code Review (SCR) or other significant industry change projects

We do not believe this Modification will impact any open SCRs.

The Proposer requests that this Modification be exempt from the SCR process.

Ofgem was notified that this Modification was to be raised on 19 January 2018 and that it was ELEXON and the Proposer's view that this Modification should be a SCR Exempt Modification Proposal.

Ofgem confirmed on 2 February 2018 that this is a SCR Exempt Modification.

Impact on Consumers

ELEXON agrees with the Proposer's view that the solution to this Modification does not have any direct impacts on consumers.

Impact on the Environment

ELEXON agrees with the Proposer's view that the solution to this Modification does not have any direct impacts on the environment.

5 Implementation

Recommended Implementation Date

The Proposer recommends an Implementation Date for P365 of 5 Working Days after a determination by the Authority.

6 Proposer's Conclusions

Applicable BSC Objectives

The impact of the P365 solution on the relevant BSC Objectives is displayed in the table below:

Impact of the Modification on the Relevant BSC Objectives	
Relevant Objective	Identified impact
a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence	Neutral
(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System	Neutral
(c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity	Neutral
(d) Promoting efficiency in the implementation of the balancing and settlement arrangements	Positive
(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]	Neutral
(f) Implementing and administering the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation	Neutral
(g) Compliance with the Transmission Losses Principle	Neutral

In the view of the Proposer and as agreed by ELEXON, this Modification will better facilitate BSC Objective (d). The Proposer believes that this Modification Proposal P365 will better facilitate Applicable BSC Objective (d) as:

- Sharing the fixed costs of ELEXON across the REC service allows costs to the BSC Parties to be defrayed; and
- Participating in the process for the appointment of the REC administrator role will provide a view to BSC Parties of the competitiveness of ELEXON in delivering their existing obligations and be used to consider efficiencies.

These were the same reasons cited by the Proposer of P330. Due to the parallels between this Modification Proposal and P330, it is worth highlighting the reasons for Ofgem's decision to approval P330. In its [decision letter](#), Ofgem stated that it had previously considered the case for allowing ELEXON to diversify its activities.

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.

In [accepting P284](#) Ofgem allowed for these criteria to be met by establishing, subject to a decision of the ELEXON Board, a 'contract model', whereby ELEXON would become distinct from, and provide services under contract to, the BSCCo. However, Ofgem also suggested that there might be other, more proportionate, means of meeting the criteria where the extent of risk was more limited. 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.

Ofgem stated that they agreed with the BSC Panel that P330 should be assessed against relevant objective d) only, and that there will be a neutral impact upon the other BSC objectives. Ofgem considered that the first three of the criteria set out above were captured under relevant objective d), whereas the fourth extends beyond the BSC objectives and is suitably considered as part of Ofgem's wider statutory duties.

Regarding this final point and Ofgem's wider statutory duties they stated that whilst the benefits of ELEXON's participation in the gas PAFA tender may not directly be of consideration for the BSC Objectives, Ofgem considers that the existence of additional bidders should improve the extent and quality of the competition for that contract and is therefore consistent with Ofgem's wider statutory duties.

Self-Governance

ELEXON agrees with the Proposer's view that this Modification Proposal should not be treated as Self-Governance, on the basis that implementing the solution to this change will amend the Code's governance procedure.



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.

7 Panel's Initial Discussions

The P365 Initial Written Assessment was presented at the February Panel meeting ([Panel 275/054](#)).

The Consumer Panel representative queried the anticipated costs of the bid. ELEXON confirmed that the cost of the RECAS Tender loan or grant is capped at £100k. Further, the expenditure is ring-fenced, to ensure that internal costs are captured within the amount.

A Panel member noted that the BSC Panel has been supportive of the concept of Code Consolidation and of ELEXON tendering for the additional role; and therefore supported the Modification. The same member noted the importance of ensuring appropriate controls over the tender costs, but was confident in ELEXON and the Board's ability to do this. The member went on to note that it makes sense to widen the pool of those tendering for the REC role, to encourage competition and the evaluation of a range of different operating models in the process.

Another Panel member highlighted that the Modification provided the opportunity for ELEXON to engage with a more diverse range of work, to support the development and retention of its employees.

The BSC Panel did not request that any further non-standard questions be added to the Report Phase Consultation for P365. The Panel unanimously agreed with all recommendations.

Ahead of the Panel meeting, Ofgem confirmed that P365 is not implicated in any on-going SCR and as such is exempt from the SCR process. The Ofgem representative did not provide any further comments in the Panel meeting.

Report Phase Consultation Questions

Do you agree with the Panel's initial unanimous recommendation that P365 should be approved?

Do you agree with the Panel that the redlined changes to the BSC deliver the intention of P365?

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

Do you agree with the Panel's initial view that P365 should not be treated as a Self-Governance Modification?

Do you have any further comments on P365?

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

8 Recommendations

The BSC Panel initially recommends to the Authority:

- That P365 should be **approved**;
- An Implementation Date for P365 of 5 Working Days following a determination by the Authority;
- The draft BSC legal text for P365; and
- That P365 should not be treated as a Self-Governance Modification.

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
4	Delivering Faster and More Reliable Switching: proposed new switching arrangements page on the Ofgem website	https://www.ofgem.gov.uk/publications-and-updates/delivering-faster-and-more-reliable-switching-proposed-new-switching-arrangements
5	P365 page on the ELEXON website	https://www.elexon.co.uk/mod-proposal/p365/
5, 10	P330 page on the ELEXON website	https://www.elexon.co.uk/mod-proposal/p330/
10, 11	P284 page of the ELEXON website	https://www.elexon.co.uk/mod-proposal/p284/
12	BSC Panel Meeting 275 page of the ELEXON website	https://www.elexon.co.uk/meeting/panel-meeting-275/