

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

---

Workgroup Meeting 1

18 November 2019

**ELEXON**

# Health & Safety

## In case of an emergency

An alarm will sound to alert you. The alarm is tested for fifteen seconds every Wednesday at 9.20am

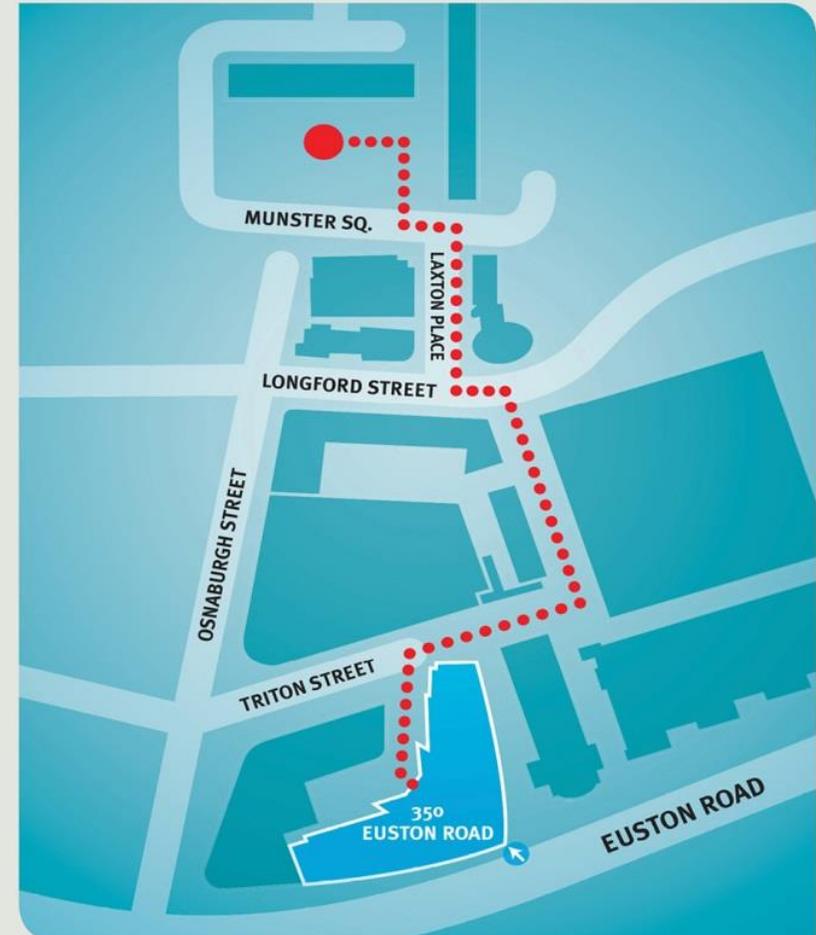
## Evacuating 350 Euston Road

- If you discover a fire, operate one of the fire alarms next to the four emergency exits.
- Please do not tackle a fire yourself.
- If you hear the alarm, please leave the building immediately.
- Evacuate by the nearest signposted fire exit and walk to the assembly point.
- Please remain with a member of ELEXON staff and await further instructions from a Fire Warden.
- For visitors unable to use stairs, a Fire Warden will guide you to a refuge point and let the fire brigade know where you are.

## When evacuating please remember

- Do not use the lifts.
- Do not re-enter the building until the all clear has been given by the Fire Warden or ground floor security.

**Our team on reception is here to help you, if you have any questions, please do ask them.**

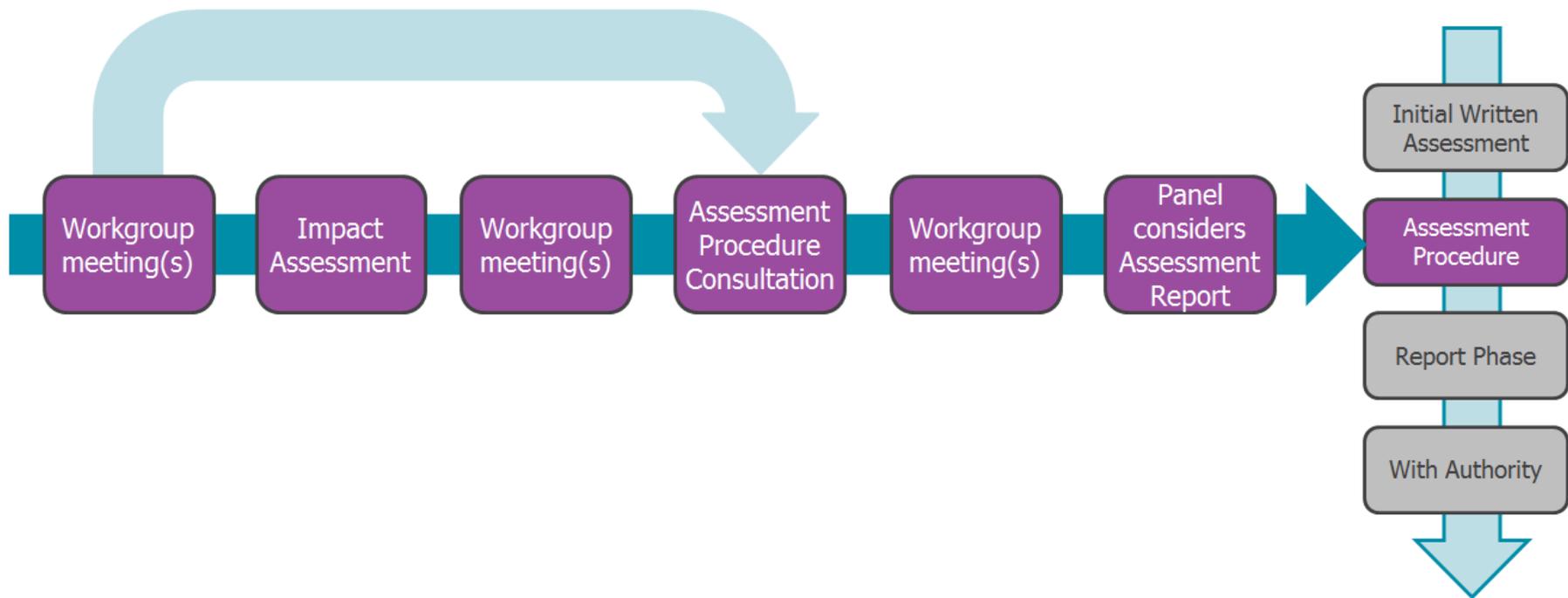


# Meeting Agenda

Agenda item	Lead
<b>1. Welcome and meeting objectives</b>	Lawrence Jones (Chair)
<b>2. Terms of reference and timetable</b>	Ivar Macsween (Lead Analyst)
<b>3. Overview of P390</b>	Terry Carr (Proposer)
<b>4. Background to P330 and P365</b>	Ivar Macsween
<b>5. Initial discussions on P390</b> <ul style="list-style-type: none"><li>• <b>Development of principles for P390</b></li><li>• <b>Consideration of bidding and tendering processes</b></li></ul>	Workgroup
<b>6. P390 solution development</b>	Workgroup
<b>7. Areas for consideration</b>	Workgroup
<b>8. Next steps</b>	Ivar Macsween
<b>9. Meeting close</b>	Lawrence Jones

# Meeting Objectives

- Consideration of P390 and Terms of Reference; and
- Agree a solution that can be consulted on.





**Any comments or  
questions?**



# Overview of P390

Terry Carr

# P390

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

The E.ON logo is rendered in a bold, red, lowercase sans-serif font. The 'e' is stylized with a thick stroke and a small dot. The 'o' is also thick and rounded. The 'n' is slightly slanted to the right. The logo is positioned in the lower right quadrant of the slide.

# Issues

- The BSC restricts the activities of ELEXON and in the absence of a specific Modification any additional activities cannot be pursued by ELEXON (even when those activities would be of benefit to BSC Parties, industry generally and the consumer)
- 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.
- They can also result in ELEXON being unable to pursue an opportunity within a required timeframe.

# Proposed Solution

- A framework that mirrors the protections incorporated within the previously approved Modifications (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.
- Any new activity would have to satisfy the existing conditions (which were established under approved Modification P330 and also repeated in approved Modification P365), as well as additional safeguards.
- It is proposed that the ELEXON Board would be able to make decisions on which opportunities to pursue, subject to all of these conditions and 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.

# Proposer's views against the Applicable BSC Objectives

## Objective (d):

- sharing the fixed costs of ELEXON across other activities allows costs to the BSC Parties to be defrayed;
- 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;
- 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.



# **Background to Previous Vires Modifications P330 and P365**

---

## P390: Background to P330 and P365

---

- Previous Modifications P330 and P365 extended the vires of ELEXON to be able to bid for the Gas Performance Assurance Framework Administrator and the Retail Energy Code Manager.
- 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 enabled ELEXON to bid to become the Gas Performance Assurance Framework Administrator (PAFA).
- 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).
- Both P330 and P365 approved by Ofgem.



# Terms of Reference

---

## P390 Workgroup Terms of Reference *(1 of 2)*

---

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

---

## P390 Workgroup Terms of Reference *(2 of 2)*

---

- e) Will the proposed solution have an effect on consumers?
- f) What changes are needed to BSC documents, systems and processes to support P390 and what are the related costs and lead times?
- g) Are there any Alternative Modifications?
- h) Should P390 be progressed as a Self-Governance Modification?
- i) Does this Modification Proposal better facilitate the Applicable BSC Objectives than the current baseline?



# **Workgroup discussions on P390**

---

## P390: Principles for any extension of vires

---

- For discussion: Under what principles would it be appropriate to extend ELEXON's vires?
- For example: in principle, any extension of ELEXON's vires should not be detrimental to its standards of service for existing activities.
- Are there any principles for determining what would be inappropriate?

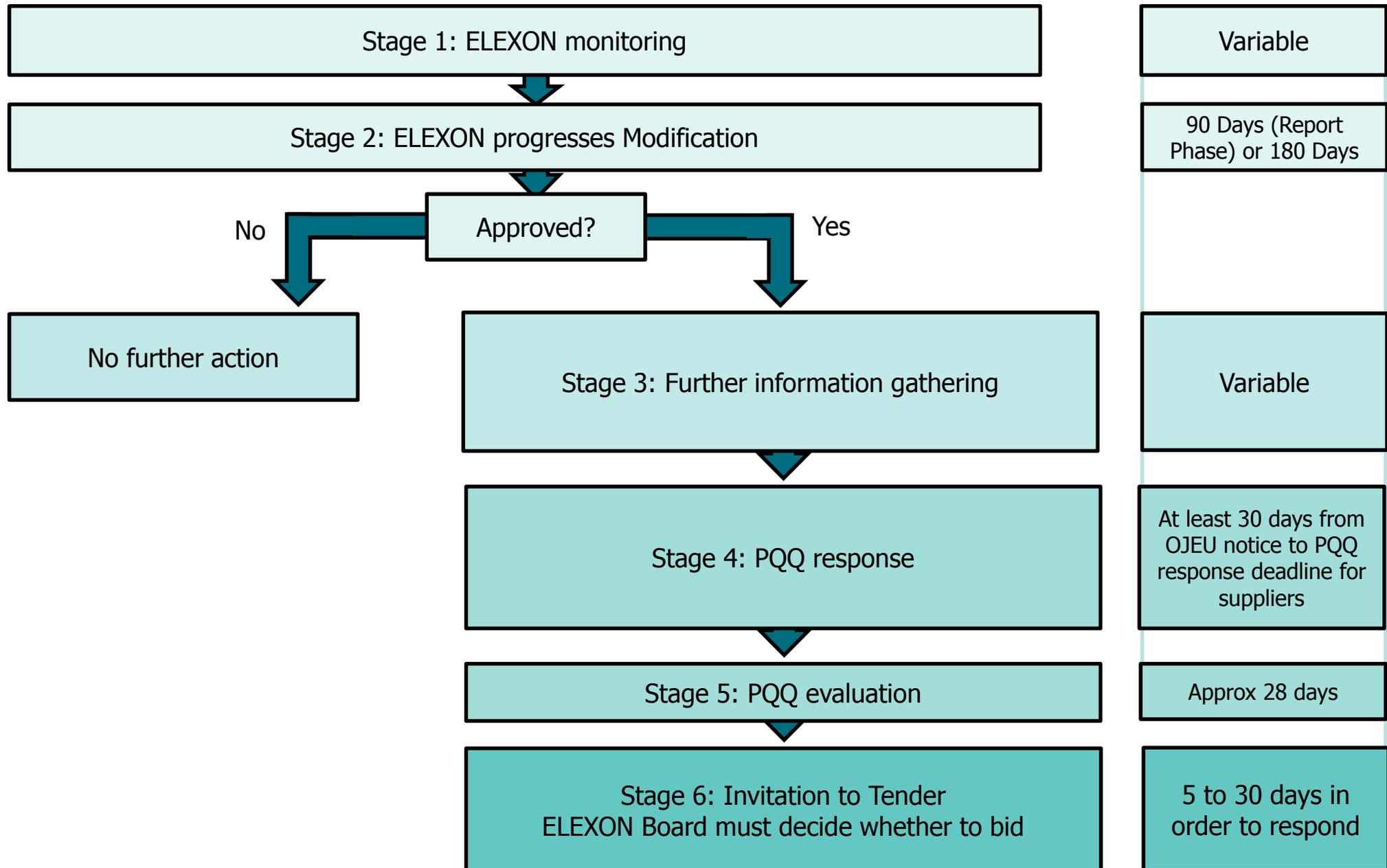
# P390: Example bidding process

Stage	Event	Description	Information Available	Associated Timescales
1.	Possible new activity is publicised	For example, a contracting authority may announce or publish a consultation on the proposed design of a new activity, service or role.	<p>Limited information:</p> <ul style="list-style-type: none"> <li>There may be a role which ELEXON could be interested in undertaking</li> <li>Information on 'industry space' in which role will be</li> </ul> <p>No information on scope or design of role, interactions/interfaces, risks, specification, contracts.</p>	<p>Variable. This will depend on:</p> <ol style="list-style-type: none"> <li>Nature of the role</li> <li>How the role is being established (i.e. public authorities will consult much more widely than private organisations so roles that derive from the public sector will have a longer lead in time)</li> </ol>
2.	Modification progressed	<p>A BSC Modification is needed to allow ELEXON to bid for a new non-BSC activity.</p> <p>All such Modifications require Authority approval.</p>	<p>Limited information.</p> <p>i.e. previous Modifications (P330 / P365) have been approved on the basis that there is some alignment between the proposed role and ELEXON's current role and that ELEXON's participation in the tender would be positive for industry. Explicitly acknowledged that final decision on whether to submit a bid was for the ELEXON board.</p>	<p>90 days if straight to Report Phase</p> <p>180 days if Assessment Procedure required</p>
3.	Possible further information becomes available	Some contracting authorities will hold supplier information events. These are to help encourage interest in the market and to test the market on points which may be an issue for potential suppliers. This is non-mandatory and is entirely in the contracting authority's discretion.	Further high level information on the design of the role.	Variable

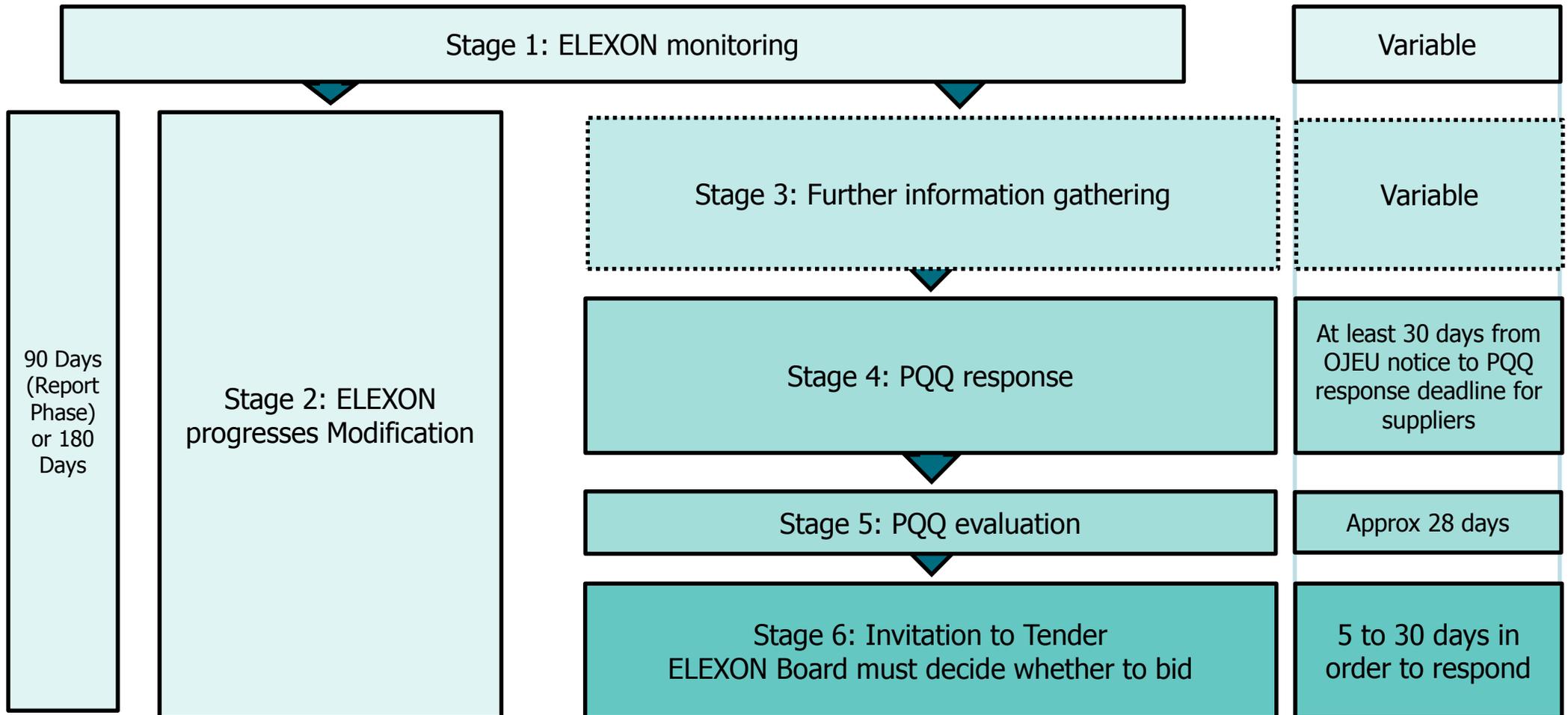
# P390: Example bidding process

Stage	Event	Description	Information Available	Associated Timescales
4.	Contract Notice published and Pre Qualification Questionnaire made available to bidders	<p>For public procurements, the contracting authority must openly advertise the opportunity. This is done by publishing a notice in the Official Journal of the EU (OJEU).</p> <p>Entities that wish to bid will complete a Pre-Qualification Questionnaire. This enables the contracting authority to assess which suppliers have the capability to deliver the services (e.g. from a technical/financial standing perspective) and should therefore be invited to tender.</p>	<p>The OJEU notice will provide some high level detail on the scope of the services, maximum contract value and the procurement procedure.</p> <p>The PQQ will also provide some further high level detail.</p>	At least 30 days from OJEU notice to PQQ response deadline for suppliers.
5.	Evaluation of PQQ responses	The contracting authority will evaluate the PQQ responses and decide who to issue the ITT to.	N/A	No prescribed time limits but approximately 28 days.
6.	Issue ITT	<p>Contracting Authority issues its Invitation to Tender. This will include:</p> <ul style="list-style-type: none"> <li>Detailed requirements</li> <li>Contract documents/information</li> <li>Financial model</li> </ul>	This is the point at which ELEXON's board would in all circumstances have sufficient information to make a decision on whether to bid.	5 to 30 days in order to respond.

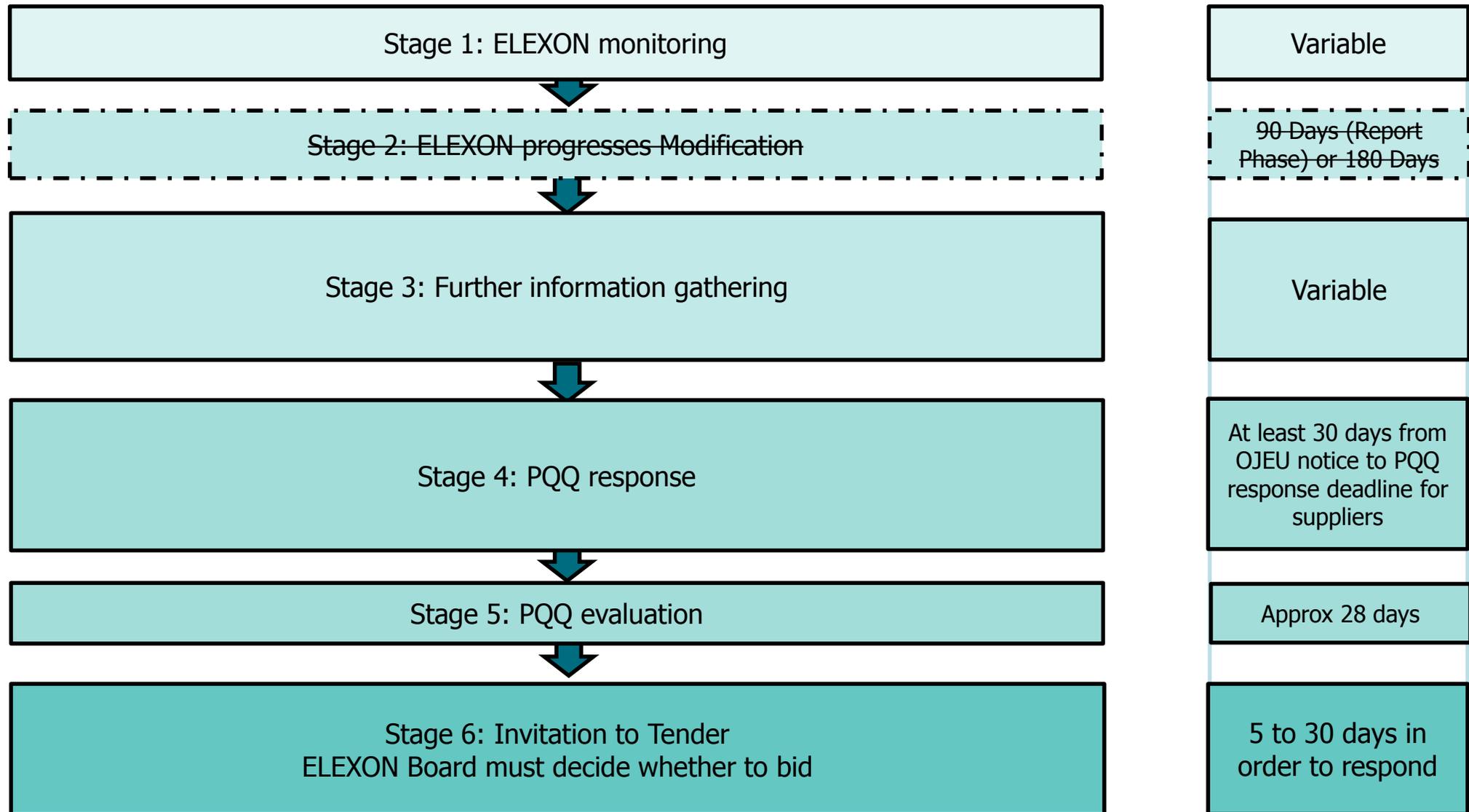
# P390: Scenario 1 'Status Quo'



# P390: Scenario 1b 'Status Quo'



# P390: Scenario 2 'Proposed P390 Solution'





# **P390 solution development**

---

## P390: P330 Decision/Ofgem conditions

---

- 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:
  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.

## P390: Conditions introduced by P330

Conditions previously included	How achieved
BSC Parties should benefit from any diversification	<p>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.</p> <p>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.</p> <p>Note EMR activity has contributed £3.5m over the last 5 years.</p>
The arrangements should not place disproportionate risk on BSC Parties	<p>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</p>
Standards of service under the BSC should be maintained	<p>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.</p>
Expenditure prior to start of activity has to be repaid within 5 years of start of activity	<p>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. 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.</p> <p>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.</p>

## P390: Additional conditions

- In addition to those introduced for P330 and P365, the following conditions have been proposed. Do Members consider each to be necessary and appropriate?

Proposed new Condition	Detail of Condition
1) Geographical limitation	<ul style="list-style-type: none"><li>• Activity must be related to the UK</li></ul>
2) Sector limitation	<ul style="list-style-type: none"><li>• Gas, electricity, heat and transport sector</li></ul>
3) Type of role	<ul style="list-style-type: none"><li>• Demonstrable link to core competencies</li></ul>
4) 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	<ul style="list-style-type: none"><li>• 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</li></ul>
5) Cost at risk (preparation and bid costs) in any year to be no more than 1% of that year's approved budget	<ul style="list-style-type: none"><li>• 1% is considered an appropriate amount to represent a business development budget.</li><li>• 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</li></ul>

---

## P390: Solution development

---

- Workgroup Term of Reference a) - Whether the safeguards proposed by P390 in addition to those developed during P330 and P365 are appropriate?
- ToR b) - Whether there will be a direct impact on BSC Parties resulting from implementation of the P390 solution?
- ToR c) - What mechanisms should be put in place to ensure BSC Parties benefit from the activities of ELEXON's subsidiaries?
- ToR d) - How to ensure that ELEXON is not cross-subsidising the subsidiaries?



**Further areas for  
consideration**

---

## P390 Workgroup Terms of Reference

---

- a) Whether the safeguards proposed by P390 in addition to those developed during P330 and P365 are appropriate?
- b) Whether there will be a direct impact on BSC Parties resulting from implementation of the P390 solution?
- c) What mechanisms should be put in place to ensure BSC Parties benefit from the activities of ELEXON's subsidiaries?
- d) How to ensure that ELEXON is not cross-subsidising the subsidiaries?
- e) Will the proposed solution have an effect on consumers?
- f) What changes are needed to BSC documents, systems and processes to support P390 and what are the related costs and lead times?
- g) Are there any Alternative Modifications?
- h) Should P390 be progressed as a Self-Governance Modification?
- i) Does P390 better facilitate the Applicable BSC Objectives than the current baseline?



**Next steps**

---

## P390 Next Steps

---

- Further analysis as appropriate
- Draft solution will be developed, and Workgroup views sought at the next meeting
- W/C 9 December: WG review Business Requirements
- W/C 9 December: WG review Legal Text
- W/C 16 December: Discuss any unresolved issues with solution at next meeting
- W/C 16 December: Gather Workgroup views on Objectives etc. at next meeting

## P390 Proposed Timetable

Event	Date
Present IWA to Panel	12 September 19
<b>Workgroup meeting 1</b>	<b>18 November 19</b>
Workgroup meeting 2	W/C 16 December 19
Assessment Procedure Consultation	6 Jan 2020 – 24 Jan 2020
Workgroup meeting 3	W/C 27 Jan 2020
Present Assessment Report to Panel	13 Feb 2020
Report Phase Consultation	17 Feb – 4 March 2020
Present Draft Modification Report to Panel	12 March 2020
Issue Final Modification Report to Authority	16 March 2020

