

September 2001

**Consultation on  
MODIFICATION PROPOSAL P28:  
REVIEW OF GOVERNANCE AND  
MODIFICATION PROCEDURES**

**Prepared by ELEXON Limited on behalf of the  
Governance Modification Group**

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### b Distribution

Name	Organisation
BSC Modifications Consultation Circulation List	Various, including BSC Signatories, Ofgem, BSC Agents and interested third parties.

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## 1 INTRODUCTION

This Report has been prepared by ELEXON Ltd., on behalf of the Governance Modification Group, in accordance with the terms of the Balancing and Settlement Code ('BSC'). The BSC is the legal document containing the rules of the balancing mechanism and imbalance settlement process and related governance provisions. ELEXON is the company that performs the role and functions of the BSCCo, as defined in the BSC.

An electronic copy of this document can be found on the BSC website, at [www.elexon.co.uk](http://www.elexon.co.uk).

Please respond to this consultation document using the attached pro forma (Attachment 3). Electronic responses should be sent to: [Modifications@elexon.co.uk](mailto:Modifications@elexon.co.uk) by 17:00 hrs on Wednesday 26 September 2001 and responses sent by post should be addressed to Modifications Department, ELEXON Ltd., 10<sup>th</sup> Floor, 338 Euston Road, London NW1 3BP, again to arrive by 17:00 hrs on Wednesday 26 September 2001. Responses should be marked 'P28 Assessment Consultation'.

If you have any queries about the issues raised in this consultation paper then please contact Gareth Forrester or Neil Cohen at ELEXON (020 7380 4100).

## 2 BACKGROUND

Modification proposal P28 is an amalgamation of three proposals; P21, P23 and P24. In its initial consideration of these proposals, the Panel determined that they should be amalgamated, since they all related to improving areas of perceived concern with the Modification Procedures and/or the Panel and Panel Committees under the BSC. The Panel also agreed that a Definition Procedure should be followed, in order to establish a specific Modification Proposal for further consideration. The definition procedure was completed by the Governance Modification Group (GMG) and a Definition Report was presented to the Panel at its meeting of 23 August 2001.

The original Modification Proposals, along with representations made by interested parties, suggested a number of potential changes in the areas of the operation of the Panel, Panel Committees, Modification Groups and the Modification procedures. It should also be noted that some representations suggested that it was either premature, or not appropriate to change the modification arrangements under the BSC at this stage.

The GMG took due account of all representations, along with the original proposals and set down a number of options that might be considered. Furthermore, recognising that a single proposal, or an alternative, must ultimately be determined upon, a consolidated proposal was also established. These potential changes and the consolidated proposal are all detailed within the Definition Report, which is attached as Attachment 1 to this document.

At its meeting of the 23 August 2001, the Panel directed that an Assessment Procedure should be undertaken by the GMG. The Panel also recommended that, as part of that Assessment procedure, the following specific activities should be pursued:

- A consultation should take place with interested parties.
- A commentary on the proposals from Ofgem, the Panel and ELEXON should be obtained.
- Consideration of the development of an Alternative Modification should be undertaken, in light of the above.

This consultation document seeks to fulfil the first of these activities and, in parallel, commentaries from the above mentioned parties are being sought. The GMG will consider the responses and commentaries and will produce an interim paper, which will be considered by the Panel at its meeting of the 18 October 2001. Following this initial consideration, it is anticipated that the GMG will produce the Assessment Report, including a full assessment of the proposal, for presentation to the Panel at its meeting of the 15 November 2001. Hence, this consultation seeks your views on the consolidated proposal contained in the Definition Report, including any suggestions that might be contemplated as part of an Alternative Modification. Such an alternative might comprise elements of the consolidated proposal, other options discussed in the Definition Report, or, indeed, elements not considered in the report, or combinations thereof.

### **3 APPLICABLE BSC OBJECTIVES**

In the Definition Report, it is suggested that Modification Proposal P28 may better achieve NGC Licence Condition 7A.3 (d);

‘Promoting efficiency in the implementation and administration of the balancing and settlement arrangements’

It is further suggested that, to a lesser extent, the proposal may better achieve NGC Licence Condition 7A.3 (c );

‘Promoting effective competition in the generation and supply of electricity and (so far as is consistent therewith) promoting such competition in the sale and purchase of electricity’

Parties should also note that any proposal to modify elements of the Modification Procedures themselves must fulfil the underlying requirements in Transmission Licence Condition 7A.4 which also sets down certain requirements for modification of the BSC in general. Unlike proposed modifications to the rest of the Code, therefore, the Applicable BSC Objectives in relation to the proposed amendment of the modification procedures are the requirements of LC7A.4 (to the extent that they do not conflict with LC7A.3), along with the requirements of LC7A.3. The full text of LC7A.4 is attached as Attachment 2.

## 4 CONSOLIDATED PROPOSAL

A full discussion of the issues associated with P28 can be found in the Definition Report, attached as Attachment 1 to this consultation document. The Definition Report first expands on a number of options for changes to governance and modification processes. The Report then goes on to distil from this set of options a consolidated proposal which is believed by the GMG to be internally consistent and purports to best achieve BSC Objectives. The consolidated proposal, described fully in Section 7 of the Definition Report, may be summarised as follows:

### 1) Panel;

- a) All non-confidential Panel business to be held in open session
- b) Any Panel Member to be able to invite comment from the floor

### 2) Panel Committees;

- a) ISG and SVG to operate in the same way to the Panel.

### 3) Modification Groups;

- a) Standing Groups to deal with Modifications in general areas
- b) Standing Groups to consider issues in advance of specific Modification Proposals being raised
- c) All Standing and Modification Groups to be open, i.e. no core membership, self-selecting, no impartiality and, as a consequence, no indemnity
- d) ELEXON to be responsible to the Panel for delivery of reports etc.

### 4) Modification Procedures;

- a) Evaluation procedure to replace Definition and Assessment
- b) Only one mandatory consultation
- c) Panel recommendation to be made after consultation
- d) Content of report to OFGEM is unchanged
- e) Urgent Modification arrangements unchanged

## 5 CONSULTATION QUESTIONS

### 5.1 Overview

Your views are invited on the generality of the issues and options described in the P28 Definition Report. In addition, we are interested to receive comment on the acceptability of specific aspects of the consolidated proposal. This is especially important in determining whether an Alternative Modification might be drafted which might better achieve the Applicable BSC Objectives. With this in mind, questions have been structured to facilitate this understanding. Broadly, the GMG is interested to know: if interested parties like the consolidated proposal; if interested parties would prefer no change (but recognising that, within the existing Code drafting, refinements to procedures can be made); if interested parties like certain elements of the consolidated proposal, but not others; if interested parties prefer other options, as described in the Definition Report, or if interested parties have other solutions that may better address the perceived defects in the existing Code drafting.

### 5.2 Consolidated Proposal

The consolidated proposal is summarised in Section 4 above and is described in full in Section 7 of the attached Definition Report (Attachment 1).

**Q1: Do you believe that the consolidated proposal, as a package, better achieves the Applicable BSC Objectives? If so, which objectives are better achieved and why? If you do not believe that the consolidated proposal better achieves BSC Objectives, please explain why not.**

### 5.3 Potential Alternatives

There are also a number of possible alternatives which we would like you to consider, which may be used to develop an Alternative Modification during the Assessment Procedure. These possibilities can be summarised as follows:

- Do not modify the BSC at the present time. Rather, a number of initiatives should be considered, as part of the ongoing evolution of the processes as currently defined in the Code. For example, the content of reports may be reviewed, the recourse to and terms of reference for the Definition procedure may continue to be refined, the content of the initial written assessments could be reviewed (perhaps focusing more on clarifying the definition of a proposal).

**Q2; Do you believe that initiatives to improve the implementation of the arrangements as currently described in the Code would better achieve the Applicable BSC Objectives than a modification to the current Code rules themselves? Do you have any specific initiatives that you believe should be considered?**

- A number of options were initially considered by the GMG, all of which were either explicitly incorporated in the consolidated proposal, or were superseded by the consolidated proposal. Therefore, a potential alternative to P28 is to modify the BSC in line with some (but not all) of the options presented in the Definition Report.

**Q3; Are there any elements of the consolidated proposal that should be changed (or removed), such that an improved proposal emerges? Please refer to the specific sub-sections in section 4.**

- Modify the BSC in some other way; i.e. there may be areas of the BSC associated with the Modifications process (and related constitutional aspects) that could be modified to better achieve relevant objectives, but which have not yet been drawn out in the Definition Report. Of course if these changes do not relate to the scope of the current proposal, it may be preferable if they were pursued as separate modification proposals. Interested parties may wish to refer to the additional points raised by the Panel and the GMG which are listed in sections 6.1 and 6.2.

**Q4; Do you believe that there are changes within the scope of this Modification Proposal, other than those described above, that would better achieve the Applicable BSC Objectives? Please describe these, stating which objectives are better achieved and why.**

## **5.4 Impact of the Proposed Modification**

The Definition Report suggests that impacts arising from P28 are likely to be procedural. rather than system related. Your views as to the potential impact on your arrangements would be helpful in confirming, or changing this view.

**Q5; What impact would the consolidated proposal have on your systems and processes and what is the minimum notice required to implement such a change? If you have identified an alternative approach, does this alternative impact differently on your systems and processes?**

## 6 ADDITIONAL POINTS FOR CONSIDERATION

### 6.1 Issues Raised By The Panel

In its consideration of the Definition Report, the Panel raised three areas for consideration:

- The ability to bring forward implementation dates for modifications. Currently, the Code allows the Panel to apply to the Authority for an extension to an implementation date, on the advice of ELEXON (see F2.11.7). This facility does not extend to the bringing forward of implementation dates.
- The ability to separately progress alternative modifications. Experience to date has suggested that it would sometimes be expedient to progress an alternative, without having to progress the original modification at the same time. This circumstance tends to arise when an alternative appears to better achieve BSC Objectives than an original proposal and timescales can be reduced by concentrating effort on only one proposal.
- The ability for the Authority to determine in respect of elements within a Modification Proposal (so called 'cherry picking'). Some Modification Proposals contain a number of distinct elements, for example a particular implementation date, alongside a particular change. It may, therefore, be useful to distinguish between these elements, within a given Modification.

The ability to bring implementation dates forward would require a change to the BSC.

It could be argued that the ability to progress alternatives is already possible, since alternatives can be presented as new Modifications. P28 also clarifies the ability to progress more than one alternative, against a given Modification. This would enhance the opportunities to present variations on a package of changes for the Authority to consider.

Although OFGEM cannot currently select which aspects of a proposal are acceptable, it does have the power to make initial observations at any time throughout the Modification process, and therefore to indicate its preliminary preferences to a Modifications Group.

### 6.2 New Issues Raised By the GMG

In its final consideration of this consultation document the GMG considered a number of additional suggestions which may be of interest in considering alternative proposals. These points are as follows:

- There should be an obligation on the Panel to undertake further consultation with interested parties, if there has been a material change to a Proposed Modification after parties had originally been consulted but before any Authority determination on the proposal. Examples of this might include changes to the estimated timing or cost of implementing the proposal. A related question is whether, if the Authority is entitled to selectively determine elements of proposals, further consultation should be required in such circumstances.
- In the consolidated proposal, Standing Groups and Modification Groups require ELEXON to be principally responsible for progressing the work, but not making any recommendations. An alternative would be to explicitly require a Modification Group, or Standing Group, to make a recommendation as to the merits of the proposal to the Panel, if possible. This would help to prevent the Panel re-opening technical discussions on a proposal, in order to arrive at a recommendation. It is recognised however that, in the absence of voting arrangements, consensus may not emerge in a Modification or Standing Group.

- As an additional point, regardless of which options are preferred for the conduct of Modification Groups (or Standing Groups), a Panel member should be invited to attend all Modification or Standing Groups and 'sponsor' them. This initiative may help to ensure full understanding at the Panel of the issues considered by the Group and that any presentations to the Panel accurately reflect the views of the Group. Such sponsorship would have to be undertaken such that the Panel member's impartiality was not undermined.
- The proposer of a Modification should always be invited to attend and speak at Panel meetings where the proposal in question is being discussed. This would allow the Panel to be cognisant of the proposer's views on the proposal and any alternative that was being progressed at all key stages.
- As an alternative to the consolidated proposal element whereby any attendee of a Panel meeting may be invited to speak, either by the Panel Chairman, or by a Panel member, those who may wish to speak could pre-arrange to do so with the Panel secretary, ahead of a Panel meeting. A further alternative, given that a key reason behind this initiative is to ensure that the full analysis of a Modification, or Standing Group, has been presented would be to allow an interested party to appeal to the Panel, if some aspect of due process had not been adequately followed.
- Within either an Assessment procedure, or an Evaluation procedure, the issue of the interaction of the proposal in question with other Modification proposals in progress at the time should be explicitly addressed in the relevant report.
- Under the consolidated option, or any of the options involving extending openness of meetings, such openness should extend to all interested parties, rather than merely BSC Parties.
- Under the option whereby Group members are self-selecting, it should be noted that it would be inappropriate to reimburse any expenses incurred through attendance. Currently, such expenses are allowable for Modification and Committee members, since they are appointed to their roles.
- Consideration should be given to making explicit the possibility that more than one Alternative Modification may be progressed for a given Modification Proposal. There is currently some ambiguity as to whether one or more alternatives are allowed.