

August 2001

**DEFINITION REPORT**  
**MODIFICATION PROPOSAL P28:**  
**REVIEW OF GOVERNANCE AND**  
**MODIFICATION PROCEDURES**

**Prepared by the Governance Modification Group**  
**on behalf of the Balancing and Settlement Code**  
**Panel**

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Version	Date	Reviewer	Signature	Responsibility
0.1		G. Forrester		Modifications Manager
0.1		C. Woods		Modification Group Chair
0.1		N. Cohen		P28 Support
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0.3		GMG		Modification Group
1.0		G. Forrester		Modifications Manager

### b Distribution

Name	Organisation
BSC Panel	Various
Governance Modification Group	Various
BSC Parties	Various

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

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**Attachment 1:** Annex F-1 of the Balancing and Settlement Code

**Attachment 2:** Responses to the Initial Consultation on P28

## 1 SUMMARY AND RECOMMENDATIONS

### 1.1 Summary

This Definition Report has been prepared by the Governance Modification Group (GMG) on behalf of the BSC Panel. It seeks to describe the issues that Modification Proposal P28 is intended to address and to identify a consolidated proposal, based on a number of specific options to those issues. P28 seeks to improve the operation of the BSC governance arrangements, specifically in relation to the operation of the Panel, Panel Committees, Modification Groups and the Modification Procedures.

Section 2 of the report explains the purpose of the Definition Procedure. Section 3 includes details of the membership of the GMG. Section 4 describes the three Modification Proposals (P21, P23 and P24) of which P28 is the amalgam. Section 5 provides a high level overview of the representations received from interested parties in response to the initial consultation on the proposal. Section 6 describes the issues considered by the GMG under three broad headings:

- Openness of the BSC Panel, Modification Groups and Panel Committees;
- The Constitution and Operation of Modification Groups and Panel Committees; and
- Increasing the Efficiency of the Modification Procedures

In each case, there is a description of the perceived issue or defect under the existing BSC arrangements that P28 seeks to address, including an explanation of why this is of particular concern with reference to the Applicable BSC Objectives and consultation responses. A description of possible options to remedy the identified issue or defect follows, with arguments for and against each option, again with reference to the Applicable BSC Objectives and consultation responses.

The specific options identified in the report are:

- (a) Modify the BSC such that all Panel business is conducted in open session (i.e. to permit attendance by representatives of any BSC Party), except where an item of business is considered to be of a confidential nature (e.g. TDC appeals, CALF redeterminations etc.).
- (b) Modify the BSC to oblige (or impose an expectation on) the Panel Chairman to invite representations from the floor at Panel meetings. A variant of this option would be to allow attendees to speak at Panel meetings if invited to do so by any Panel Member, but only where they had new and material points to make to the Panel, relevant to the decision in hand (although a number of group members were uncertain as to how this could be enforced in practice).
- (c) Modify the BSC such that the business of Panel Committees (other than the PAB and TDC) are conducted in open session (i.e. to permit attendance by representatives of any BSC Party), except where an item of business is considered to be of a confidential nature.
- (d) Modify the BSC to oblige (or impose an expectation on) Panel Committee Chairmen to invite representations from the floor at Committee meetings.
- (e) Modify the BSC such that all Modification Groups are conducted in open session (i.e. to permit attendance by representatives of any BSC Party).
- (f) Modify the BSC to oblige (or impose an expectation on) Modification Group Chairmen to invite representations from the floor at Modification Group meetings.
- (g) Modify the BSC to remove the obligation on Modification Group members to act impartially.

- (h) Abandon the process of Panel appointment of Modification Group members, replacing it with a process of self-selection. By its nature, this would remove the existing distinction between members and non-members of Modification Groups. It is also implicit in this option that the self-selected members of the groups would not be obliged to act impartially.
- (i) Introduce the ability for the Panel to establish a number of Standing Groups to consider Modification Proposals and possibly other business under delegated authority from the Panel. The Standing Groups would meet on regular fixed dates (with some flexibility to deal with Urgent Modification Proposals).
- (j) Modify the BSC to explicitly permit Panel Committees or, if introduced, Standing Groups to consider and discuss potential Modification Proposals in advance of these being formally raised through the Modification Procedures. This would be without prejudice to the right of a party to formally raise the Modification Proposal at any stage.
- (k) Modify the BSC to give the BSC Panel the flexibility to approve an appropriate programme of work in the circumstances of each individual Modification Proposal, to culminate in a Modification Report to the Authority (within default maximum timescales and subject to certain minimum requirements regarding consultation and reporting). The function of the Panel (via its Modification Groups) would be to procure the full and timely definition and evaluation of each proposal (and any Alternative Modification Proposals that emerge, including:
  - A full description of the proposal(s);
  - Where appropriate, a full impact assessment of the proposal(s) (including, to the extent applicable, all of the matters listed in Annex F1 of the BSC (included as Attachment 1));
  - An assessment of the extent to which the proposal(s) better achieve the Applicable BSC Objectives; and
  - A detailed summary of all responses to any consultations undertaken.

There should be an obligation for the following activities to be undertaken, as a minimum:

- Modification Proposals to be submitted and completed according to specified content requirements, as now;
- ELEXON to produce an Initial Written Assessment, as now;
- At least one consultation should always be undertaken (with a minimum duration of [one week]); and
- Any proposed BSC drafting should always be consulted upon.
- The Panel would make a recommendation to the Authority at the end of the process, as now.

The current BSC provisions in respect of Urgent Modification Proposals would remain unchanged.

Section 7 distils certain of the above options into a consolidated proposal, derived by the GMG on the basis of those options which purport to best facilitate the achievement of Applicable BSC Objectives. This should therefore be considered to be the defined Modification Proposal P28 for assessment purposes. It is noted that an Alternative Modification may be developed during any Assessment Procedure directed by the Panel.

Section 8 explains the need for further assessment of these proposals.

## **1.2 Modification Group Recommendations**

On the basis of the analysis, consultation and assessment undertaken in respect of this Modification Proposal during the Definition Phase, and the resultant findings of this report, the Modification Group recommends that the BSC Panel should submit the proposal to the Assessment Procedure, with the following terms of reference:

- Undertake further consultation with interested parties on the consolidated proposal, the issues and possible alternative options identified in this Definition Report;
- On the basis of the consultation responses and further assessment undertaken by the Modification Group, assess the fully described Proposed Modification and develop any Alternative Modification based on an alternative combination of the identified component options;
- Seek the provisional views of the Authority in respect of the Proposed Modification and any Alternative Modification;
- Identify the preferred Proposed Modification and develop complete BSC legal drafting for that model;
- Submit the completed Assessment Report to the BSC Panel by 18th October 2001.

## 2 PURPOSE AND SCOPE OF THE REPORT

BSC Section F sets out the procedures for progressing proposals to amend the BSC. These include procedures for proposing, consulting on, developing, evaluating and reporting to the Authority on potential modifications.

The BSC Panel is charged with supervising and implementing the modification procedures. ELEXON provides the secretariat and other advice, support and resource required by the Panel for this purpose.

The Panel may decide to submit a Modification Proposal to the 'Definition Procedure'<sup>1</sup>. In such cases, the Panel commissions a Modification Group to define the issues raised by a Modification Proposal in sufficient detail to enable the Panel to determine whether to:

- a) Refer the proposal back to the Modification Group for further analysis; or
- b) Submit the proposal to the Assessment Procedure<sup>2</sup>; or
- c) Proceed directly to the Report Phase<sup>3</sup>.

The Modification Group is therefore tasked with reviewing the Modification Proposal with a view to providing clarification and definition where there is insufficient detail in the proposal to allow the Panel to decide whether to proceed with a detailed evaluation. The Modification Group must prepare a written report for the Panel that sets out the following matters<sup>4</sup>:

- a) An assessment of the issues raised by the Modification Proposal with supporting information and data to explain the effect of such issues by reference to the Applicable BSC Objective(s)<sup>5</sup> and a summary of such assessment;
- b) An analysis of and the views and rationale of the Modification Group as to whether (and, if so, to what extent) the issues raised by the Modification Proposal warrant further assessment and evaluation under the Assessment Procedure;
- c) A detailed summary of the representations made by Parties and interested third parties during any consultation undertaken by the Modification Group and the comments and views of the Modification Group in respect thereof;
- d) A summary of any analysis prepared by the Transmission Company and the comments and views of the Modification Group in respect thereof;
- e) A summary of the analysis prepared by relevant BSC Agents and the comments and views of the Modification Group in respect thereof;
- f) Where applicable, a copy of the terms of reference and a summary of any report or analysis of external consultants or advisers; and
- g) Such other matters as the Panel may require in the terms of reference of the relevant Modification Group.

This Definition Report therefore addresses all of the above items to the extent relevant to the Modification Proposal in question.

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<sup>1</sup> See BSC F2.5

<sup>2</sup> See BSC F2.6

<sup>3</sup> See BSC F2.7

<sup>4</sup> See BSC F2.5.4

<sup>5</sup> As defined in the Transmission Licence

### 3 MODIFICATION GROUP DETAILS

This Definition Report has been prepared by the Governance Modification Group. The Membership of the Modification Group was as follows:

<b>Member</b>	<b>Organisation</b>
Catherine Woods	ELEXON (Chair)
Alison Kuck	Amerada Hess Gas Ltd. (Proposer)
Lisa Waters	Dynegy (Proposer)
Terry Ballard	Innogy
Peter Bolitho	Powergen
Paul Chesterman	London Electricity
David Edward	Ofgem
Louise Elder	NGC
Martyn Hunter	St Clements
Abid Sheikh	Scottish Power
Simon Goldring	BGT
Gareth Forrester	ELEXON
Neil Cohen	ELEXON
Laone Roscorla	ELEXON

All meetings of the group were held in open session and the following individuals attended in addition to the core membership of the group:

<b>Attendee</b>	<b>Organisation</b>
Hanna McKinney	Conoco UK Ltd
Jerome Williams	Ofgem
Danielle Lane	BGT
Nick Elms	Enron
Rekha Patel	Dynegy
Jane Butterfield	Powergen

## 4 DESCRIPTION OF PROPOSED MODIFICATION

### Overview

Modification Proposal P28 is an amalgamation of three Modification Proposals:

- P21: Review of Modification Group and Panel Procedures;
- P23: Review Of The Imbalance Settlement Group (ISG); and
- P24: Review Of The Modification Procedures

These proposals all seek to improve the operation of the BSC governance arrangements, specifically in relation to the operation of the Panel, Panel Committees, Modification Groups and the Modification Procedures. Given the common ground of these modifications and the desirability of developing a consistent package of proposals in this area, the Panel directed that the three proposals should be amalgamated and progressed as a single modification.

All three proposals seek to address areas of perceived concern with the current operation of the BSC governance arrangements. While some specific suggestions are made, the intent of the proposals was to initiate a broad review of how these arrangements can be made more efficient and transparent. One proposer stated explicitly that the proposal was not intended to be prescriptive and that further definition of possible options to the issues identified would be necessary.

### P21

P21, raised on 20 June 2001 by Amerada Hess Gas Ltd., seeks to initiate a review of the Modification Procedures and the operation of the BSC Panel and associated subgroups to ensure maximum transparency to the industry and the efficient operation of the processes. Suggestions for change include:

- Specifying that all Modification Group and (non-confidential) Panel, ISG and SVG business should be held in open session;
- Revising the procedures for formation of Modification Groups; and
- Streamlining aspects of the Modification Procedures, including consideration of how issues may be identified prior to being submitted as Modification Proposals.

### P23

P23, raised on 22 June 2001 by Dynegy, focuses on the ISG Panel Committee, suggesting that all meetings of the group should be held in open session and should allow attendees to make contributions. It is also suggested that the group's remit should be developed such that it becomes a standing 'workstream' to consider modifications and other energy and imbalance issues.

### P24

P24, also raised on 22 June 2001 by Dynegy, seeks to initiate a review of the Modification Procedures to improve the efficiency and inclusivity of the BSC governance process. Specific suggestions for change include:

- Establishing Standing Groups to consider modifications in the same area;
- Opening all groups to attendees and allowing all attendees to contribute, removing any distinction between group members and attendees; and

- Reducing the number of stages during the lifecycle of a Modification Proposal to ensure timely progress.

### **Proposers' Justification**

All three Proposers suggest that the Applicable BSC Objective set out in NGC's Licence Condition 7A(3)(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' would be better facilitated by adopting the above proposals. In P21, it is also suggested that the objective in NGC Licence Condition 7A(3)(d): 'promoting efficiency in the implementation and administration of the balancing and settlement arrangements' would also be better achieved.

## 5 REPRESENTATIONS BY PARTIES AND INTERESTED THIRD PARTIES

Following the Panel's decision to submit P28 to the Definition Procedure, BSC Parties and other interested parties were invited to provide comments to the Modification Group in respect of the proposal. 12 representations were received from the following respondents (copies of the responses can be found at Attachment 2 to this report):

- Edison Mission Energy
- Powergen
- Utility Link
- Enron Europe
- British Energy
- Scottish Power
- Scottish & Southern Energy
- SEEBOARD
- TXU Europe Energy Trading
- London Electricity plc
- BGT
- Dynegy

Of these, some six respondents (representing over twelve signatories) were generally supportive of a review of the Modification procedures. Three responses (reflecting the views of seven signatories) did not support such a review, some because it was premature, others because they did not accept that the proposals better achieved the Applicable BSC Objectives. The remainder did not express general views.

Respondents also made a number of specific points, from which four major themes emerged:

- the conversion of Modification Groups and Panel committees into Standing Groups (or 'Workstreams');
- the role of participants at Modification Groups and Panel Committees;
- openness and transparency of the BSC Panel, Modification Groups and Panel Committees; and
- steps to increase the efficiency and transparency of the Modification Procedures.

Where appropriate, respondent's specific comments on possible options in each of these areas are included in the discussion in Section 6 of this report.

Proposers and respondents also made a number of suggestions as to how the practical management of the governance and Modification Procedures could be improved (e.g. reducing the length of reports, providing additional or more timely information on the BSC Website etc.). While these steps would not generally require a BSC modification (and are therefore outside the remit of this report), ELEXON has noted the helpful suggestions and will seek to implement changes in these areas as part of an ongoing programme of process improvement. Where such improvements constitute an integral part of the proposal, reference has been made to the management approach, as appropriate.

## 6 MODIFICATION GROUP DELIBERATIONS

### 6.1 Overview

#### Applicable BSC Objectives

In broad terms, the Modification Group took the view that the general thrust of the proposals sought to better achieve NGC Licence Condition 7A(3)(d): 'promoting efficiency in the implementation and administration of the balancing and settlement arrangements'. It was also suggested that, to a lesser extent, 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' is better achieved by the enhanced involvement of participants and the expedition of Modification Proposals.

#### Major Issues Considered

The Modification Group considered the constituent elements of Modification Proposal P28, together with the representations summarised in Section 5 above and agreed that, in light of these, three major interrelated issues should be further defined:

1. Openness of the BSC Panel, Modification Groups and Panel Committees (Section 6.2);
2. The constitution and operation of Modification Groups and Panel Committees (Section 6.3); and
3. Increasing the efficiency of the Modification Procedures (Section 6.4).

Specific issues and proposals identified by the group under each of these broad headings are presented in the sections below. In each case the report seeks to adhere to the following structure:

Issue:	A description of the perceived issue or defect under the existing BSC arrangements that the proposals seek to address, including an explanation of why this is of particular concern with reference to the Applicable BSC Objectives and consultation responses.
Options:	A description of possible options to remedy the identified issue or defect, with arguments for and against each option, again with reference to the Applicable BSC Objectives and consultation responses.

### 6.2 Openness of the BSC Panel, Modification Groups and Panel Committees

#### Issue: Openness of Meetings

The Modification Group considered the proposition that the proceedings of key bodies underpinning the BSC decision-making process are not sufficiently transparent at present. Transparency itself was considered to have two distinct facets: freedom to attend meetings and freedom to speak at those meetings. It was recognised that it would be necessary to consider the appropriateness of each facet in the context of each of the Panel, Modification Groups and Panel Committees in turn, as each has a distinct function under the BSC, and different considerations may apply in each case.

At present, all Modifications business of the BSC Panel is held in open session and representatives of any Party to the BSC may attend that part of the meeting and speak if invited to do so by the Panel Chairman (see BSC B4.5.1). In practice, the Panel Chairman has invited the proposers of modifications under consideration at the time to address the meeting, but has rarely invited additional comment from

the floor other than in exceptional circumstances. All non-modification business of the Panel is currently conducted in closed session and legal advice is that a modification to the BSC would be required to reverse this position.

Under the present terms of the BSC, meetings of Modification Groups are, by default, held in closed session (see BSC F2.4.18). However, the Panel has exercised its discretion to open these meetings to attendance by interested parties. The chairmen of Modification Groups have the discretion to invite any attendee to speak at meetings and, on balance, have found allowing such contributions to be useful.

There are currently four Panel Committees established under the Panel, all of which conduct their respective business in closed session. These are the Imbalance Settlement Group (ISG), Supplier Volume Allocation Group (SVG), Performance Assurance Board (PAB) and Trading Disputes Committee (TDC). It is generally recognised that, due to the highly confidential nature of their business, it would be undesirable (and possibly unlawful) to hold open meetings of the PAB and TDC. The approach taken to confidentiality under the BSC is that any data item not explicitly made available via BSC terms and conditions is confidential and can only be made available with the consent of the relevant Party. In broad terms, those data items that are not made available tend to be those that relate to a particular Party and have no impact (from a BSC perspective) on other participants. Hence the above conclusion with regard to the business conducted by the PAB (which discusses such issues as the Accreditation of individual Supplier Agents) and the TDC (which considers trading disputes, often involving the commercial activities of individual Parties).

### Options

Those respondents and members of the group that support openness as a matter of principle argue that, under the arrangements described above, there is currently a lack of transparency on significant commercial issues that are discussed within the various bodies. There is also a view that too much influence is currently ascribed to a closed set of group members. Smaller participants and new entrants to the market argue that the ability to attend meetings has an educational benefit, allowing them to familiarise themselves with the operation of the market and related issues faster and more effectively than would otherwise be possible. It was also suggested that permitting attendees at these groups generally facilitates development of expertise within the industry. Others suggest that they are able to make a better contribution to consultation processes (e.g. on modification proposals) if they have been able to follow the debate at the group stage. It was therefore argued that openness would better facilitate the achievement of the BSC objectives of promoting competition and increasing efficiency.

A counter-argument was that such open involvement might undermine the pre-eminence of consultation as the means by which views are expressed and that the involvement of people seeking to learn, rather than contribute, would detract from expediting discussions and efficiency would deteriorate.

A number of specific options to address the issues described above emerged from the consultation responses and Modification Group deliberations. Recognising that, in many instances, discretion already exists (and is exercised) under the BSC to conduct meetings in open session, the options focus on 'hardwiring' the requirement for openness into the BSC.

- (a) *Modify the BSC such that all Panel business is conducted in open session (i.e. to permit attendance by representatives of any BSC Party), except where an item of business is considered to be of a confidential nature (e.g. TDC appeals, CALF redeterminations etc.).*

Those in favour of fully open Panel meetings were particularly concerned that deliberations on matters of huge commercial significance were taking place behind closed doors. Quoted examples of such

issues included the setting of key BSC parameters, such as the Balancing Reserve Level (BRL), Credit Assessment Price (CAP) and guidance for the setting of Credit Assessment Load Factors (CALF). It was argued that transparent decision-making is consistent with the Applicable BSC Objective of promoting effective competition, as all BSC Parties would have equal access to information about potential changes to the BSC.

Those who did not support open Panel meetings were concerned about the impact on the efficiency and dynamics of the Panel as a decision-making body. It was suggested that there are practical and logistical limitations to openness, e.g. if a Panel meeting can only be held by telephone conference call in certain circumstances or if the cost of a meeting is unreasonably inflated due to the number of Parties wishing to attend. It was argued, therefore, that in these respects, fully open Panel meetings would not meet the Applicable BSC Objective of promoting efficiency in the implementation and administration of arrangements. Others were also concerned that it was likely that only participants with sufficient resources would attend, leading to competitive advantage being given to a minority of participants, counter to the objective of non-discrimination.

There was broad acceptance that Panel discussions on matters confidential to particular BSC Parties should continue to take place in closed session at the Panel's discretion.

*(b) Modify the BSC to oblige (or impose an expectation on) the Panel Chairman to invite representations from the floor at Panel meetings. A variant of this option would be to allow attendees to speak at Panel meetings only where they had new and material points to make to the Panel, relevant to the decision in hand (although a number of group members were uncertain as to how this could be enforced in practice). Another variant would be to extend the discretion to invite representations from the floor at Panel meetings to any Panel Member.*

It was argued that permitting parties to address the Panel would allow broader discussion of issues, leading to the increased understanding, a possible improvement in the quality of Panel decisions and improved confidence in outcomes.

Similar concerns as described above regarding the undue influence that may be accorded to a minority of well-resourced parties were voiced against this proposal. There were also concerns that such a move may result in meetings becoming 'talking shops', and that the efficient progress of Panel business may be hindered as a result, particularly if the Chairman lost the ability to direct the meeting in an orderly fashion. In relation to the Modification procedures in particular, there was a concern that consultation may be undermined as the primary and proper route for parties to express views and input to decision-making.

*(c) Modify the BSC such that the business of Panel Committees (other than the PAB and TDC) are conducted in open session (i.e. to permit attendance by representatives of any BSC Party), except where an item of business is considered to be of a confidential nature.*

Those in favour of holding Panel Committees (ISG and SVG) in open session again quoted the potential for increased transparency, understanding of issues and quality of decision-making.

Those against the proposal were again concerned that a competitive advantage and undue influence may be given to better-resourced parties and that such meetings would become costly and difficult to manage and administer. There were also concerns that these bodies conducted a level of confidential business, such that it would be inappropriate to hold meetings in open session.

*(d) Modify the BSC to oblige Panel Committee Chairmen to invite representations from the floor at Committee meetings. A variant would be to extend the discretion to invite representations from the floor at Committee meetings to any Committee Member.*

The same arguments for and against as outlined above in relation to participation at Panel meetings were considered equally relevant in the context of Panel Committees.

*(e) Modify the BSC such that all Modification Groups are conducted in open session (i.e. to permit attendance by representatives of any BSC Party).*

As explained earlier, Modification Group meetings are already conducted in open session, by virtue of a Panel resolution to that effect. Those in favour of making this the default position under the rules of the BSC, argued that this was sufficiently fundamental to the transparent and inclusive operation of the Modification Procedures to merit such a step. It was also noted that since Modification Groups specifically dealt with proposed BSC changes and that these were, by their nature, non-confidential, it was unnecessary to make any exceptions to the openness rule for these groups.

*(f) Modify the BSC to oblige Modification Group Chairmen to invite representations from the floor at Modification Group meetings.*

As noted earlier, it is generally believed that contributions from attendees at Modification Groups have been of value. Some parties believed that these views should be given equal weight to those of the Modification Group members. Again, the potential for greater understanding, broader debate and quality outcomes was quoted in favour of the proposition.

Those against this proposal suggested that it could further strengthen the position of larger (or even London based) players able to bring resources to bear to influence Modification Group discussions and that such an arrangement could further undermine the pre-eminence of consultation as the means by which views are expressed.

### **6.3 The Constitution and Operation of Modification Groups and Panel Committees**

A further aspect of P28 is a proposed reform of the way in which Modification Groups and Panel Committees are established, of the role of participants on those groups and of the general role of the groups themselves. The various issues and suggested options under this banner are considered in turn below.

#### **Issue: Impartiality of Group Members**

At present, members of Modification Groups are obliged under the terms of the BSC to act impartially (see BSC F2.4.9). The discussion on status of Modification Group members revolved around the distinction between participating impartially and participating as an advocate reflecting the perspective of the participant's employer.

#### **Options**

*(g) Modify the BSC to remove the obligation on Modification Group members to act impartially. This would imply that Modification Groups would need to be open, otherwise members could exercise undue influence on proposals. It would also follow that the indemnities provided for Modification Group members would no longer be available if impartiality were removed.*

Those in favour of changing the current arrangement suggested that the impartial stance was an artifice and that a more robust development of Modifications would occur if individual perspectives were acknowledged.

Counter-arguments were that, whilst there was a recognition that remaining impartial in debate was difficult, the BSC obliged Modification Group members to act impartially and indemnified them on that

basis. Weakening this framework might lead to there being challenges to process on future Modifications. In addition, there was a view that, fundamentally, Modification Groups have the specific task of objectively evaluating proposals within strict timescales and terms of reference set by the Panel and that removing the impartiality obligation would hinder the ability of the groups to achieve that objective. Again, it was also suggested that this particular change could further strengthen the position of larger (or even London based) players able to bring resources to bear to influence Modification Group discussions and that such an arrangement could further undermine the pre-eminence of consultation as the means by which views are expressed. If this were to happen, again more challenges to process might occur, thus detracting from efficiency.

### **Issue: Appointment of Group Members**

At present, Modification Group members are appointed by the BSC Panel from a standing list of experts maintained by ELEXON. Panel Committee members are also appointed by the Panel. Other attendees at meetings do not form part of the membership of the groups, regardless of whether or not they actually contribute to the debate and work of the group. A number of respondents to P28 suggested that the Modification Group and Panel Committee selection processes and the distinction between members and non-members should be revised.

### **Options**

- (h) Abandon the process of Panel appointment of Modification Group and Panel Committee members, replacing it with a process of self-selection. By its nature, this would remove the existing distinction between members and non-members of Modification Groups and Panel Committees. It is also implicit in this option that the self-selected members of the groups would not be obliged to act impartially (see discussion of this issue above).*

Arguments in support of self-selection and removing the member/non-member distinction suggested that inefficiencies in process were created because the self-selection of attendees would always bring those with knowledge and understanding of an issue into a discussion more effectively than the selection of members by the Panel from lists of experts maintained by ELEXON. It was argued that equal weight should be given to the views of all present at such meetings. An appointment process also involves bureaucracy and, therefore, costs which would be unnecessary with a self-selection approach. This would therefore facilitate achievement of the efficiency objective of the BSC.

A counter-argument was that Panel selection of members ensured a manageable and consistent Group, selected to provide a suitable cross-section of expertise and views and, as such, more able to fulfil process obligations under the BSC. It was also unclear whether or how such a self-selected group could be robustly covered by the indemnity provisions under the BSC. It was also unclear how voting would work, where required, in the absence of a core membership of a group (this applies only to Panel Committees, as Modification Groups are non-voting). In so far as Panel Committees are concerned, decisions and responsibilities are clearly and fully prescribed under the BSC and are explicitly delegated from the Panel. In such circumstances, given that voting forms a key element of these decisions (for example, in respect of the approval of BSC Subsidiary Documents), it would be difficult to envisage arrangements that did not involve a defined membership, acting impartially and covered by indemnity, as the Panel does. It was suggested, in the light of this, that Panel Committees should be selected in the same way as Panel members are (which is to say with some members being elected). A compromise view that avoided the bureaucracy of elections and selection was that the membership of Panel Committees should involve some element of rotation of membership, at the discretion of the Panel.

It is noted that it would be inappropriate to indemnify self-selected Modification Group members. This is the position with members of comparable 'Workstreams' under the gas Network Code arrangements, who are not indemnified by Transco.

Consideration of how such self-selected Modification Groups might fulfil obligations under the BSC (e.g. to produce and deliver evaluation reports) suggests that the Panel would need to allocate responsibilities to identified persons, rather than to an amorphous and potentially variable grouping. The GMG considered that, given the practical way in which Modifications are currently being dealt with (with ELEXON providing chairmen, secretariat and technical support for Modification Groups), ELEXON should undertake to fulfil such responsibilities, via a nominated chairman of a given Modification Group. However, it was also noted that the roles of ELEXON and Modification Groups (acting under the direction of the Panel) are currently distinct and separate under the BSC, it being the Panel's responsibility to operate the Modification Procedures, with ELEXON providing administrative support, resources and facilities. This may not be an issue if the responsibilities in question are clearly delineated, such that the work of Modification Groups (which would now be supporting ELEXON rather than the Panel) is limited to distilling arguments, definitions, impacts and other aspects of proposals, with the Panel retaining the prerogative to make recommendations.

### **Issue: Establishment of Standing Groups**

At present, Modification Groups are established to consider Modification Proposals as and when they arise. A Modification Group may consider any number of proposals concurrently and, in practice, similar modifications have been submitted to the same group. P28 suggests that it would be more efficient to formalise this arrangement by the introduction of Standing Groups. There is also a suggestion that work presently undertaken by Panel Committees (specifically the ISG and SVG) could more efficiently be undertaken by such groups.

### **Options**

- (i) Introduce the ability for the Panel to establish a number of Standing Groups to consider Modification Proposals and possibly other business under delegated authority from the Panel. The Standing Groups would meet on regular fixed dates (with some flexibility to deal with Urgent Modification Proposals).*

The expectation would be that a number of such Standing Groups would be established and would cover certain specified areas of interest (e.g. Governance, Pricing, Contract Notification, Metering and Reporting). The choice of what particular groups may be appropriate (along with their disbandment if no longer required) would be at the discretion of the Panel and would not inhibit the ability of the Panel to establish specific Modification Groups, if there was no Standing Group able to address a particular item of business. Those in favour of the proposition suggested that this would facilitate continuity in developing proposals. It is also argued that having Standing Groups would make it easier for participants to follow and contribute to the groups' work, as meetings would be held at regular intervals according to a published schedule, enabling individuals to better plan their attendance. It was suggested that this concept has worked well under the gas Network Code. It was also noted that a similar arrangement is currently proposed for inclusion in the new Connection and Use of System Code (CUSC), when implemented.

If Standing Groups were to be introduced, it would be necessary to address the issues concerning openness, selection of members and impartiality or otherwise of members, as discussed earlier in relation to Modification Groups.

Some Modification Group members and respondents also suggested that work undertaken by the ISG and SVG could more efficiently and openly be undertaken by these Standing Groups. However, the GMG acknowledged the distinction between, on the one hand the general consideration of Modifications and, on the other hand, explicitly prescribed decision making under the BSC, delegated from the Panel. The former of these may be undertaken by some group established by the Panel (a Standing Group, or a Modification group), but the latter necessarily requires the formality of a Panel Committee as currently defined in the BSC. The GMG therefore concluded that, should Standing Groups be adopted, there should be no cross-over of responsibilities between such groups and any Panel Committees.

A further issue concerns whether, if Standing Groups are introduced, it should be permitted for these groups to discuss broad issues (prior to them being raised as Modification Proposals) as well as developing any Modification Proposals in line with directions from the Panel. This is discussed further under Section 6.4 below.

## **6.4 Increasing the Efficiency of the Modification Procedures**

Modification Proposal P28 suggested that there was an opportunity to make aspects of the Modification Procedures more flexible and efficient in light of the experience of the first few months of their operation, including consideration of how issues may be identified and discussed prior to being submitted as Modification Proposals. Various suggestions that the Modification Group considered are presented below.

### **Issue: Allow Discussion of Issues Ahead of Modification Proposals Being Raised**

Modification Proposal P28 and a number of consultation respondents suggested that there is an opportunity to develop more robust Modification Proposals, or enable problems to be solved without resorting to modifications in the first place. It was argued that, at the moment, some modifications are perhaps raised simply to ensure that a party's views are heard.

#### **Options**

- (j) *Modify the BSC to explicitly permit Standing Groups to consider and discuss potential Modification Proposals in advance of these being formally raised through the Modification Procedures. This would be without prejudice to the right of a party to formally raise the Modification Proposal at any stage.*

Those in favour of this proposition suggested that this would facilitate continuity in developing proposals and would allow a more efficient consideration of issues, rather than always having to progress a Modification Proposal, perhaps with an ill thought out solution. One respondent was of the opinion that one of the biggest failings of the current arrangements is the lack of apparent forward planning or 'blue sky thinking'.

Counter-arguments were that such an approach might create a perception of prejudice towards a Modification (if, say, it had not been well received as an issue, in its formative stage) and might unduly influence the direction of the BSC. Concerns discussed earlier regarding the constitution and openness of any group undertaking such deliberations would also be relevant here. As with other propositions in this area, those not in favour suggested that the pre-eminence of consultation as the means by which views are presented may be undermined and that this could lead to an increase in the number of legal challenges to Modification processes.

### **Issue: Increase Flexibility in the Modification Procedures**

It was recognised by the Modification Group that the existing Modification Procedures set out in Section F of the BSC were made deliberately prescriptive to provide assurance to parties, the Panel and the Authority that proposals would be progressed in a timely, transparent manner and that due process would be followed in every case. However, supporters of P28 suggest that the rules could be made more flexible without prejudice to due process.

One area of particular concern that was discussed was the current distinction between the Definition and Assessment Procedures. A number of parties felt that this was unhelpful and often lead to protracted discussions at the Panel and at Modification Groups as to what stage was appropriate in particular circumstances and what the resulting remit of any group considering a proposal was. It was argued that the need to produce and seek approval of a separate Definition Report sometimes lead to unnecessary delay and duplication of effort where time and resource could better be focused on further evaluation of the proposal.

Another particular issue concerned the level and timing of consultation under the Modification Procedures. While the need for a consultative process was not questioned, there was a feeling that views were sometimes sought too early in the process, before the critical issues in relation to a particular proposal had been defined. The value of responses was therefore sometimes less than could be hoped for and there was often a need to undertake further consultation, again leading to duplication of effort within participant organisations, Modification Groups and ELEXON.

### **Options**

*(k) Modify the BSC to give the BSC Panel the flexibility to approve an appropriate programme of work in the circumstances of each individual Modification Proposal, to culminate in a Modification Report to the Authority (within default maximum timescales and subject to certain minimum requirements regarding consultation and reporting). The function of the Panel (via its Modification Groups, or Standing Groups) would be to procure the full and timely definition and evaluation of each proposal (and any Alternative Modification Proposals that emerge), including:*

- A full description of the proposal(s);*
- Where appropriate, a full impact assessment of the proposal(s) (including, to the extent applicable, all of the matters listed in Annex F1 of the BSC (included as Attachment 1));*
- An assessment of the extent to which the proposal(s) better achieve the Applicable BSC Objectives; and*
- A detailed summary of all consultation responses.*

*There should be an obligation for the following activities to be undertaken, as a minimum:*

- Modification Proposals to be submitted and completed according to specified content requirements, as now;*
- ELEXON to produce an Initial Written Assessment, as now;*
- At least one consultation should always be undertaken (with a minimum duration of [one week]); and*
- Any proposed BSC drafting should always be consulted upon.*
- The Panel would make a recommendation to the Authority at the end of the process, as now.*

*The current BSC provisions in respect of Urgent Modification Proposals would remain unchanged.*

Those in favour of a solution of this nature suggest that abandonment of the Definition/Assessment Procedure distinction would reduce the number of meetings and reports and make the modification process more timely and efficient. One respondent noted that there is currently an artificial distinction between the two procedures and that, consequently, much time is taken up with debating what should be discussed and when, rather than with the Proposal itself. It was argued that it was difficult to distinguish between the objectives of the two phases and apparent that the discussions that take place in the Definition Procedure are repeated in the Assessment Procedure. It was suggested therefore that once a raised modification is submitted to the relevant group, it should be worked through to the report stage in as quick a time scale as the Panel believes still facilitates the main aims of the existing procedures.

One respondent was of the view that the number of stages in the process needn't necessarily be reduced but better use could be made of each stage. Another was of the opinion that the modification process is currently in a period of stress due to the high volume of changes and, as such perceived problems could simply be due to high levels of activity currently being undertaken. It was suggested by some that the current arrangements were generally operating successfully and that major change would not be advisable at this time.

## **7 CONSOLIDATED PROPOSAL**

The GMG considered the above options and endeavoured to establish a consolidated set of options which together constitute proposal P28. The basis of selection was to consider the mutual consistency between options, along with some preliminary view as to the extent to which the different options purport to better achieve BSC objectives, noting that a full assessment of these matters would properly take place during the Assessment Procedure. The options not selected to be enshrined within P28 remain important, however, in that they may form the basis of an Alternative Modification, subject to the Panel decision in respect of further activity in respect of P28. In undertaking this exercise, the GMG also sought to provide detail to ensure that P28 would be sufficiently comprehensive to enable assessment to proceed.

The consolidated proposal incorporates four main elements of the above deliberations:

- Panel Openness
- Panel Committee Openness
- Modification Groups/Standing Groups
- Amendment of the Modification Procedures

### **7.1 Panel Openness**

All Panel business would be held in open session, except that specifically identified as being confidential. Furthermore, any Panel Member would be able to invite representations to be made from the floor, in respect of any item of business under discussion. Such representations must be relevant and material to the decision in hand. In all other respects, Panel proceedings would be as now. This element of the proposal reflects option (a) and a variant of option (b).

### **7.2 Panel Committee Openness**

Panel Committee proceedings (except those relating to the TDC and the PAB) would be modified in a manner similar to the Panel such that meetings would be open except for confidential business and any member could invite representations from the floor. Such representations must be relevant and material to the decision in hand. Hence, members would continue to be selected, would continue to act impartially and would remain indemnified under the BSC. The need to limit the scope of Panel Committees to take decisions explicitly prescribed in the BSC, as delegated by the Panel would be reinforced, as would the need to periodically rotate membership. This element of the proposal reflects option (c) and a variant on option (d).

### **7.3 Modification Groups/Standing Groups**

The Panel would establish Standing Groups, with terms of reference that allowed them to consider Modification Proposals in a given area and to consider any issues raised by participants (either directly to the group or via the Panel) which related to that area of the balancing and settlement arrangements. Specific issues, or Modification Proposals, might also be considered by a Modification Group, if no existing Standing Group were considered appropriate. ELEXON would be responsible for ensuring that Panel requirements delegated to such groups were fulfilled and would provide the secretarial and technical support to such groups. The proviso associated with this aspect of the

proposal would be that any report from such a group would not make recommendations in respect of an issue or Modification, but would distil arguments presented during the course of the activity being undertaken. These groups would be open to any Party (and energywatch, or other body designated by the Authority, such that they could raise Modifications) and hence, there would be no requirement to act impartially, nor any indemnity provided under the BSC. There would be no core membership of the groups. Standing Groups and Modification Groups would provide a progress report to each Panel meeting with Modifications business on the agenda. Furthermore, a record of proceedings at these meetings would be made and published. However, such records would not duplicate deliberations which would more properly be included in relevant modification or issue reports. This element of the proposal reflects option (h) which incorporates options (e),(f) and (g), along with options (i) and (j).

## **7.4 Amendment of the Modification Procedures**

The process for the administration of a Modification proposal would fall into three main steps; initiation, evaluation and report.

In so far as the initiation stage is concerned, the process would be as now. Hence, the content and format of a proposal would be as now, so too would the need to produce an initial written assessment, along with the requirements to publish these documents and maintain the documents currently required under the BSC (such as the Modifications Register). The control point at the end of this initiation stage would be as now, in that the Panel would consider the proposal at the next available meeting for Modifications business.

At this stage, the Panel would approve a plan of work and terms of reference for a Standing Group, or Modification Group, to undertake an evaluation of the proposal. The ultimate deliverable from this work would be a report in the form currently defined in Annex F-1 of the BSC (see Attachment 1). The Panel would also stipulate what interim reports might be required, along with any requirement for Panel decisions to control progress.

At least one of these interim deliverables should be a formal consultation, at least [one week] in duration, conducted when the evaluation is substantially complete. Panel approval of the consultation document would be required prior to issue. The Panel would have the flexibility to require more consultation at any stage during the evaluation for cases where this was particularly warranted, or recommended by the relevant Standing/Modification Group. All BSC parties would be invited to participate in or submit comments to Standing/Modification Groups, but such representation would be designed to assist both evaluation of a modification proposal (or development of alternates) and in identifying arguments for and against the proposal. Parties may well change their views as a proposal progresses, so these informal representations would not be attached to the Evaluation Report, (although any relevant argumentation may be included in the report itself).

In any event, the evaluation process should not normally exceed 5 months in duration. The current provision to allow the Panel to extend this timetable if justified by the particular circumstances of a proposal would remain (see BSC F2.2.9). The control point at the end of the evaluation stage would be the presentation of the final evaluation report (including all formal consultation responses) to the appropriate Panel meeting, at which the Panel would make its recommendations to the Authority. Also at this stage, if BSC drafting had not been completed, initial views would be sought from the Authority and, subject to those views, drafting would be undertaken and a consultation undertaken to invite views on such drafting.

If drafting has been completed, or if the Panel (in consultation with the Authority) has determined that drafting is not required, the report stage would involve consolidating the evaluation report, along with any views arising from consultation on drafting, with a recommendation from the Panel. This consolidated report would then be provided to the Authority for determination.

There would be no change to the current procedure for progressing Urgent Modification Proposals. In such cases, the Authority would approve a plan that could involve some deviation from the normal process and timescales. Hence, ad-hoc Modification Groups or Standing Group meetings may still be required to deliver against the directed timetable.

The above reflects a development of the general approach suggested in option (k).

## **8 THE NEED FOR FURTHER ASSESSMENT AND EVALUATION**

Modification Proposal P28, the consultation responses and the Modification Group deliberations described in this report have lead to the definition of a specific proposal to amend the way in which the BSC is governed and modified, along with relevant background, including some options on the chosen solution. It would be appropriate to undertake consultation on this specific model and on some of the identified alternative options as part of an Assessment Procedure. It will be necessary to identify a consistent optimal package of options that best achieves the Applicable BSC Objectives. It would also be appropriate to seek the provisional views of the Authority in respect of any such proposed package of changes. Once a preferred option emerges it will be necessary to develop the relevant BSC legal drafting and for this to be comprehensively reviewed. Depending on the package of proposals, a number of practical and legal issues may require further assessment.

It is not expected that any of the proposed changes will impact BSC Systems and it will not therefore be necessary to commission BSC Agent assessments during the Assessment Procedure. Furthermore, any impact on Core Industry Documents and on Parties is likely to be procedural, rather than system related. Hence, it is felt that suitable consultation will elicit impacts in these areas and no specific impact assessments are required.