

ASSESSMENT REPORT for Modification Proposal P206 'Publication of BSC Panel Election Results'

Prepared by: P206 Modification Group

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This document has been distributed in accordance with Section F2.1.10 of the Balancing and Settlement Code.¹

Proposed Modification P206 seeks to amend the Code such that BSCCo would be required to disclose the following aggregated information in relation to the results of elections for Industry Panel Members: the total number of voting papers submitted, the number of votes received by each candidate (in total and in each round), and the qualifying number of votes required for election in each round. Currently, BSCCo is prohibited by the Code from disclosing any of this voting information. Details of the 2006 election results would be disclosed retrospectively. The names of voting Parties and details of their individual votes would not be disclosed.

Alternative Modification P206 seeks to publish the same information as the Proposed Modification, but without retrospective implementation (i.e. details of the 2006 election results would not be disclosed).

MODIFICATION GROUP'S RECOMMENDATIONS

The P206 Modification Group invites the Panel to:

- **AGREE that Proposed Modification P206 should not be made;**
- **AGREE that Alternative Modification P206 should be made;**
- **AGREE a provisional Implementation Date for both the Proposed and Alternative Modifications of 5 Working Days following an Authority decision;**
- **AGREE the draft legal text for Proposed Modification P206;**
- **AGREE the draft legal text for Alternative Modification P206;**
- **AGREE that Modification Proposal P206 be submitted to the Report Phase; and**
- **AGREE that the P206 draft Modification Report be issued for consultation and submitted to the Panel for consideration at its meeting of 14 December 2006.**

¹ The current version of the Code can be found at <http://www.elexon.co.uk/bscrelateddocs/BSC/default.aspx>.

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SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

As far as the Modification Group has been able to assess, the following parties/documents would be impacted by P206.

Please note that this table represents a summary of the full impact assessment results contained in Appendix 4.

Parties	Sections of the BSC	Code Subsidiary Documents
Distribution System Operators <input type="checkbox"/>	A <input type="checkbox"/>	BSC Procedures <input type="checkbox"/>
Generators <input checked="" type="checkbox"/>	B <input checked="" type="checkbox"/>	Codes of Practice <input type="checkbox"/>
Interconnectors <input checked="" type="checkbox"/>	C <input type="checkbox"/>	BSC Service Descriptions <input type="checkbox"/>
Licence Exemptable Generators <input checked="" type="checkbox"/>	D <input type="checkbox"/>	Party Service Lines <input type="checkbox"/>
Non-Physical Traders <input checked="" type="checkbox"/>	E <input type="checkbox"/>	Data Catalogues <input type="checkbox"/>
Suppliers <input checked="" type="checkbox"/>	F <input type="checkbox"/>	Communication Requirements Documents <input type="checkbox"/>
Transmission Company <input type="checkbox"/>	G <input type="checkbox"/>	Reporting Catalogue <input type="checkbox"/>
Party Agents	H <input type="checkbox"/>	Core Industry Documents
Data Aggregators <input type="checkbox"/>	I <input type="checkbox"/>	Ancillary Services Agreement <input type="checkbox"/>
Data Collectors <input type="checkbox"/>	J <input type="checkbox"/>	British Grid Systems Agreement <input type="checkbox"/>
Meter Administrators <input type="checkbox"/>	K <input type="checkbox"/>	Data Transfer Services Agreement <input type="checkbox"/>
Meter Operator Agents <input type="checkbox"/>	L <input type="checkbox"/>	Distribution Codes <input type="checkbox"/>
ECVNA <input type="checkbox"/>	M <input type="checkbox"/>	Distribution Connection Agreements <input type="checkbox"/>
MVRNA <input type="checkbox"/>	N <input type="checkbox"/>	Distribution Use of System Agreements <input type="checkbox"/>
BSC Agents	O <input type="checkbox"/>	Grid Code <input type="checkbox"/>
SAA <input type="checkbox"/>	P <input type="checkbox"/>	Master Registration Agreement <input type="checkbox"/>
FAA <input type="checkbox"/>	Q <input type="checkbox"/>	Supplemental Agreements <input type="checkbox"/>
BMRA <input type="checkbox"/>	R <input type="checkbox"/>	Use of Interconnector Agreement <input type="checkbox"/>
ECVAA <input type="checkbox"/>	S <input type="checkbox"/>	BSCCo
CDCA <input type="checkbox"/>	T <input type="checkbox"/>	Internal Working Procedures <input checked="" type="checkbox"/>
TAA <input type="checkbox"/>	U <input type="checkbox"/>	BSC Panel/Panel Committees
CRA <input type="checkbox"/>	V <input type="checkbox"/>	Working Practices <input checked="" type="checkbox"/>
SVAA <input type="checkbox"/>	W <input type="checkbox"/>	Other
Teleswitch Agent <input type="checkbox"/>	X <input type="checkbox"/>	Market Index Data Provider <input type="checkbox"/>
BSC Auditor <input type="checkbox"/>		Market Index Definition Statement <input type="checkbox"/>
Profile Administrator <input type="checkbox"/>		System Operator-Transmission Owner Code <input type="checkbox"/>
Certification Agent <input type="checkbox"/>		Transmission Licence <input type="checkbox"/>
Other Agents		
Supplier Meter Registration Agent <input type="checkbox"/>		
Unmetered Supplies Operator <input type="checkbox"/>		
Data Transfer Service Provider <input type="checkbox"/>		

1 EXECUTIVE SUMMARY

The key conclusions of the P206 Modification Group ('the Group') are outlined below.

The Group:

- **AGREED** a **MAJORITY** view that the Proposed Modification **WOULD NOT** better facilitate the achievement of Applicable BSC Objective (c)², due to its element of retrospection;
- **AGREED** a **MAJORITY** view that the Alternative Modification **WOULD** better facilitate the achievement of Applicable BSC Objective (c) by promoting transparency and thereby competition;
- **SUPPORTED** the principle of prospectively disclosing aggregated voting numbers in future Panel elections, and did not believe that this would compromise the confidentiality or robustness of elections or impact the role or status of Panel Members;
- **NOTED** that the Freedom of Information Act was not applicable to P206;
- **AGREED** that further evaluation of the election processes of other industry Codes was not required in order to assess whether P206 would better facilitate the achievement of the Applicable BSC Objectives;
- **CONSIDERED** the relevance of previous views of the Authority and industry in the context of the disclosure of voting information, but agreed that these should not fetter its assessment of P206;
- **AGREED** that, in the interests of transparency, all available aggregated voting data should be disclosed (i.e. with the exception of the names and individual votes of voting Parties);
- **AGREED** that voting numbers in ad-hoc elections for replacement Panel Members should also be published;
- **CONSIDERED** the implications of the retrospective element of the Proposed Modification, and developed an Alternative Modification which removed this element;
- **CONSIDERED** whether a compromise solution was required to mitigate any risk to confidentiality, and considered a potential option for an Alternative Modification – whereby voting numbers below a 'De Minimis' threshold would not be disclosed – but did not believe that this was necessary to preserve confidentiality of voting, and therefore did not progress this further;
- **AGREED** with BSCCo's legal advice that Applicable BSC Objective (c) was the appropriate Objective for consideration of transparency issues;
- **SOUGHT** the views of consultation respondents as to whether the Proposed Modification and/or the Alternative Modification would affect participation and behaviour in Panel elections (including in relation to the confidentiality of voting);
- **NOTED** that the implementation costs for both the Proposed and Alternative Modifications were estimated to be £880 (4 BSCCo man days' effort);
- **AGREED** that the retrospective element of the Proposed Modification should be delivered via a legal text requirement to publish the 2006 election results, rather than by using a retrospective Implementation Date;
- **AGREED** that the recommended Implementation Date for both the Proposed and Alternative Modifications should therefore be 5 Working Days following an Authority decision; and

² Applicable BSC Objective (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'.

- **AGREED** that the draft legal text delivers its intended solutions for the Proposed and Alternative Modifications.

A description of the P206 solution is provided in Section 2. Further information regarding the Group's discussions of the areas set out in the P206 Terms of Reference is contained in Section 3, including details of the Group's recommended implementation approach and the estimated implementation costs of P206. A summary of the Group's views regarding the merits of the Proposed Modification and Alternative Modification can be found in Section 4.

A copy of the draft legal text for the Proposed and Alternative Modifications is provided in Appendix 1, and a copy of the Group's full Terms of Reference can be found in Appendix 2. A summary of the responses to the Assessment Procedure consultation and impact assessment can be found in Appendices 3 and 4 respectively.

2 DESCRIPTION OF MODIFICATION

P206 was raised on 3 August 2006 by E.ON UK plc ('the Proposer'). P206 seeks to amend the Balancing and Settlement Code ('the Code'), such that BSCCo would be required to disclose the number of preference votes received in each voting round by candidates standing for election to the BSC Panel, but not the names of the voting Parties concerned. In addition, the Modification Proposal suggests that the qualifying total required by candidates for election in each round and the qualifying total calculation for each round should be published.

This section outlines the solution for the Proposed Modification and Alternative Modification, as developed by the Modification Group.

For a full description of the original Modification Proposal as submitted by E.ON UK plc ('the Proposer'), please refer to the P206 Initial Written Assessment (IWA).

2.1 Background

2.1.1 Panel Election Process

a) Nomination

The process for the election of the five Industry Panel Members is set out in Annex B-2 of the Code. Each Trading Party may nominate one candidate, and each trading party group (a Trading Party and every Affiliate of that Party) may submit one set of voting papers for each Energy Account held by the voting Trading Party in that trading party group (i.e. two sets - one for the Production Energy Account and one for the Consumption Energy Account). The Panel elections are carried out using a preference voting system.

b) Voting Papers

Each submitted voting paper must indicate a first preference among the candidates. A voting paper may, but does not need to, indicate a second or third preference. However, the same candidate may not receive more than one preference in the same voting paper. Voting proceeds in a number of rounds.

Annex B-2, Paragraph 3.2.5, of Section B of the Code currently states that BSCCo will not disclose the preference votes cast by Trading Parties or received by candidates (neither the number of votes nor the names of voting Parties).

c) Voting Rounds

i) First Round

In the first voting round, the number of first preference votes allocated to each candidate is determined. The qualifying total for election is $(T/N) + 1$, where T is the total number of first preference votes in all

voting papers and N is the number of Industry Panel Members to be elected. Any candidate who receives equal to or greater than the qualifying total is elected to the Panel.

ii) Second Round

In the second voting round, the remaining candidates are those not elected in the first round. The voting papers with first preference votes for candidates elected in the first round are discounted. The number of first and second preference votes allocated to each candidate on the remaining voting papers is determined. The qualifying total is now $(T'/N') + 1$, where T' is the number of first and second preference votes in all remaining voting papers and N' is the number of Panel Members remaining to be elected.

iii) Third Round

In the third voting round, the remaining candidates are those not elected in the first or second rounds. The voting papers with first or second preference votes for candidates elected in the first or second rounds are discounted. The number of first, second and third preference votes allocated to each candidate on the remaining voting papers is determined. The qualifying total is now $(T''/N'') + 1$, where T'' is the number of first, second and third preference votes in all remaining voting papers and N'' is the number of Panel Members remaining to be elected.

iv) Further Round(s)

A further round is necessary if any Panel Members remain to be elected after the third round. In this round, all voting papers are counted (i.e. including all those discarded in previous rounds), and the remaining candidates are ranked in order of the number of first preference votes allocated to them. The candidate(s) with the greatest number of such votes is elected. If there is a tie in the number of first preference votes between two or more candidates, the tied candidate(s) with the greatest number of second preference votes is elected. If there is a tie in the number of second preference votes between two or more candidates, BSCCo draws lots to select the candidate(s) to be elected from among those tied.

2.1.2 Worked Example

i) First Round

Assume 6 candidates for 5 Industry Panel Member vacancies; candidates A, B, C, D, E and F. Assume 20 voting papers are received, with 1st, 2nd, and 3rd preference votes assigned as in the table below (Figure 1).

Preference	1st	2nd	3rd									
Votes	A	C	B	A	C		D	C	B	E	B	
Votes	A	C	B	B	C	F	D	C	B	E		
Votes	A	C	B	B	C	F	D	C	B	E		
Votes	A	C	D	B	C	F	D	C	B	F	B	A
Votes	A	C		B			D	C	B	F	E	

Figure 1

The qualifying total required by candidates for election for the Panel is then:

$$(20/5) + 1 = 5$$

Where 20 is the total number of 1st preference votes in all papers and 5 is the number of Industry Panel Members to be elected.

So any candidate with 5 or more 1st preference votes is elected to the Panel. Thus, candidate A and candidate D are elected with 6 and 5 votes respectively.

ii) Second Round

Any candidates not elected in the first round proceed to the second round. Any voting papers with 1st preference votes for elected candidates are now discounted, as illustrated in the table below (Figure 2). The remaining 1st and 2nd preference votes are counted.

Preference	1st	2nd	3rd									
Votes	A	C	B	A	C		D	C	B	E	B	
Votes	A	C	B	B	C	F	D	C	B	E		
Votes	A	C	B	B	C	F	D	C	B	E		
Votes	A	C	D	B	C	F	D	C	B	F	B	A
Votes	A	C		B			D	C	B	F	E	

Figure 2

The qualifying total is now:

$$(15/3) + 1 = 6$$

Where 15 is the total number of 1st and 2nd preference votes in all remaining papers and 3 is the number of Industry Panel Members remaining to be elected.

So any candidate with 6 or more 1st or 2nd preference votes is elected. Thus, candidate B is elected with 6 votes.

iii) Third Round

Any candidates not elected in the first or second round proceed to the third round. Any voting papers with 1st or 2nd preference votes for elected candidates are discounted, as illustrated in the table below (Figure 3). The remaining 1st, 2nd and 3rd preference votes are counted.

Preference	1st	2nd	3rd									
Votes	A	C	B	A	C		D	C	B	E	B	
Votes	A	C	B	B	C	F	D	C	B	E		
Votes	A	C	B	B	C	F	D	C	B	E		
Votes	A	C	D	B	C	F	D	C	B	F	B	A
Votes	A	C		B			D	C	B	F	E	

Figure 3

The qualifying total is now:

$$(4/2) + 1 = 3$$

Where 4 is the total number of 1st, 2nd and 3rd preference votes in all remaining papers and 2 is the number of Industry Panel Members remaining to be elected.

So any candidate with 3 or more 1st, 2nd or 3rd preference votes is elected. Thus, candidate E is elected with 3 votes.

iv) Further Round

Candidates A, D, B and E have been elected; thus one Panel Member remains to be elected from among candidates C and F. Counting all voting papers (i.e. including all those discounted in all preceding rounds), the remaining candidates are ranked in order of the 1st preference votes allocated to them. The candidate with the greatest number of such votes is then elected. Candidate F has 2 votes and candidate C has none, so candidate F is elected to the Panel.

2.1.3 Replacement of Panel Members

In the event that a Panel Member ceases to hold office not less than six months before the end of his term of office, a replacement is elected for the remainder of the term, using the process described above. However, only Trading Parties that voted for the resigning Panel Member (with a first, second or third preference vote), or who did not vote for any elected Panel Member still serving, may participate in the election by nominating candidates or voting.

If a Panel Member ceases to hold office less than six months before the end of his term of office, the Trading Party which nominated the resigning Panel Member is entitled to appoint a replacement Panel Member for the remainder of the term.

2.1.4 Aim of P206

The Proposer believes that the publication of the numbers of votes received by candidates in Panel elections would make the Panel election procedure more transparent and open to scrutiny by Parties. The Proposer asserts that the existing ability of Parties to require that the BSC Auditor scrutinise the conduct of elections only allows validation of the process, whereas disclosure of the numbers of votes received by candidates would allow evaluation of the Panel election process, which may lead to more efficient governance arrangements.

2.2 Proposed Modification

The Code would be amended such that BSCCo would be required to disclose the following information regarding the voting in the elections for Industry Panel Members, including any ad-hoc elections for the replacement of Panel Members who resign part-way through their term of office:

- The total number of voting papers received;
- The total number of 1st, 2nd, and 3rd preference votes received by each candidate over all voting papers (i.e. prior to voting rounds);
- The number of remaining voting papers (T) and remaining Panel vacancies (N) in each round (and hence the qualifying total in each round); and
- The number of relevant preference votes for each candidate in the remaining voting papers in each voting round.

This information would be published at an aggregated level, and the names and votes of individual voting Parties would not be published.

The Proposed Modification would be implemented such that the voting information described above would be retrospectively disclosed for the 2006 Panel elections.

2.3 Alternative Modification

The Alternative Modification developed by the Group is identical to the Proposed Modification, except that it would not be implemented retrospectively – i.e. voting information for the 2006 Panel elections would not be disclosed.

Under the Alternative Modification, the first set of voting information to be published would therefore be either the results of the 2008 Panel election, or any ad-hoc election held to replace a resigning Industry Panel Member between the implementation of P206 and the full 2008 election.

3 AREAS RAISED BY THE TERMS OF REFERENCE

This section outlines the conclusions of the Modification Group regarding the areas set out in the P206 Terms of Reference.

3.1 Principle of Disclosure of Voting Information

3.1.1 Modification Group's Initial Discussions

The Group considered the principle of disclosing information from the Panel elections. The Proposer asserted that disclosure of voting numbers would increase the transparency of the election process, which is good corporate governance and would increase the confidence of participants in the BSC arrangements; furthermore, having access to voting numbers would allow alternative election processes to be evaluated more openly and effectively under any future Standing Issue or Modification Proposal.

The Group agreed with the arguments of the Proposer that publication of anonymous voting information would increase the transparency of, and thereby the confidence in, the BSC arrangements. The Proposer queried whether the Freedom of Information Act was a relevant consideration, but noted BSCCo's legal advice that it is not subject to the Freedom of Information Act as it is not a public authority. A Group Member queried whether, since Ofgem is a public authority, Parties could request details of election results from them using the Freedom of Information Act. The Group noted BSCCo's legal advice that the Code contains general provisions which allow the Authority to request data from BSCCo, but that there is a prohibition under the Freedom of Information Act of giving information that could constitute a breach of confidence.

The Group noted that the existing election process could be modelled using hypothetical scenarios as shown in Section 2.2, but also noted the view of the Proposer that actual election results were required in order to fully evaluate proposed changes to the Panel election arrangements. The Proposer clarified that the assessment of previous Rejected Modification Proposal P129³ (which sought to amend the Panel election process to a 'first past the post' constituency-based process) had utilised such hypothetical modelling, but that he believed that the P129 industry consultation responses had demonstrated a suspicion of hypothetical examples which had led in part to the rejection of the proposal. The Group noted that part of the reason P129 was rejected was that Parties felt a constituency process would be unrepresentative; the Proposer stated that this could not be proved or disproved solely by hypothetical modelling of the current process or any proposed election process.

A majority of Group Members agreed that arguments based on actual data tended to be more convincing. However, one member queried whether P206 was necessary in order to achieve this, or whether election results could already be made available to Modification Groups considering such changes on a confidential basis. The Group noted BSCCo's legal advice that this would not be possible, since the Code currently prohibits disclosure of this information to any person. The Proposer also noted that, even if such information could be confidentially provided to Modification Groups, it would not be available to consultation respondents to inform their views. A majority of Group Members therefore believed that P206 was necessary in order to fully evaluate potential future changes to Panel governance. One member disagreed, and believed that the current process could be adequately modelled using hypothetical data. However, this member agreed more generally with the principle that publishing voting information would provide more transparent governance.

The Group therefore supported the principle of disclosing voting information prospectively for future Panel elections. However, concerns were expressed over the retrospective publication of data from the 2006 Panel elections. Further details can be found in Section 3.5.

³ Modification Proposal P129 'Changes to Panel Determination Process and Panel Election Procedures'.

3.1.2 Views of Respondents to Assessment Procedure Consultation

All respondents to the P206 consultation, who did not adopt a neutral position on this issue, broadly supported the principle of prospectively disclosing the specified voting information for future Panel elections. This support was based on the desirability of open and transparent governance, and the perception that this would increase confidence in governance arrangements, which would be beneficial for competition. One respondent also considered that such transparency was likely to reduce barriers to entry, whilst another respondent believed that it could further encourage the interests of potential new market entrants. One respondent considered that increased confidence leads to greater certainty and reduced risk in the market, thereby promoting competition.

Most respondents did not offer a view as to whether the disclosure of voting information might allow better evaluation of the Panel election process, and of any future modifications that may be proposed in this area. However, one respondent stated that Parties would benefit from the ability to evaluate any new governance proposals openly, with reference to actual Panel election data, rather than using speculative modelled data. This respondent also considered that Parties would be more receptive to change, if they could be confident that governance arrangements are robust. By contrast, one respondent stated that they did not consider any possible facilitation of the evaluation of future modifications regarding the election process as a valid reason to support P206 – although they were still in favour of the increased transparency that disclosure would deliver. This respondent considered that evaluation of P206 should be constrained to the current Code baseline, and should not attempt to prejudge possible future modifications.

One respondent considered that it appeared inconsistent with the democratic election process outlined in the BSC that election results are not disclosed in full, and believed that full disclosure is right and proper in a fully democratic process.

3.1.3 Modification Group's Conclusions

The Modification Group discussed the consultation responses relating to this area, and noted that there was support for the prospective disclosure of voting information due to the benefits that would be gained from increased transparency.

The Group noted the view of one respondent that facilitating the evaluation of future Modification Proposals was not a valid argument in favour of P206. The Group agreed that it had considered P206 on its own merits, and that its views were not contingent on the raising of other specific proposals in the future. However, it did note that part of the Proposer's rationale in raising the proposal was to enable more transparent evaluation of the election process and any future changes to that process that might be proposed. The Group considered that this was a valid argument against the Applicable BSC Objectives to the extent that, by creating the ability for post-event analysis, P206 could facilitate the identification of any defects in the process and enable more transparent analysis of any proposed changes compared with the existing Code baseline.

3.2 Relevant Election Process Precedents

3.2.1 Modification Group's Initial Discussions

The Group noted that Section 8 of the Connection and Use of System Code (CUSC) contained a preference voting system for User Members of the CUSC Amendments Panel which was very similar to that set out in the BSC (Reference 1). It noted that, like the BSC, the CUSC contained a prohibition on disclosing the names of voting parties or numbers of votes. However, as under the BSC, User Members could request independent scrutiny of the election results (by the Authority in the case of the CUSC, rather than the BSC Auditor). The Group agreed that the fact that both the BSC and the CUSC currently prohibited disclosure should not fetter its assessment of P206, if a case could be made that disclosure would better facilitate the achievement of the Applicable BSC Objectives.

The Group discussed the value of evaluating further precedents that may be set by the policies of other industry Codes toward disclosure of election results. It was noted that other Codes or agreements, such as the Distribution Connection and Use of System Agreement (DCUSA) or the Unified Network Code (UNC) in the gas market, represented examples of different types of panel election processes such as constituency-based voting. However, the Group determined that comparing such Codes/agreements with the BSC would not be a 'like for like' comparison, and would not be directly relevant to its specific consideration of P206 against the Applicable BSC Objectives.

The Group reviewed the hypothetical Worked Example provided by BSCCo (see Section 2.2.2) and noted the preference voting system used in the BSC. The Proposer suggested that the BSC's election process was unusual, and that the principle of transparent governance was undermined by the use of a voting system that lacked precedent. The Proposer also considered that, in the Worked Example, different candidates would be elected if an alternative voting system was used, such as Proportional Representation through Single Transferable Vote (PR-STV) or Cumulative Voting, which the Proposer suggested is widely used in corporate governance. The Proposer argued that P206 would enable Parties to openly assess the merit of using other voting systems in the future.

3.2.2 Views of Respondents to Assessment Procedure Consultation

One respondent stated their belief that the voting system used in the elections for BSC Industry Panel Members is without precedent – particularly in the non-disclosure of results – and this made it necessary that the system should be open to transparent evaluation. Another respondent believed that the non-disclosure of final election results in full seems inconsistent with virtually every other voting system the respondent was aware of, particularly political voting systems.

One respondent stated that there appeared to be a presumption that the current election process was flawed, and commented that this was not part of the P206 Terms of Reference and had not been considered by the Modification Group. Another respondent commented that the Group had adhered to the Panel's instruction in its Terms of Reference to keep the assessment of P206 focussed on the specific issue identified in the Modification Proposal. One respondent stated that there might be some argument to completely overhaul the Panel election process, as it was their view that the preference voting currently used has the potential to deliver results that lead to the elimination of popular candidates, and that may appear strange in light of the numbers of votes received by candidates. However, the respondent noted that this fell outside the P206 Terms of Reference, and would need to be the subject of a separate Modification Proposal.

3.2.3 Modification Group's Conclusions

The Group noted that, though it had considered whether there were any election precedents that could usefully inform the evaluation of the modification, its assessment had been constrained to consideration of the particular merits of P206 in relation to the achievement of the Applicable BSC Objectives. The Group also noted that it had been careful to focus on the issue of the transparency of election results raised by P206, and not to stray into consideration of the effectiveness of the election process itself. The Group was comfortable that this was consistent with the Terms of Reference set by the Panel.

3.3 Previous Views

3.3.1 Modification Group's Initial Discussions

The Group noted that the solution developed by the Modification Group for Rejected Modification P129 had included the publication of voting numbers in Panel elections. However, the Group noted that P129 had sought to introduce a different voting process, and that the principles regarding disclosure of the results of that process were therefore not directly comparable to P206.

The Group noted that the Authority had not commented on the disclosure of voting numbers in its P129 decision letter. It noted that the Authority and the Department of Trade and Industry (DTI), in response to the 2000 consultation on the draft text of the BSC prior to NETA Go-Live, had expressed the view that transparency was adequately catered for in the Panel election rules (Reference 2). However, the Group noted that this statement had been in response to a suggestion that it should be clear which Parties voted for which candidates, and that the context of this view (i.e. the suggested total removal of confidentiality of voting) was therefore different to P206.

The Group agreed that these previous views provided useful background, but noted that it had been some time since these views had been recorded and furthermore that P206 needed to be assessed on its own merits against the existing Code baseline. The Group agreed that the relevant test for P206 was whether it would better facilitate the achievement of the Applicable BSC Objectives compared to the current Code baseline.

3.3.2 Views of Respondents to Assessment Procedure Consultation

The Assessment Procedure consultation responses contained no specific comments in this area in relation to the principle of the disclosure of voting information.

Some respondents did cite the criteria for retrospection set out by the Authority in previous decision letters. Further detail can be found in Section 3.5.

3.3.3 Modification Group's Conclusions

The Group had no further comments in relation to this area in addition to its previous conclusion that the relevant test for P206 was whether it would better facilitate the achievement of the Applicable BSC Objectives compared to the current Code baseline.

3.4 Information to be Disclosed

3.4.1 Modification Group's Initial Discussions

The Group noted that the following voting information was available for disclosure:

- The total number of voting papers received;
- The number of 1st, 2nd, and 3rd preference votes received by each candidate over all voting papers (i.e. prior to voting rounds);
- The number of remaining voting papers (T) and remaining Panel vacancies (N) in each round, or the qualifying total in each round $((T/N) + 1)$; and
- The number of relevant preference votes for each candidate in the remaining voting papers in each voting round.

The Group noted that disclosure of the total number of voting papers received would allow election turnout by participants to be measured. The Group discussed whether it would be necessary to disclose the number of Trading Parties that participated in elections in order to fully reflect voter turnout, e.g. in the case that a Party or Parties participate but only submit one set of voting papers (rather than the two sets, one per Energy Account, that all Parties are entitled to submit). However, the Group felt that in practice it would be sufficient to disclose only the number of voting papers received, as this would provide an adequate measure of participation. The Group noted that the list of eligible voting Parties (i.e. trading party groups) was published by BSCCo prior to full Panel elections, and that the maximum number of potential voting papers was therefore twice the number of trading party groups. The Group agreed that publication of the actual number of voting papers received would therefore show the election turnout. The Proposer argued that it was vital to know the turnout in order to evaluate the effectiveness of the election process.

The Group felt that all the identified available information should be disclosed as this would allow the voting to be fully evaluated. The Group agreed that publication of a subset of this information would only allow partial evaluation of voting and of the effectiveness of the preference voting system, as it would not show the 'whole picture' – i.e. the qualifying total for each voting round was needed in addition to the votes received in order to know which candidates were elected in each round. It agreed that the total numbers of preference votes received by candidates, in addition to the totals for each round, were required in the event that voting proceeded to the final round (where all voting papers are counted).

3.4.2 Views of Respondents to Assessment Procedure Consultation

The Assessment Procedure consultation responses contained no specific comments in this area.

There was some discussion by respondents of how disclosure might be limited if this was felt to be necessary in the interests of confidentiality (see Section 3.6), but these respondents were not unsupportive of the basic information proposed for disclosure.

3.4.3 Modification Group's Conclusions

In light of the lack of objections in consultation responses to disclosure of the voting information specified by the Group, the Group concluded that this information was suitable for disclosure in the view of Parties.

3.5 Retrospection

3.5.1 Modification Group's Initial Discussions

The Group considered the retrospective element of the Proposed Modification. The Group was given legal advice that there was generally a presumption in law against retrospection, and that Ofgem has previously used quite stringent criteria in determining the need for retrospective changes, though Ofgem is not bound by any previous criteria it may have given.

The Group noted that, though the Modification Proposal was submitted before the conclusion of the 2006 Panel election and it could thus potentially be argued that it was not strictly speaking seeking retrospective change, BSCCo was able to confirm that between a half and two thirds of the total number of votes submitted for the election were received prior to the submission of the Modification Proposal. Hence it is certain that a number of Parties acted on the basis of rules which, at that time, they could have had a reasonable expectation would not be changed and under the assumption that all aspects of voting would be confidential.

A Group Member queried whether, if it was determined that the voting information from the 2006 elections could be published, the voting information with regard to all previous Panel elections could be published. The Group noted that this could potentially form an option for an Alternative Modification.

A Group Member stated that retrospection was the biggest issue in relation to the Proposed Modification, and that granting retrospection in this case could set an undesirable precedent with regard to retrospective changes. The Proposer noted the general presumption against retrospective changes, but did not believe the specific retrospection of P206 to be problematic since he did not believe that it would have any commercial implications for Parties. The Proposer noted that implementing the change prospectively would address the defect for future elections, but argued that it would not aid the evaluation of any potential future changes to the election process over the two years prior to the next election. However, the other Group Members agreed that, while sympathetic to the Proposer's position, this was not sufficient justification for retrospective implementation. One member noted that the 2006 election timetable had been publicised well in advance, and considered that P206 could have been raised earlier if publication of these results was desired.

With the exception of the Proposer, the Group therefore agreed that retrospective implementation was not appropriate and agreed to develop a non-retrospective Alternative Modification. However, Group Members clarified that their concerns regarding retrospection related to the precedent that this might set for other changes, rather than any specific concern that Parties would have voted differently in the 2006 election had they had known that voting numbers would be published. This was consistent with the Group's view that disclosing voting numbers would not compromise confidentiality or affect voting behaviour. Further detail regarding these views can be found in Section 3.6. However, the Group agreed to include specific consultation questions in these areas.

3.5.2 Views of Respondents to Assessment Procedure Consultation

A majority of consultation respondents were opposed to retrospective disclosure.

Most of these respondents stated that neither the Proposed nor Alternative Modification would affect their voting in Panel elections. However, notwithstanding this, these respondents believed that it was important that Parties were able to participate in elections with confidence that the arrangements would not be amended retrospectively. These respondents considered that retrospection would increase regulatory uncertainty and undermine market confidence, which would have a detrimental effect on competition. Some respondents also considered that this could create a barrier to entry to the market. Some respondents stated that there was a possibility, however small, that Parties might have voted differently in the 2006 election if they knew that voting information would be published, and that it would not be appropriate for election rules to be changed after the event. One respondent argued that P206 should have been raised earlier if the Proposer wanted the 2006 election results to be published. Many respondents noted that voting was at an advanced stage when the modification was submitted, and one respondent therefore considered that retrospective disclosure of the 2006 voting information could constitute a technical breach of confidentiality – making it open to legal challenge.

Some respondents stated that they were not opposed to all retrospective modifications, which they considered could be acceptable in very unusual circumstances provided there was strong justification. However, although some agreed with the view of the Proposer that real voting data could assist the presentation and analysis of future modifications, most respondents did not believe that the benefits of P206 were sufficient to overcome the general presumption against retrospection. One respondent believed that the Proposed Modification did not meet the criteria for retrospection previously outlined by the Authority in its decision letter for Modification Proposal P19 'To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications' (Reference 3), which were: loss due to a fault or error directly attributable to central arrangements; a combination of circumstances that could not have been reasonably foreseen; or a situation where the possibility of a retrospective action had been clearly flagged to participants in advance – the Authority also indicated that loss sustained would need to be material. In addition, many respondents believed that, whilst P206 might not have a commercial impact, approval of the Proposed Modification would set an undesirable precedent regarding retrospective changes. Some respondents noted the request in the Modification Proposal that the Implementation Date should be the date of the submission of the proposal. These respondents believed that it was unsound to consider that this would not constitute retrospection, and that accepting this could encourage Proposers of future Modification Proposal to request such an implementation approach. One respondent considered that such a request took no account of the practicalities and timescales of implementing a proposal. All of the respondents who raised concerns regarding the retrospection of the Proposed Modification believed that this issue would be addressed by the Alternative Modification.

A minority of respondents supported retrospective implementation. One of these respondents believed that foreknowledge that voting information would be published would not have affected voting in the 2006 election. Another respondent believed that, whilst the Alternative Modification was a suitable compromise in that it would address the transparency issue prospectively, the Proposed Modification would deliver an additional benefit because it would allow Parties to better evaluate the Panel election process and any future

governance proposals as soon as possible. This respondent considered that if implementation was not retrospective, the realisation of this benefit would be delayed. The respondent noted the concerns raised by Modification Group members regarding retrospection, but countered that P206 would not have any commercial impact and that the Modification Proposal had been submitted a week before the 2006 voting deadline. One respondent who supported retrospection believed that P206 was a simple modification, which had been made to look overly complicated and controversial by the Group.

3.5.3 Modification Group's Conclusions

The Group considered the consultation responses regarding the issue of retrospection.

The Group considered the argument made that the uncertainty in the governance arrangements that would be engendered by retrospective implementation, and the consequent damage to confidence in the market, could create a barrier to entry to the market in addition to having a more general negative impact upon competition. The Group noted that this aspect had not been identified in its previous discussion. Some members considered that, in principle, retrospection could be viewed as a barrier to entry – hence the general presumption in law against retrospective changes. However, the Group was uncertain as to whether P206 in itself was a significant enough issue for the retrospection of the Proposed Modification to deter entrance to the market.

The Group noted the observation made by one respondent that, because its retrospective element might be construed as constituting a breach of confidence, implementation of the Proposed Modification might be open to legal challenge. The Group believed that this argument related to the potential for general challenges over the legality of retrospectively publishing information which had been submitted on the understanding of confidentiality, rather than to the specific appeals process administered by the Competition Commission (where the criteria for an appeal of an Authority decision on a modification relate to the consistency between the Panel's recommendation and Authority decision); the respondent subsequently confirmed to ELEXON that this interpretation was correct. Some members agreed with this view, although they agreed that there was little likelihood of such a legal challenge being made.

Many Group Members reiterated their earlier views regarding the undesirability of retrospective implementation. One member cited in support of this view Ofgem's decision letters in relation to Modification Proposals P19 'To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications' and P171 'Retrospective Removal of Emergency Instructions Taken for System Reasons from Imbalance Price' (Reference 4), in which the Authority took the view that the market would benefit from the assurance of rules that are unlikely to be changed retrospectively. The member noted that for this reason there is a general presumption by the Authority against retrospective modifications on the basis that they damage market confidence.

The Group noted the suggestion of the Modification Proposal that the Implementation Date for the Proposed Modification should align with the submission date of P206. One member considered that this would set a dangerous precedent and should not be encouraged, in case such requests became common practice in the submission of modifications. The Group also noted that such an implementation approach would provide no lead time for the implementation of modifications. Whilst this was not considered to be a material concern with regard to P206, which is a Code-only change, members believed this would be a significant factor in the case of system changes that may require several months' lead time for implementation. The Group considered that, for this reason, it would be unwise to make a decision contrary to the presumption against retrospection, because there is a risk that this could set a precedent that might have detrimental consequences. The Group agreed that, if the Proposed Modification were to be implemented, its retrospection should be effected through a provision in the legal text rather than through a retrospective Implementation Date. Further detail can be found in Sections 3.10 and 3.11.

The Group noted the view of one consultation respondent that P206 had been made to seem to be overly complex and controversial. The Group noted that it had a responsibility to assess the areas set out in its

Terms of Reference, and to consider all potential implications of the proposal with due diligence. The Group agreed that it was comfortable that it had discharged its Terms of Reference without straying beyond the areas set by the Panel.

3.6 Confidentiality

3.6.1 Modification Group's Initial Discussions

The Group considered whether the confidentiality of Panel elections might be compromised, given the nature of the information they supported disclosing, the limited participation in Panel elections and the degree of predictability associated with the voting of some Parties (e.g. Parties could reasonably be expected to vote for a candidate they had nominated). However, the Group considered that it would not be possible to deduce with any degree of certainty the manner in which a Party had voted, based on Group Members' experience of Panel elections and the aggregated and anonymous nature of the data which would be published. Members did not believe that publishing voting numbers would alter the behaviour of Parties in elections (either the numbers of candidates and voting Parties participating in the election, or the votes cast by Parties). However, the Group agreed to include specific consultation questions in these areas.

The Group discussed whether a compromise between disclosing voting information and maintaining confidentiality might be appropriate, and what form such a compromise could take, e.g. 'De Minimis disclosure' whereby numbers of votes below a given amount are not disclosed. However, the Group did not believe this to be necessary given its view that total disclosure of numbers would not compromise confidentiality. Moreover, the Group believed that it would be practically difficult to agree the appropriate 'De Minimis' threshold – for example, different thresholds might be required for each voting round. However, the Group again agreed to include a specific consultation question in this area.

3.6.2 Views of Respondents to Assessment Procedure Consultation

A majority of consultation respondents believed that the disclosure of the specified voting information would not compromise the confidentiality of voting. Following from this, a majority of consultation respondents believed that it was not necessary to consider the use of any alternative solution in order to minimise any risk to confidentiality.

One respondent noted that the Modification Group had agreed that it would not be possible to infer which Party had voted for which candidate, and believed that any guesses would be based on "useless" assumptions. As such, the principle of the secret ballot would be preserved. The respondent considered that, as well as being unnecessary, use of a 'De Minimis' solution would be contrary to the aim of the proposal of adding transparency to the election process.

One respondent restated their belief that the retrospective implementation of the Proposed Modification would constitute a technical breach of confidentiality; however they believed that the Alternative Modification would address this issue. The respondent considered that the use of a 'De Minimis' solution to minimise the risk to confidentiality would limit the usefulness of the modification.

One respondent noted that while the disclosure of aggregated voting data would allow a candidate to discover whether they received all the votes that they may have expected through lobbying, it would not normally be possible to ascertain which Parties' votes they did not receive. The respondent argued that only if a candidate received between nil and two votes could it be reasonably surmised who had not voted as anticipated, as these votes are likely to be from the candidate's nominator; however, it would not be possible to work out which rival candidate the other expected votes went to, so confidentiality would be maintained. This respondent did not believe that a 'De Minimis' solution was required, but suggested that if this was to be used then the 'De Minimis' level should be set at 3 votes or less. Another respondent believed that, whilst it might be possible to infer voting patterns from the aggregated numbers, at best this would be an informed guess. This respondent considered that Parties could already attempt to infer voting patterns

under the current arrangements. The respondent also stated that, whilst there might be some merit conceptually in setting a 'De Minimis' level, it was not clear how the level could be set ex-ante in practice.

Some respondents expressed the view that, while they did not believe that there would be a risk to the confidentiality of Panel elections, if there was significant concern about this among Parties they would support the consideration of a solution intended to minimise risk to confidentiality. One respondent considered that it is essential that the election process is structured in a way that encourages full participation.

3.6.3 Modification Group's Conclusions

The Group noted the views of the consultation respondents, and that there was not considered to be a risk to confidentiality – which concurred with the initial discussions of the Group regarding this area. The Group therefore concluded that it was not necessary to consider any alternative solutions aimed at minimising risk to confidentiality of voting.

3.7 Elections for Replacement Panel Members

3.7.1 Modification Group's Initial Discussions

The Group discussed whether there were any additional considerations that needed to be taken into account in relation to elections for replacement Panel Members, in the case that a Panel Member resigns more than 6 months before the end of their term of office.

The Group considered whether there would be any greater risk to the confidentiality of these elections due to participation, by nominating candidates or voting, being restricted to Trading Parties whose vote had been counted in the election of the resigning Panel Member or that had not voted for any elected Panel Member still serving. A Group Member queried whether, for such ad-hoc elections, the list of those Trading Parties eligible to vote in the election would be published – since this would partly reveal the Parties that had voted for the resigning Panel Member. It was noted that an ad-hoc election of resigning Panel Members has never been held under the BSC; however, it was BSCCo's initial view that such a list would not be published. The Group could not identify any other issues particular to elections of replacement Panel Members that might have implications for the disclosure of voting information for these elections. The Group therefore agreed that voting numbers for these elections should also be published under P206.

3.7.2 Views of Respondents to Assessment Procedure Consultation

One respondent considered that, in the case of an election to replace a resigning Panel Member it would be more difficult to work out who had voted for whom. No other respondents commented specifically on this area.

3.7.3 Modification Group's Conclusions

The Group considered that this did not appear to be an area of concern for consultation respondents, and that this concurred with the initial conclusions of the Group.

The Group noted with interest BSCCo's advice that, upon further investigation, it had established that paragraph 4.2 of Annex B-2 of the Code did oblige it to publish a list of those Parties eligible to vote in elections for replacement Panel members. The Group considered this to be a slight concern since this might compromise confidentiality by partly revealing those Parties which had voted for the resigning Panel Member. The Group therefore agreed that the existence of this requirement should be highlighted within the Assessment Report, but noted that the issue fell outside the scope of P206 and would require a separate Modification Proposal if Parties believed it should be changed. The Group also noted that it would only be possible to infer which Parties had contributed to the election of the resigning Panel Member, since only those Parties whose vote was counted in the relevant preference round (i.e. whose vote in favour of that

candidate had not been discarded as a result of another of their preference votes contributing to the election of a rival candidate) would be eligible to participate in the ad-hoc election. Moreover, the list of eligible Parties would include those who had not voted in the previous Panel election or whose vote had not counted towards the election of any Panel Member still serving.

3.8 Impact on Panel Members, Participation and Voting Behaviour

3.8.1 Modification Group's Initial Discussions

The Group considered whether the disclosure of voting information would have an impact upon the ability of Panel Members to fulfil their duties, for instance if a Panel Member was elected by a relatively large number of votes whether they would be perceived to have more authority than a Panel Member elected by a few votes. The Group noted that it was potentially possible for a Panel Member to be elected on the basis of a single vote, depending on the number of candidates and votes involved. However, the Group agreed that there should be no effect upon the relative standing of Panel Members, as they would all have been elected using the same system and would have equal standing once elected. The Group noted that as the Panel Members act in the capacity of impartial experts they do not need to obtain numbers of votes in order to gain authority, and do not canvas on the basis of 'manifestos'. The Group agreed that P206 would therefore have no impact upon the ability of Panel Members to fulfil their duties.

The initial view of the Group was that P206 was not likely to alter the pattern of Parties' voting behaviour, since it believed that Parties voted for Members on their merits and not as a result of lobbying. Members did not believe that it would discourage participation in Panel elections, and some members believed that publishing turnout figures might actually encourage more people to vote. However, the Group agreed to ask specific consultation questions in these areas.

3.8.2 Views of Respondents to Assessment Procedure Consultation

A majority of consultation respondents believed that implementation of P206 would not affect the level of participation in Panel elections by candidates or voting parties.

One respondent believed that implementation of the modification would be likely to increase participation in Panel elections; the amount of participation would be known, so the level of voting Party turnout could be assessed. The respondent also stated the belief that at present the voting system is better understood by more experienced Parties than by new entrants; greater transparency could rectify this. The respondent noted that only five candidates stood in 2004 and only seven in 2006. Another respondent also considered that increased transparency may encourage greater participation in elections, particularly if potential candidates have more confidence in the arrangements.

One respondent believed that other factors would override any influence of the disclosure of voting information, and that they would expect participation to remain consistent with historic levels. One respondent commented that they would hope that Parties voted for the candidates they believed were the most appropriate to sit on the Panel, regardless of whether their votes would be published. Other respondents indicated that, whether or not the ballot was secret, they would vote for the person whom they believed to be the best candidate.

One respondent believed that, whilst implementation of Alternative Modification P206 would not alter their voting in the 2008 Panel election, having access to voting data from that election could potentially alter their voting in other future elections. Similarly, having access to data from the 2006 election under the Proposed Modification could potentially alter their behaviour in the 2008 election. So knowledge that voting information would be disclosed would not affect their voting, but access to voting information from elections could influence their future voting.

Most respondents commented on the participation of voting Parties, but a minority of respondents also believed that P206 could encourage more candidates to stand in elections.

3.8.3 Modification Group's Conclusions

The Group considered the consultation responses received in relation to this area, and noted that there did not appear to be any belief that there would be a detrimental impact upon the standing or duties of Panel Members. The Group was therefore comfortable that its initial agreed view, that implementation of P206 would have no impact on Panel members, was valid.

The Group noted that some respondents felt that increased confidence in the Panel election process, as a result of greater transparency due to disclosure of voting information, might encourage more candidates to stand and/or Parties to vote. Some members agreed with this view, with one member arguing that knowing voting numbers could lead to increased or more informed lobbying by candidates. Other members disagreed – believing that there were more fundamental drivers than knowing voting numbers, and that participation would therefore remain the same. None of the Group members believed that Parties would be discouraged from standing for, or voting in, Panel elections.

The Group noted the view of one respondent that having access to voting data could alter their voting in future elections. The Group interpreted this response as relating to the casting of votes by the respondent rather than their participation, since the respondent indicated that they did not believe that P206 would affect turnout; the respondent subsequently confirmed to ELEXON that this interpretation was correct. Some members suggested that having access to previous years' election results could increase awareness of the voting mechanisms, which could lead to more informed voting decisions – and possible tactical voting regarding the ordering or choice of their three preference votes in voting papers. One member suggested that access to previous election results might influence who were perceived to be the Panel Members most likely in need of votes. Other members disagreed, arguing that it is currently possible to use such tactical voting under the current arrangements, and that it would be risky for a Party under the existing rules to assume that a Panel Member was not in need of their vote.

3.9 Relevance of Applicable BSC Objectives to Governance Changes

3.9.1 Modification Group's Initial Discussions

The Group considered which of the Applicable BSC Objectives was most relevant to consideration of P206. The Group received legal advice that Objective (c) was most appropriate because perceptions of transparency and confidence in governance arrangements were linked to competition; Objectives (a) and (b) were not relevant and (d) is accepted to relate only to efficiency savings in the administration of the balancing and settlement arrangements (i.e. central and ELEXON costs).

The Group noted that it is generally quite difficult to frame governance issues in terms of specific Applicable BSC Objectives.

The majority of the Group, including the Proposer, agreed that Applicable Objective (c) was most relevant to P206. One Group Member initially considered that Objective (d), which was originally given as the Applicable Objective in the justification within the Modification Proposal, was most relevant.

3.9.2 Views of Respondents to Assessment Procedure Consultation

All respondents who cited an Applicable BSC Objective believed Objective (c) to be the most appropriate against which to judge the merits of the Proposed and Alternative Modifications. This was because they felt that the issues were linked to perceptions of transparency and confidence which could affect competition and entry into the market.

One respondent referred to a negative impact under Applicable BSC Objective (d) as part of their argument against the setting of a precedent regarding alignment of implementation and submission dates, because the respondent anticipated that this would lead to future Modification Proposals including similar wording and that this would reduce the efficiency of delivering change to the BSC. Another respondent cited Applicable

BSC Objective (d), arguing that the efficiency of the BSC arrangements could be compromised because retrospective implementation could be subject to legal challenge.

3.9.3 Modification Group's Conclusions

The Group noted the views of consultation respondents in relation to the relevance of Applicable BSC Objectives.

The Group member who had previously believed Objective (d) to be most relevant stated that they had reconsidered their view, and now believed Objective (c) to be the relevant Objective.

The Group therefore unanimously agreed that Applicable BSC Objective (c) was most relevant to its assessment of P206.

The Group reiterated its view that it was difficult to link P206 (and governance issues more generally) to specific Applicable BSC Objectives – since the arguments tended to be theoretical and linked to perceptions rather than commercial issues. The Group discussed whether it would be useful to have an additional Applicable BSC Objective in the area of governance, but noted that this would require a change to the Transmission Licence and was therefore outside the scope of the BSC Modification Procedures.

3.10 Implementation Approach and Costs

3.10.1 Results of Proposed and Alternative Modification Impact Assessment

P206 IMPLEMENTATION COSTS⁴

		Stand Alone Cost	Incremental Cost	Tolerance
Total Demand Led Implementation Cost		Nil	Nil	N/A
ELEXON Implementation Resource Cost		4 Man days £880	4 Man days £880	+/- 5%
Total Implementation Cost		£880	£880	+/- 5%

P206 ONGOING SUPPORT AND MAINTENANCE COSTS

		Stand Alone Cost	Incremental Cost	Tolerance
Service Provider Operation Cost		Nil	Nil	N/A
Service Provider Maintenance Cost		Nil	Nil	N/A
ELEXON Operational Cost		Nil	Nil	N/A

⁴ An explanation of the cost terms used in this section can be found on the BSC Website at the following link:
http://www.elexon.co.uk/documents/Change_and_Implementation/Modifications_Process_-_Related_Documents/Clarification_of_Costs_in_Modification_Procedure_Reports.pdf

No impact of P206 has been identified on BSC Agents, Party Agents or the Transmission Company. P206 would have no direct impact on BSC Parties, except in the sense that aggregated information relating to eligible Parties' votes in Panel elections would be anonymously made available to all Parties.

Please note that the implementation costs for the Proposed and Alternative Modifications are the same.

3.10.2 BSCCo Impact

There will be minor impacts on BSCCo through the requirement to publish the appropriate information and to update local working instructions and industry guidance notes.

The impact is the same for both the Proposed and Alternative Modifications, though in the case of the Alternative Modification information would not need to be published until the next Panel election has taken place.

3.10.3 Modification Group's Conclusions

The Modification Group noted that as P206 is a Code-only change it was not necessary that it should be implemented as part of a standard systems release. The Group noted ELEXON's advice that a lead time of 5 Working Days would be sufficient to ensure all required changes were made.

The Group considered whether a retrospective Implementation Date (potentially aligned with the submission date of the Modification Proposal as suggested by the Proposer) was required for the Proposed Modification, and noted that this would not allow BSCCo an implementation lead time between the Authority decision and the publication of the 2006 election data in which to prepare the information. It also considered that Parties who were not aware of the Implementation Date might not realise that the 2006 data was to be published, unless this was specifically stated in the legal text. In addition, since the submission date of the proposal fell part-way through the voting in the 2006 elections, it considered that could be some confusion as to whether votes submitted prior to the raising of P206 would be published. The Group therefore agreed with BSCCo's legal view that the clearest and most efficient method of delivering the retrospective intention of the Proposed Modification would be to explicitly state within the legal text that the 2006 election results would be published. The Group noted that, under this approach, a retrospective Implementation Date would not be required – and that the same Implementation Date could therefore be used for both the Proposed and Alternative Modifications.

The Modification Group therefore agreed the following recommended implementation approach for P206:

- An Implementation Date for the Proposed Modification of 5 Working Days following an Authority decision; and
- An Implementation Date for the Alternative Modification of 5 Working Days following an Authority decision.

In the case that the Proposed Modification is approved, voting information for the 2006 election would be published on the Implementation Date (i.e. 5 Working Days after the Authority decision).

3.11 Legal Text

The Modification Group reviewed the text and agreed that it delivers the solutions developed by the Group for the Proposed and Alternative Modifications.

The Group agreed that if the Proposed Modification were to be implemented, it was preferable that the retrospective disclosure of the 2006 Panel elections should be effected through a specific clause in the legal text, rather than through a retrospective Implementation Date. The Proposed Modification legal text therefore explicitly states that the 2006 voting data would be published on the P206 Implementation Date.

A copy of the draft legal text can be found in Attachment 1.

4 ASSESSMENT OF MODIFICATION AGAINST APPLICABLE BSC OBJECTIVES

This section outlines the views of consultation respondents and the Modification Group regarding the merits of P206 against the Applicable BSC Objectives.

4.1 Proposed Modification

4.1.1 Views of Respondents to Assessment Procedure Consultation

The **MAJORITY** view of respondents was that the Proposed Modification **WOULD NOT** better facilitate the achievement of the Applicable BSC Objectives. Most respondents believed Objective (c) to be most relevant to their views, although a minority also believed that there would be a negative impact on Objective (d).

The following arguments were expressed by respondents against **Applicable BSC Objective (c)**:

- Retrospective disclosure of voting information would damage confidence in governance arrangements which would have a negative impact on competition and/or act as a barrier to entry to the market.

The following arguments were expressed by respondents against **Applicable BSC Objective (d)**:

- Potential legal challenge of retrospective disclosure would render inefficiencies in BSCCo's administration of the Code; and/or
- Granting retrospection would encourage the Proposers of other future Modification Proposals to request retrospection which would cause a reduction in the efficiency of delivering change to the BSC.

The **MINORITY** view of two respondents to the Assessment Procedure consultation was that the Proposed Modification **WOULD** better facilitate the achievement of the Applicable BSC Objectives. Only one of these respondents cited a specific Applicable BSC Objective and provided supporting rationale in support of their view. This respondent believed that the Proposed Modification would better facilitate the achievement of **Applicable BSC Objective (c)**.

The following arguments were expressed by the respondent in support of this view:

- Open and transparent governance would increase confidence in governance arrangements which would be beneficial for competition; and
- Parties would benefit from the ability to evaluate openly the Panel election process and future governance proposals.

No respondents believed there to be an impact on Applicable BSC Objectives (a) or (b).

A minority of respondents were neutral on the merits of the Proposed Modification.

4.1.2 Modification Group's Conclusions

The **MAJORITY** view of the Modification Group was that the Proposed Modification **WOULD NOT** better facilitate the achievement of **Applicable BSC Objective (c)** when compared to the current Code baseline. The following arguments were expressed by these members in support of this view:

- The retrospective element of the Proposed Modification would, if implemented, create uncertainty in the BSC governance arrangements, which would undermine the confidence of participants in the arrangements and thus have a negative impact on competition;
- This negative impact would outweigh any prospective benefits of the Proposed Modification;
- Approval of the Proposed Modification would set an undesirable precedent in relation to the use of a retrospective implementation approach; and

- The potential for legal challenge of retrospective disclosure of voting information would create additional uncertainty.

The **MINORITY** view of the Proposer was that the Proposed Modification **WOULD** better facilitate the achievement of **Applicable BSC Objective (c)** when compared to the current Code baseline, for the following reasons:

- The Proposed Modification would increase the transparency of the Panel election process, making the governance arrangements more open, which would strengthen the confidence of participants in the arrangements and thus improve competition;
- Parties would be better able to evaluate the Panel election process, which could result in improvements which would increase confidence in the arrangements, thus promoting competition;
- Parties would be better able to assess the merits of any changes proposed in future to the Panel election process or governance arrangements, which could result in improvements which would increase confidence in the arrangements, thus promoting competition; and
- Retrospective implementation of the Proposed Modification would mean that the improved ability of Parties to evaluate the Panel election process, and any consequent benefits, would be achieved relatively promptly.

The Group agreed that the Proposed Modification would have a neutral impact on Applicable BSC Objectives (a), (b) and (d).

4.2 Alternative Modification

4.2.1 Views of Respondents to Assessment Procedure Consultation

a) Alternative Modification Compared With Proposed Modification

The **MAJORITY** view of respondents was that the Alternative Modification **WOULD** better facilitate the achievement of the Applicable BSC Objectives when compared to the Proposed Modification.

The following argument was expressed by respondents in support of this view:

- Removal of the requirement for retrospective disclosure of voting information would maintain confidence in governance arrangements, removing the negative impact on competition and barrier to entry to the market caused by the Proposed Modification.

Not all of these respondents cited a specific Applicable BSC Objective or provided rationale in support of their views; however, those that did referred to **Applicable BSC Objective (c)**.

The **MINORITY** view of two respondents was that the Alternative Modification **WOULD NOT** better facilitate the achievement of the Applicable BSC Objectives when compared to the Proposed Modification. Only one of these respondents referred to a specific Objective and provided rationale in support of their view. This respondent believed that the Alternative Modification would not better facilitate the achievement of Applicable BSC Objective (c) when compared with the Proposed Modification.

The following argument was expressed by this respondent in support of their view:

- The non-retrospective implementation of the Alternative Modification would mean that the improved ability of Parties to evaluate the Panel election process – and any consequent benefits – would be achieved relatively slowly.

A minority of respondents expressed a neutral view.

b) Alternative Modification Compared with Existing Code Baseline

The **MAJORITY** view of respondents was that the Alternative Modification **WOULD** better facilitate the achievement of the Applicable BSC Objectives when compared to the current Code baseline. Those respondents who cited a specific Objective in support of their views believed that the Alternative Modification would better facilitate the achievement of Applicable BSC Objective (c).

The following arguments were expressed by respondents in support of this view:

- Parties would benefit from the ability to evaluate openly the Panel elections process and new governance proposals – it should be noted that this argument was made by only one respondent, and that another respondent explicitly rejected the validity of this argument; and/or
- Open and transparent governance would increase confidence in governance arrangements which would be beneficial for competition.

A minority of respondents expressed a neutral view.

4.2.2 Modification Group's Conclusions

a) Alternative Modification Compared With Proposed Modification

The **MAJORITY** view of the Modification Group was that the Alternative Modification **WOULD** better facilitate the achievement of **Applicable BSC Objective (c)** when compared to the Proposed Modification, for the following reason:

- The non-retrospective implementation of the Alternative Modification would maintain the confidence of participants in the BSC governance arrangements, and thus have a positive impact on competition compared to the Proposed Modification.

The **MINORITY** view of the Proposer was that the Alternative Modification **WOULD NOT** better facilitate the achievement of Applicable BSC Objective (c) when compared to the Proposed Modification, for the following reason:

- The non-retrospective implementation of the Alternative Modification would mean the improved ability of Parties to evaluate, and test the robustness of, the Panel election process – and any consequent benefits – would be achieved relatively slowly.

b) Alternative Modification Compared with Existing Code Baseline

The **UNANIMOUS** view of the Modification Group was that the Alternative Modification **WOULD** better facilitate the achievement of **Applicable BSC Objective (c)** when compared to the current Code baseline, for the following reasons:

- The Alternative Modification would increase the transparency of the Panel election process, making the governance arrangements more open, which would strengthen the confidence of participants in the arrangements and thus improve competition;
- Parties would be better able to evaluate the Panel election process, increasing confidence in the arrangements and thus promoting competition; and
- Parties would be better able to assess the merits of any proposed changes to the Panel election process or governance arrangements, increasing confidence in the arrangements and thus promoting competition.

The Proposer, whilst believing that the retrospection of the Proposed Modification would allow a more timely delivery of the benefits associated with P206, acknowledged that the Alternative Modification would prospectively address the defect identified by the Modification Proposal for future Panel elections – and

believed that the Alternative would therefore better facilitate the achievement of Applicable BSC Objective (c) compared with the existing Code baseline.

The Group agreed that the Alternative Modification would have a neutral impact on Applicable BSC Objectives (a), (b) and (d).

4.3 Final Recommendation to the Panel

On the basis of the above assessment, the Modification Group therefore agreed a **MAJORITY** recommendation to the Panel that:

- The Proposed Modification **SHOULD NOT** be made; and that
- The Alternative Modification **SHOULD** be made.

Details of the Group's recommended Implementation Date and legal text can be found in Section 3.

5 TERMS USED IN THIS DOCUMENT

Other acronyms and defined terms take the meanings defined in Section X of the Code.

Acronym/Term	Definition
Preference Vote	First, second or third preference among candidates, indicated on a voting paper.
trading party group	A Trading Party and every Affiliate of that Trading Party.
Industry Panel Member	A Panel Member appointed pursuant to Section B2.2 of the Code.

6 DOCUMENT CONTROL

6.1 Authorities

Version	Date	Author	Reviewer	Reason for Review
0.1	23/10/06	Dean Riddell	Kathryn Coffin	For peer review
0.2	24/10/06	Dean Riddell	P206 Modification Group	For Modification Group review
0.3	30/10/06	Dean Riddell	Kathryn Coffin	For technical review
0.4	31/10/06	Dean Riddell	David Jones	For quality review
1.0	03/11/06	Change Delivery	BSC Panel	For Panel decision

6.2 References

Ref.	Document Title	Owner	Issue Date	Version
1	CUSC Section 8 'CUSC Amendment' http://www.nationalgrid.com/NR/rdonlyres/8B81E9A0-F1B1-47B7-906D-41DA0DB69167/7768/8AmendV19.pdf	National Grid	07/07/06	1.9
2	Balancing and Settlement Code: Ofgem/DTI Conclusions http://www.ofgem.gov.uk/temp/ofgem/cache/cmsattach/1633_ccreport.pdf	Ofgem	01/08/2000	N/A

Ref.	Document Title	Owner	Issue Date	Version
3	Ofgem Decision Letter for Modification Proposal P19 'To provide for the remedy of errors in Energy Contract Volume Notifications and in Metered Volume Reallocation Notifications' http://www.elexon.co.uk/documents/modifications/19/P19_Ofgem_Dec.pdf	Ofgem	01/08/2001	N/A
4	Ofgem Decision Letter for Modification Proposal P171 'Retrospective Removal of Emergency Instructions Taken for System Reasons from Imbalance Price' http://www.elexon.co.uk/documents/modifications/171/P171_Ofgem_Decision.pdf	Ofgem	29/04/05	N/A

6.3 Intellectual Property Rights, Copyright and Disclaimer

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APPENDIX 1: DRAFT LEGAL TEXT

Draft legal text for the Proposed Modification is attached as a separate document, Attachment 1A.

Draft legal text for the Alternative Modification is attached as a separate document, Attachment 1B.

APPENDIX 2: PROCESS FOLLOWED

Copies of all documents referred to in the table below can be found on the BSC Website at: [ELEXON - Modification Proposal P206](#).

Date	Event
03/08/06	Modification Proposal raised by E.ON UK plc
14/09/06	IWA presented to the Panel
18/09/06	First Assessment Procedure Modification Group meeting held
29/09/06	Request for Transmission Company analysis issued
29/09/06	Request for BSCCo impact assessment issued
29/09/06	Assessment Procedure consultation issued
13/10/06	Transmission Company analysis returned
13/10/06	BSCCo impact assessment returned
13/10/06	Assessment Procedure consultation responses returned
17/10/06	Second Assessment Procedure Modification Group meeting held
09/11/06	Assessment Report presented to the Panel

ESTIMATED COSTS OF PROGRESSING MODIFICATION PROPOSAL⁵

Meeting Cost	£1,000
Legal/Expert Cost	Nil
Impact Assessment Cost	Nil
ELEXON Resource	35 man days £6,550

Please note that the cost estimates above are unchanged from those presented in the P206 IWA.

⁵ Clarification of the meanings of the cost terms in this appendix can be found on the BSC Website at the following link: http://www.elexon.co.uk/documents/Change_and_Implementation/Modifications_Process_-_Related_Documents/Clarification_of_Costs_in_Modification_Procedure_Reports.pdf

MODIFICATION GROUP MEMBERSHIP

Member	Organisation	18/09/06	17/10/06
Kathryn Coffin	ELEXON (Chair)	Y	Y
Dean Riddell	ELEXON (Lead Analyst)	Y	Y
Ben Sheehy	E.ON UK (Proposer)	Y	Y
Bec Thornton	National Grid	Y	N
Steven Eyre	British Energy	Y	Y
Andrew Colley	Scottish and Southern	Y	Y
Dave Wilkerson	Centrica	Y	Y
James Nixon	SAIC (Scottish Power)	☎	N

Attendee	Organisation	18/09/06	17/10/06
Melanie Henry	ELEXON (Lawyer)	Y	Y
Laone Roscorla	ELEXON (Technical Support)	Y	Y
Yvonne Kenny	Ofgem	Y	N
Samantha McEwen	Ofgem	Y	N
Charles Ruffell	RWE Npower	Y	Part

MODIFICATION GROUP TERMS OF REFERENCE

Modification Proposal P206 will be considered by a new Modification Group, the 'P206 Modification Group' (formed from members of the Governance Standing Modification Group), in accordance with the following Terms of Reference.

P206 – Publication of Panel Election Results**Assessment Procedure**

- 1.1 The Modification Group will carry out an Assessment Procedure in respect of Modification Proposal P206 pursuant to section F2.6 of the Balancing and Settlement Code.
- 1.2 The Modification Group will produce an Assessment Report for consideration at the BSC Panel Meeting on 9 November 2006.
- 1.3 The Modification Group shall consider and/or include in the Assessment Report as appropriate:
 - **Principle of Disclosure of Voting Information** - the principle of whether information regarding the number of preference votes received by candidates should be published, and any implications of the Freedom of Information Act.
 - **Relevant Election Process Precedents** - any precedents regarding confidentiality or disclosure of preference votes set by the election procedures of similar bodies.

- **Previous Views** - any views previously expressed by Ofgem and/or industry (e.g. during assessment of Rejected Modification Proposal P129 'Changes to Panel Determination Process and Panel Election Procedures' or as part of the original drafting of the Code) regarding the disclosure of voting.
- **Information to be Disclosed** - the precise voting information that should be published, e.g. the number of preference votes received by each candidate in each voting round or the total number of votes received by elected candidates. The Modification Proposal suggests that, in addition to the number of preference votes received by each candidate in each voting round, BSCCo should also publish the qualifying total required by candidates for election in each round and the quota calculation (i.e. the qualifying total calculation) for each round.
- **Retrospectivity** - implications of the element of retrospectivity in the Modification Proposal resulting from the proposal that, if approved, the amendment should be implemented from the submission date (i.e. 3 August 2006), in order that the 2006 election results would be disclosed (voting papers for the 2006 Panel election were issued on 17 July 2006 and voting closed on 9 August). This should include any legal implications of Parties and candidates participating in Panel elections using a process that is then retrospectively changed.
- **Confidentiality** - how much voting information can be disclosed before the confidentiality of voting may become compromised. With a known number of candidates and a finite number of voting Parties (some of whose voting intentions can be reasonably anticipated, e.g. if a Party has nominated a candidate) it should be considered whether it may be possible in some circumstances to deduce who has voted for who if the numbers of votes received by candidates are disclosed.
- **Elections for Replacement Panel Members** - any particular implications for elections held to replace members who resign more than six months before the end of their term of office (e.g., as these would involve fewer candidates and votes, any risk to confidentiality may be increased).
- **Draft Legal Text** - the most appropriate legal drafting, in light of the areas set out above and the legal drafting suggested in the Modification Proposal.
- **Areas Raised by Panel Members at Meeting on 14 September 2006:**
 - Ensure areas of assessment fall within the scope of the specific issue or defect raised by the Modification Proposal, e.g. wider Panel governance arrangements to be considered as background only.
 - Consider whether disclosure of voting numbers would affect participation in elections by candidates and/or voting Parties.
 - Consider whether disclosure of voting numbers would help Panel Members fulfil their duties.
 - Consider which Applicable BSC Objective(s) are most relevant to the assessment of P206 (including legal advice if necessary).
 - Consider the appropriateness of potential compromises between disclosure and the principle of confidentiality, e.g. 'fewer than X number of votes not disclosed'.
 - Consider whether actual voting numbers are necessary to evaluate effectiveness of Panel election process, or whether this can be done by modelling hypothetical scenarios.

APPENDIX 3: RESULTS OF ASSESSMENT PROCEDURE CONSULTATION

10 responses (representing 61 Parties and 1 non-Party) were received to the P206 Assessment Procedure consultation.

A summary of the consultation responses is provided in the table below (bracketed numbers represent the number of Parties and non-Parties represented by respondents).

The 'Other' column denotes responses of 'Neutral', 'n/a' or an alternative answer that was not given as a response option.

Q	Consultation question	Yes	No	Other
1.	Do you believe Proposed Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline?	2 (14+0)	6 (46+0)	2 (1+1)
2.	Do you believe Alternative Modification P206 better facilitates the achievement of the Applicable BSC Objectives when compared to the current Code baseline?	8 (60+0)	0	2 (1+1)
3.	Do you believe Alternative Modification P206 better facilitates the achievement of Applicable BSC Objectives when compared to the Proposed Modification?	6 (46+0)	2 (14+0)	2 (1+1)
4.	Do you believe that the voting numbers in the 2006 Panel Elections should be disclosed retrospectively?	2 (14+0)	6 (46+0)	2 (1+1)
5.	Would implementation of Proposed or Alternative Modification P206 cause you to vote any differently in Panel elections?	1 (6+0)	7 (54+0)	2 (1+1)
6.	Do you believe that the disclosure of voting information as in Proposed or Alternate Modification P206 could compromise the confidentiality of voting?	0	7 (54+0)	3 (7+1)
7.	Do you believe that any alternative solution should be used that minimises any risk to confidentiality? e.g. non-disclosure of votes below a given number.	0	7 (54+0)	3 (7+1)
8.	Do you believe that implementation of Proposed or Alternative Modification P206 would affect the level of participation in Panel elections by candidates or voting Parties?	1 (13+0)	7 (47+0)	2 (1+1)
9.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered?	0	9 (61+0)	1 (0+1)
10.	Does P206 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?	0	9 (61+0)	1 (0+1)
11.	Are there any further comments on P206 that you wish to make?	1 (1+0)	9 (60+1)	0

Details of the arguments made by respondents can be found in Sections 3 and 4, along with the Modification Group's consideration of these arguments. Full copies of the consultation responses are attached as a separate document, Attachment 2.

APPENDIX 4: RESULTS OF IMPACT ASSESSMENT

During the Assessment Procedure an impact assessment was undertaken in respect of all BSC systems, processes, documentation and parties. The following have been identified as impacted by P206.

For details of the costs associated with these impacts, please refer to Section 3.

a) Impact on BSC Systems and Processes

No impact.

b) Impact on BSC Agent Contractual Arrangements

No impact.

c) Impact on BSC Parties and Party Agents

P206 would have no direct impact on BSC Parties, except in the sense that aggregated information relating to eligible Parties' votes in Panel elections would be made anonymously available to all Parties.

P206 would have no impact on any Party Agents.

d) Impact on Transmission Company

No impact, since the Transmission Company Panel Member is appointed rather than elected by Parties.

A copy of the Transmission Company analysis commissioned by the Group for P206 is provided below.

Q	Question	Response
1	Please outline any impact of the Proposed Modification (and, if applicable, any Alternative Modification) on the ability of the Transmission Company to discharge its obligations efficiently under the Transmission Licence and on its ability to operate an efficient, economical and co-ordinated transmission system.	We do not presently foresee any impact on our ability to discharge our obligations under the Transmission Licence at this time for the Proposed Modification or the Alternative Modification.
2	Please outline the views and rationale of the Transmission Company as to whether the Proposed Modification (and, if applicable, any Alternative Modification) would better facilitate achievement of the Applicable BSC Objectives.	We remain neutral as to whether the proposal better facilitates the Applicable BSC Objectives for the Proposed Modification or the Alternative Modification.
3	Please outline the impact of the Proposed Modification (and, if applicable, any Alternative Modification) on the computer systems and processes of the Transmission Company, including details of any changes to such systems and processes that would be required as a result of the implementation of the Proposed Modification (and, if applicable, any Alternative Modification)	We have not currently identified any additional impact of Proposed Modification P206 and the Alternative Modification.
4	Please outline any potential issues relating to the security of supply arising from the Proposed Modification (and, if applicable, any	We have not identified any security of supply issues arising from P206 or from the Alternative Modification.

	Alternative Modification).	
5	Please provide an estimate of the development, capital and operating costs (broken down in reasonable detail) which the Transmission Company anticipates that it would incur in, and as a result of, implementing the Proposed Modification (and, if applicable, any Alternative Modification).	No costs have been identified for the Proposed Modification or the Alternative Modification.
6	Please provide details of any consequential changes to Core Industry Documents and/or the System Operator Transmission Owner Code that would be required as a result of the implementation of the Proposed Modification (and, if applicable, any Alternative Modification).	No consequential changes have been identified as a result of the implementation of the Proposed Modification or the Alternative Modification.
7	Any other comments on the Proposed Modification (and Alternative Modification if applicable).	No further comments on the Proposed Modification or the Alternative Modification.

e) Impact on BSCCo

Area of Business	Impact of Proposed/Alternative Modification
Panel elections audit service	Very minor impact to take into account P206.
Panel support	Minor impacts to publish the required information, and to update local working instructions and guidance notes.

f) Impact on Code

Code Section	Impact of Proposed/Alternative Modification
Section B	Annex B-2: Election of Industry Panel Members, would be amended to detail the requirement for BSCCo to publish the numbers of votes received by candidates.

A copy of the draft legal text to give effect to these changes can be found in Attachment 1.

g) Impact on Code Subsidiary Documents

No impact.

h) Impact on Core Industry Documents/System Operator-Transmission Owner Code

No impact.

i) Impact on Other Configurable Items

No impact.

j) Impact on BSCCo Memorandum and Articles of Association

No impact.

k) Impact on Governance and Regulatory Framework

No impact. The Group noted that the election process for CUSC Panel Members was very similar to the BSC, and contained an identical prohibition against publication of voting numbers – whilst other industry codes represented examples of different election systems. However, the Group noted that this lay outside the scope of its assessment. The Group considered that it was difficult to tie P206 to specific Applicable BSC Objectives, and questioned whether there should be an additional BSC Objective for such changes – but noted that this would require a change to the Transmission Licence and was outside the vires of the BSC.