Stage 04: Final Modification Report

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

P263: Code Governance Review: Send Back Process and Environmental Assessment

The Ofgem Code Governance Review has recently amended the Transmission Licence to introduce a Send Back Process and Environmental Assessment requirements into the BSC.

P263 introduces the Send Back Process into the BSC, which provides the Panel the ability revise and reconsider a Final Modification Report where requested by Ofgem.

It also introduces new requirements for the Panel and Modification Groups to assess the impact of Modification Proposals on green house gas emissions where those impacts are likely to be material.

The Panel recommends **Approval** of P263

Medium Impact:
Panel, industry consultation respondents, Modification Groups, BSCCo

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About this document:

This document is a Final Modification Report, which was sent to the Authority on 20 October 2010, on behalf of the Panel. The Authority will consider the Panel's recommendations, and decide whether or not this change should be made.

This document contains a summary of the industry responses to the Report Phase Consultation. You can download the full individual responses from ELEXON's website here.

Any questions?

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1 Summary

Why Change?

In July 2010 Ofgem directed that licence modifications be made to implement the Code Governance Review Final Proposals. They also noted that the industry codes would need to be updated by 31 December 2010. The Transmission Licensee has raised Modification Proposals in order to align the BSC with the new processes and policies coming into effect in the Transmission Licence.

Solution

P263 would align the BSC to the updated Transmission Licence by introducing:

- A Send Back Process
- Requirements for Environmental Assessment

The Send Back Process would be used where Ofgem requires additional information in the Final Modification Report in order to make a decision. It would provide the Panel the ability revise and reconsider a Final Modification Report to include whatever additional information Ofgem requires. This could include:

- Updating legal text
- Revised or additional analysis
- Other revised or additional information

P263 also introduces new requirements for the Panel and Modification Groups to assess the impact of Modification Proposals on greenhouse gas emissions where those impacts are likely to be material.

Impacts

P263 would impact the Panel, Modification Groups and ELEXON as they would be required to complete the required Send Back work. It would also impact industry where they are consulted during the Send Back Process.

Implementation

P263 has an Implementation Date of:

- 31 December 2010 if an Authority decision is received on or before 10 December 2010; or
- 15 Working Days if an Authority decision is received after 10 December 2010.

The Case for Change

The **majority** of Panel agreed P263 **would** better facilitate Applicable BSC Objectives (a) and (d). They noted the following reasons:

Applicable BSC Objective (a):

- P263 would ensure that the BSC is consistent with the Transmission Licence in an efficient and effective manner.

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Applicable BSC Objective (d):

- P263 would increase the efficiency of the BSC Modifications Procedures by allowing Modifications to be sent back to Panel. This would prevent the wastage of industry time, effort and resources by not having to repeat the full Modification Procedures in the event the Authority rejected a Modification Proposal because they were unable to make a decision based on the Modification Report.

A minority of those who believed P263 was better than the current arrangements also cited **Applicable BSC Objective (c)**, noting that:

- P263 would improve the quality of the Authority's decision making process thereby improving confidence for Parties in the BSC arrangements.

A **minority** of the Panel believed P263 **would not** better facilitate Applicable BSC Objective (a) or (c) for the following reasons:

Applicable BSC Objective (a):

- One member noted that in coming to their decision they saw zero benefits against Applicable BSC Objective (a).

Applicable BSC Objective (c):

- The Send Back process defined under P263 would weaken the incentives for Ofgem to both fully participate in the development of modifications and make timely decisions. This added regulatory uncertainty could reduce the number of new entrants.

Recommendations

The Panel's recommendation is that P263 should be approved.

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2 Why Change?

Code Governance Review

The industry codes contain the contractual arrangements for participating in the Electricity and Gas markets. In November 2007 Ofgem launched the Code Governance Review. The aim of the review was to reduce the complexity and fragmentation, and to increase the transparency and accessibility, of these arrangements. In July 2010 National Grid agreed to Ofgem-directed Transmission Licence changes that implement the Code Governance Review Final Proposals. Ofgem noted that the industry codes would need to be updated by 31 December 2010. To fulfil its requirement to ensure the BSC is consistent with the Transmission Licence, National Grid raised Modification Proposals to align the BSC with the modified Transmission Licence.

The supporting BSC changes fall into 5 distinct areas:

- Significant Code Reviews
- Self Governance
- Code Administration Code of Practice, assisting Parties, ensuring consistency with other codes
- Send Back Process
- Environmental Assessment

National Grid has split the relevant Transmission Licence changes into 2 Modification Proposals. This Modification Proposal covers:

- Send Back Process
- Environmental Assessment

Send Back Process

One of the changes introduced by the Code Governance Review is the ability for Ofgem to 'Send Back' a Final Modification Report for revision and reconsideration by the BSC Panel. Ofgem has introduced this new provision as they are concerned that, under the current arrangements, the Authority may be put in the position where:

> "it is unable to accept a proposal, not on its merits, but owing to deficiencies in the report such as an insufficient assessment, incorrect legal text or other technical flaws."
>
> - (*Code Governance Review, Ofgem, 31 March 2010)*

Hence, the Transmission Licence has been amended so that Ofgem can send back a Final Modification Report for revision and reconsideration by the Panel. When a Final Modification Report is sent back, Ofgem can specify the additional steps it requires to form an opinion. These include:

- Drafting additional legal text or amending existing legal text;
- Revisions to the Final Modification Report, including revision to the Implementation timetable
- Revised or additional analysis and/or information.

Ofgem would also be able to specify when it wants the additional steps completed. For more details on the proposed process see Section 3.

The BSC must be aligned to the updated Transmission Licence (see Appendix 1) to introduce the Send Back Process.

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Environmental Assessment

Ofgem has noted that:

> "In June 2008, we issued guidance to industry participants specifying that the costs of greenhouse gas (GHG) emissions should be taken into account by industry in evaluating and assessing code modification proposals. However, while the industry has taken steps to incorporate the guidance into procedures, we considered that there was a continuing perception of this being desirable rather than essential. There was also some uncertainty on whether this guidance was limited only to emissions or other environmental impacts, such as upon flora and fauna."
>
> - *(Code Governance Review, Ofgem, 31 March 2010)*

In order to clarify the uncertainty Ofgem has updated the Transmission Licence so that the BSC Panel and Modification Groups should assess the quantifiable impacts of a Modification Proposal (including any alternatives), where likely to be material, on greenhouse gas emissions. This would be conducted in accordance with guidance issued by the Authority.

The BSC must be aligned to the updated Transmission Licence (see Appendix 1) to clarify the requirements for Panel and Modification Groups assessing green house gas emissions.

Other related Code Governance Review changes

P262 'Code Governance Review: Significant Code Reviews, Self Governance and Code Administration Code of Practice' has been raised alongside P263 and supports the Code Governance Review changes in the areas of:

- Significant Code Reviews
- Self Governance
- Code Administration Code of Practice

Since P262 contains amendments which will have a greater impact on Participants the Panel has agreed to send it to a 2 month Assessment Procedure. As there is no direct interaction between P263 and P262 there is no issue with the different timetables.

In addition, National Grid has raised similar changes under the CUSC and the Uniform Network Code (UNC). Once again, these changes do not directly interact with P263.

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3 Proposed Solution – Send Back Process

Send Back Process

P263 would introduce a new Send Back Process into the BSC to reflect the Transmission Licence drafting.

Pre-requisites of the Send Back Process

1. The Send Back Process only applies to Modification Proposals where the Final Modification Report has been submitted to the Authority.
2. The Send Back Process must be initiated before the last 'decision by' date in the Final Modification Report, otherwise the Modification Proposal will 'timeout'.

Send Back Process

1. If the Authority cannot make a decision based on a Final Modification Report then it can initiate the Send Back Process by sending a direction to the BSC Panel specifying:
   1.1. the additional steps (including drafting or amending existing drafting of the modification to the BSC), revision (including revision to the timetable), analysis and/or information that it requires in order to form such an opinion; and
   1.2. the report to be revised and be re-submitted at an appropriate time.
2. The Authority must initiate the Send Back Process before the last 'decision by' date in the Final Modification Report otherwise the Modification Proposal would 'time out'
3. Once the Authority directs the Send Back Process for a Modification Proposal the implementation timescale as specified in the Final Modification Report shall cease in order to allow the industry to complete the Send Back Process within an appropriate timescale.
4. BSCCo shall prepare a Send Back procedure and timetable. This shall take into account the additional steps required by the Authority. The Send Back procedure and timetable will be a bespoke and flexible process. The BSC panel shall approve the procedure and timetable.
5. Each Send Back Process must include provision for the Panel reconsidering its recommendations.
6. Each Send Back Process may include the following:
   6.1. Industry consultation(s)
   6.2. Additional analysis or information required in Final Modification Report (this may require the convening of a Workgroup)
   6.3. Redrafting of legal text
   6.4. Revising Implementation Dates
   6.5. Any other stages as agreed by the Panel which are required in order to complete the additional steps outlined by the Authority;
7. The Panel shall consider and approve the Send Back procedure and timetable. At this stage the Authority, in the form of the Ofgem Panel Representative, is able to request changes to the recommended procedure and timetable.
8. If the Send Back Process does not include revision to the Implementation Dates specified in the Final Modification Report then the Panel can choose whether or not to consult on Implementation Dates. If Send Back Process does include potential revision to the Implementation Dates specified in the Final Modification Report then the Panel must consult on the revised Implementation Dates.
9. Once the timetable is approved BSCCo shall ensure that all Authority directed additional steps are completed.

What is 'timing out'?

In 2007/08 the Authority was unable to make a decision on Modification Proposals P198, P200, P203 and P204 by the final 'decision by' date provided in the Final Modification Report.

A subsequent Judicial Review ruled that if the Authority did not make a decision by the final date in the report then it lost its ability to make a decision on the Modification Proposals (such that they were effectively 'timed out').

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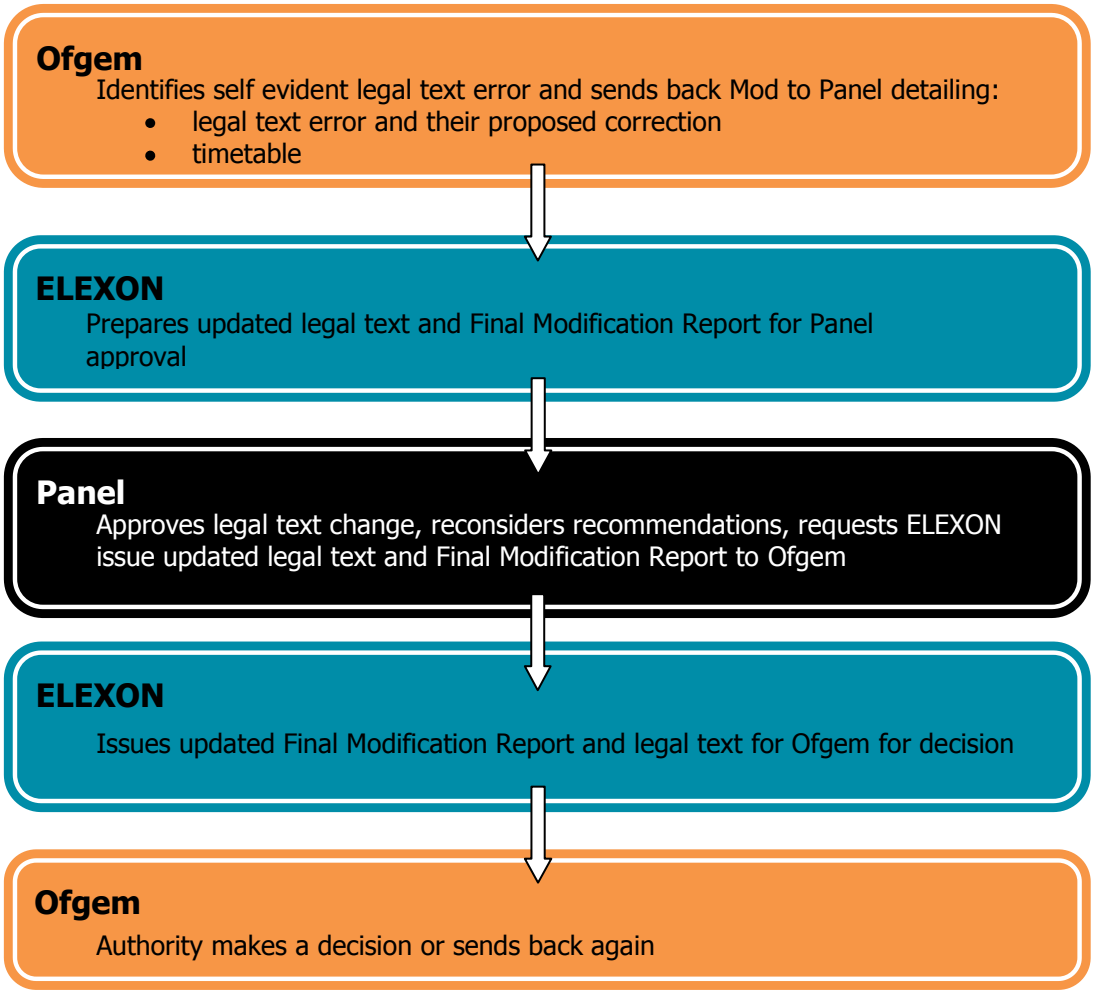
10. Once all additional steps are completed, BSCCo shall present the updated Final Modification Report to the Panel. The Panel shall revisit its recommendations based on the updated Final Modification Report.
11. BSCCo then issues the updated Final Modification Report to the Authority for decision. The updated Final Modification Report replaces the previously issued Final Modification Report.
12. The Authority can repeat the Send Back process as they see fit (although pre-requisite 2 still applies).

Examples of how the Send Back Process would work

When a Modification Proposal is sent back by the Authority, the Panel will approve a Send Back timetable. Each Send Back timetable will be bespoke and the only mandatory requirement is that the Panel reconsider their recommendation each time. Therefore each Send Back Process will only encompass the activities that are required to address Ofgem's additional steps. To give you an idea of how this might work in practice we have prepared some examples below:

Example 1 - Self evident change to the legal text



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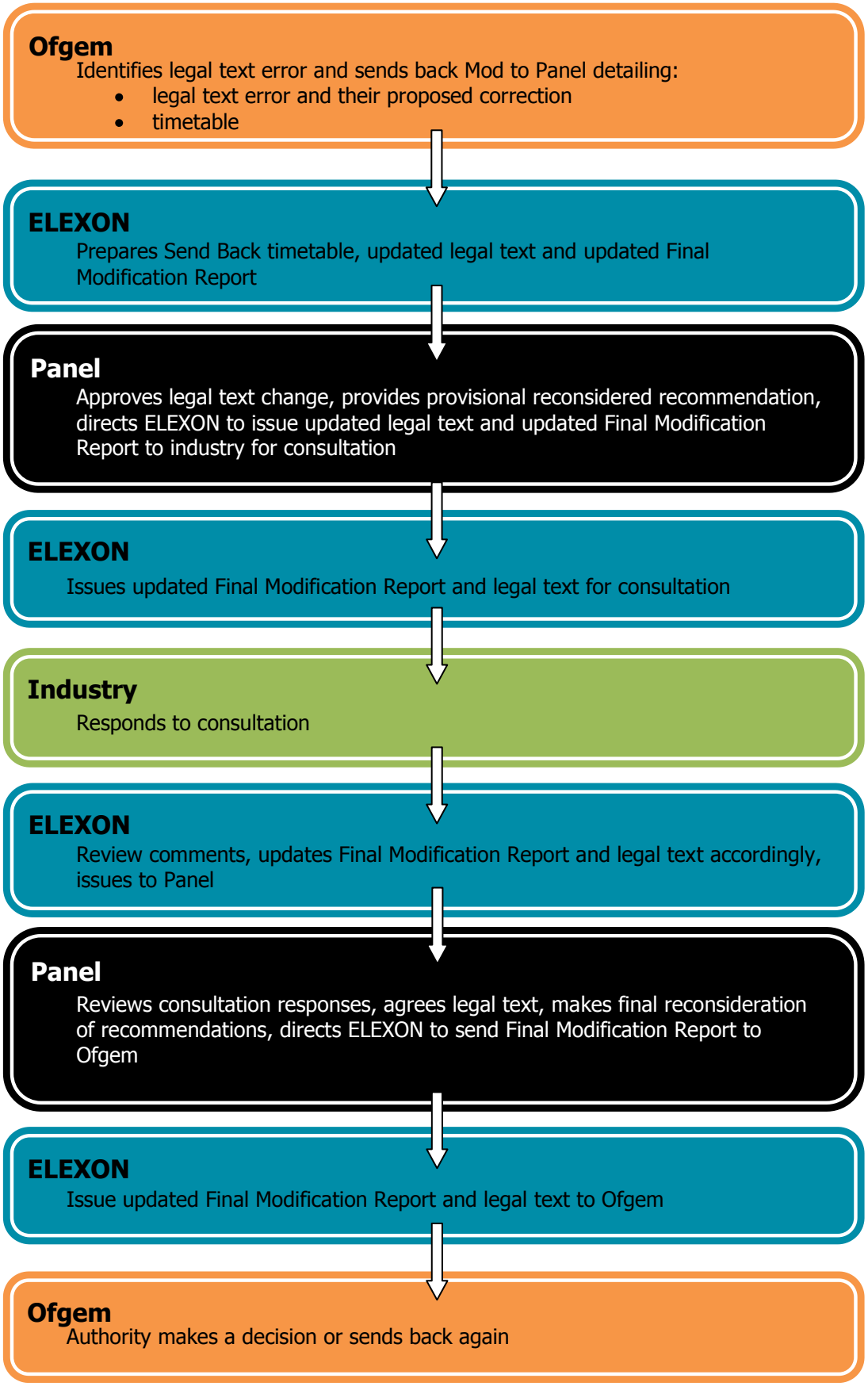
Example 2 - Significant change to the legal text



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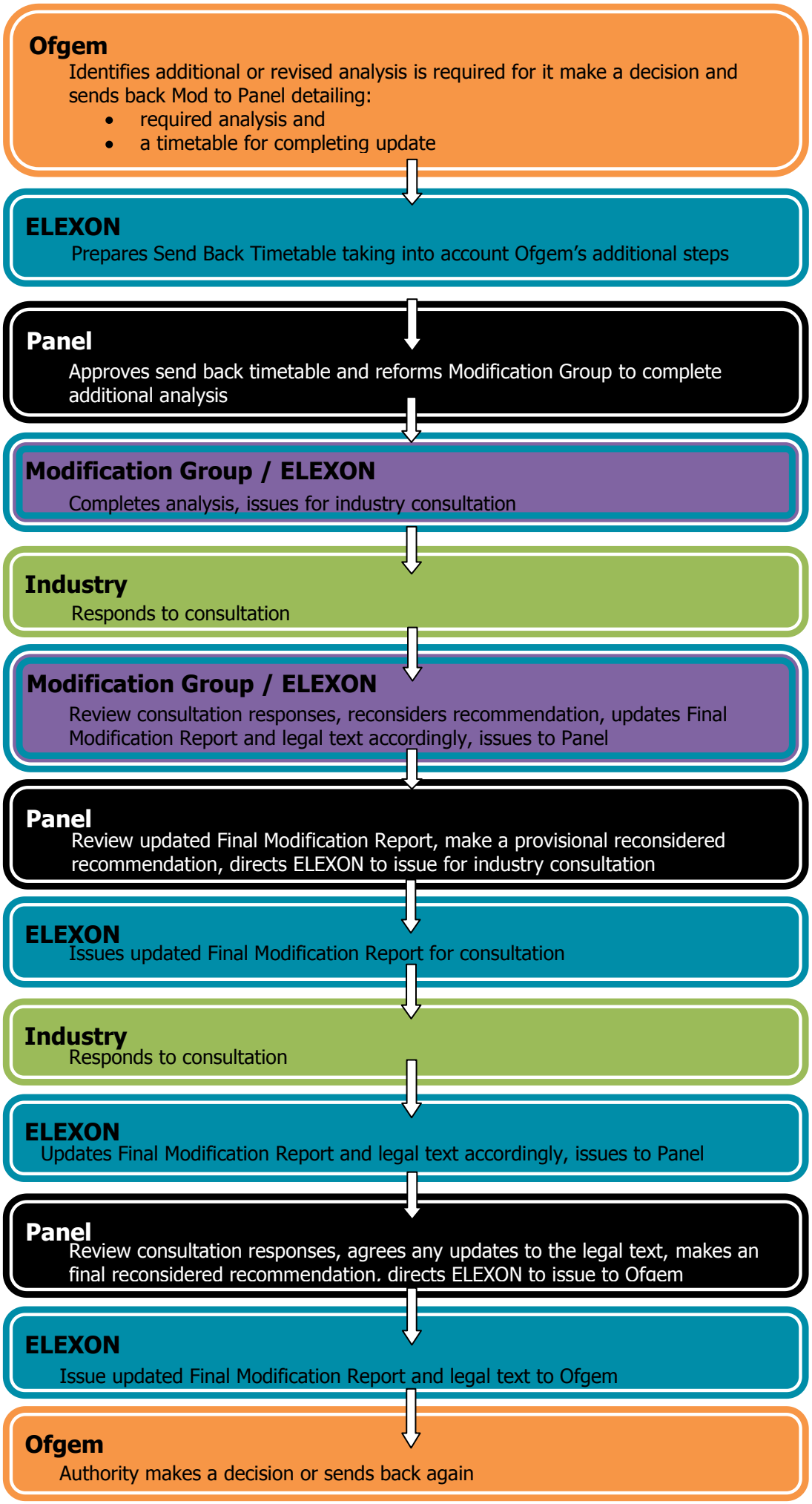
Example 3 - Revised or additional analysis required



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Environmental Assessment

The BSC would be amended to include a specific requirement for Modification Groups and the Panel to assess, where the impact is likely to be material, the quantifiable impact of a Modification Proposal on greenhouse gas emissions. This would be conducted in accordance with guidance issued by the Authority. This assessment would be included in all the relevant Modification reports, including the Assessment Consultation, Assessment Report and Final Modification Report.

The Modification Proposal form would be updated to allow the Proposer to comment as to whether they believe their Modification Proposal was likely to have a quantifiable impact on greenhouse gas emissions. We would update the Modification Proposal form as part of the development for P262, which also requires Modification Proposal form updates and would be implemented alongside P263.

The Proposed Modification legal text is provided as Attachment A.

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5 Impacts & Costs

Costs

ELEXON Cost		ELEXON Service Provider cost	**Total Cost**
Man day	Cost		
10	£2,400	£0	**£2,400**

Indicative industry costs
None identified

Impacts

Impact on BSC Systems and process
None identified

Impact on BSC Agent/service provider contractual arrangements
None identified

Impact on BSC Parties and Party Agents
Where necessary, Parties and Party Agents will be consulted during the Send Back Process. They may also provide Workgroup members if required.

Impact on Transmission Company
Where necessary, the Transmission Company will be consulted during the Send Back Process. They may also provide a Workgroup member if required.

Impact on ELEXON	
Area of ELEXON's business	Impact
Change Management	ELEXON will assist the Panel with any send back directions. This may involve redrafting legal text and Modification Reports, supporting Modification Group work and preparing new implementation timetables. ELEXON will also assist the Panel and Modification Groups in environmental assessment of Modification Proposals, where the impact of the Modification Proposals on greenhouse gas emissions is likely to be material. This may include procuring external consultants.

Impact on Code	
Code section	Impact
Section F	Include a new Send Back Process and the requirement for Panel and Modification Groups to assess the environmental impact of

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Impact on Code	
	Modification Proposals.
Section X Annex X-1	Include new definitions for Send Back Direction, Send Back Process and Workgroup.

Impact on Code Subsidiary Documents	
CSD	Impact
BSCP40	The Modification Proposal form in BSCP40 would need to be updated to allow the Proposer to comment as to whether they believe their Modification Proposal was likely to have a quantifiable impact on greenhouse gas emissions.

Impact on Core Industry Documents and other documents	
Document	Impact
Connection and Use of System Code	The CUSC is introducing similar provisions though CAP186 and CAP187.
Uniform Network Code	The UNC is introducing similar provisions though UNC0319 and UNC0321.

Impact on other Configurable Items
None identified

Below is the estimated cost incurred by the industry in assessing this Modification as published in the P263 IWA:

Estimate of total industry assessment costs					
Modification Group support	Est #mtgs	Est # att	Est effort	Est rate	Total
	0	5	1.5	605	**£0**
Consultation response support	Est #con	Est # resp	Est effort	Est rate	Total
	1	6	2.5	605	**£9,075**
Total					**£9,075**

Meeting costs reflect an estimate of how many Modification group meetings will be held and the industry effort of supporting these meetings. The calculation is based upon an average number of members (5) each putting in 1.5 man days effort per meeting. This effort is multiplied by a standard rate of £605 per day. The result is:

0 working group meetings x 5 attendees x 1.5 WDs effort x £605 = ***£0***

Consultation costs represent an approximation of industry time and effort in responding to consultations. The calculation is based upon an estimate of how many responses we will receive and assumes each response will take 2.5 man days of effort, again multiplied by a standard rate of £605 per day. The result is:

6 responses x 2.5 WDs effort x £605 x 1 consultation = ***£9,075***

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Below is the "actual" estimated cost incurred by the industry in assessing this Modification as published in the P263 IWA:

Estimate of total industry assessment costs					
Modification Group support	Est #mtgs	Est # att	Est effort	Est rate	Total
	0	5	1.5	605	**£0**
Consultation response support	Est #con	Est # resp	Est effort	Est rate	Total
	1	7	2.5	605	**£10,587**
Total					**£10,587**

6 Implementation

National Grid has a 'best endeavours' licence obligation to implement the Code Governance Review BSC changes by 31 December 2010. Hence we are proposing an Implementation Date of:

- 31 December 2010 if an Authority decision is received on or before 10 December 2010; or
- 15 Working Days following if an Authority decision is received after 10 December 2010.

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7 The Case for Change

The Panel's initial views against the Applicable BSC Objectives

The Panel believes that P263 will better facilitate the achievement of **Applicable BSC Objectives (a)** - The efficient discharge by the licensee [i.e. the Transmission Company] of the obligations imposed upon it by this licence [i.e. the Transmission Licence].

In order to efficiently discharge the Transmission Licence the licensee must ensure that the BSC is consistent with the Licence. Hence P263 will better facilitate Applicable Objective (a) by aligning the BSC with the Transmission Licence.

8 Panel's Initial Discussions

Why straight to Report Phase and why 2 months?

The Panel noted that P262, which was dealing with the other areas of the Code Governance Review, was being issued into a 2 month assessment and questioned why ELEXON were recommending P263 be issued to a 2 month Report Phase.

The Proposer responded that when progressing similar proposals under the CUSC, discussions at the CUSC Working Groups had been minimal on Send Back Process and Environmental Assessment elements. They did note that there had been far more discussion on the elements regarding SCRs, Self Governance and the Code of Practice. The Proposer had therefore split the required Code Governance amendments into two Modification Proposals, one that would be sent for Assessment (P262) and one that would be sent to Report (P263). ELEXON also added that the discussions at the CUSC Working Groups were in line with those had at the joint BSC/CUSC workshops. Engagement with the industry has been key in progressing these changes, and when discussing the potential changes with the industry no comments on the solutions or suggested alternatives had been received.

ELEXON did note that, in order to give participants as long as possible to respond to the Report Phase Consultation, the maximum consultation period (15 Working Days) would be used. This would extend P263 to a 2 month Report Phase. ELEXON believed it was appropriate to allow respondents to fully consider P263 but that no further assessment was required. Hence they were recommending a 2 month Report Phase.

One Panel member was concerned that sending P263 straight to Report Phase would limit the development of alternatives. ELEXON noted that the Transmission Licence drafting somewhat restricted the ability to develop alternatives. In addition, ELEXON requested participants inform them of any potential alternatives a number of times during the development of the Code Governance Modification Proposals. None had been suggested.

If a valid alternative did appear there were options. ELEXON could recommend rejection of P263 and the Proposer could raise an Urgent Modification Proposal of the alternative solution. The Panel requested that ELEXON inform it of any potential alternatives and developments as soon as possible.

One Panel member noted that the Code Governance Review had been a two year process and the results had already been drafted into the Transmission Licence. They believed the Modification Proposals should proceed straight to report to be progressed in the most appropriate and efficient way. An Assessment Procedure should only be used if it was necessary.

The Panel agreed to send P263 to a 2 month Report Phase.

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Potential complexities with Environmental Assessment

One Panel member noted that requirements for environmental assessment could add significant extra complexity into Modification Group and Panel's consideration of some Modification Proposals. For example, if a future Modification Proposal significantly increased the use of Combined Cycle Gat Turbine (CCGT) power stations, would the Panel need to consider the increase in green house gas emissions from power station gas leaks?

ELEXON responded that they would undertake the necessary work the Modification Group and Panel to assess a Modification against the Applicable BSC Objectives, in line with the published guidance from Ofgem. P263 did not introduce new obligations for environmental assessment, rather it clarified how one should go about it. In some cases this could mean that ELEXON may procure external consultants in order to undertake environmental assessment.

Why v2.0 of the Modification Proposal form?

ELEXON explain that the attached Modification Proposal form was at v2.0 since the Proposer had made a slight amendment to the solution since it was submitted.

P263 v1.0 included a pre-requisite that "Send Back Process must be completed before the last 'decision by' date in the Final Modification Report, otherwise the Modification Proposal will 'timeout'."

However, noting that the Send Back Process may require significant work (particularly if the Authority requires additional analysis), completing this within the original implementation timescale may not be possible. It would be more appropriate to allow the industry the time they need to complete the Send Back Process.

Hence the Proposer updated the pre-requisite to:

"The Authority must initiate the Send Back Process before the last 'decision by' date in the Final Modification Report, otherwise the Modification Proposal will 'timeout'."

The Proposer has updated the Modification Proposal form (Attachment A) and ELEXON has updated the draft legal text (Attachment B) to reflect these changes. The Panel noted the pre-requisite clarification when agreeing to send P263 to Report Phase Consultation.

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9 Report Phase Consultation Responses

ELEXON consulted on the Panel's initial recommendations during the Report Phase.

The following table summarises the consultation responses which ELEXON received. You can download the full individual responses to this Report Phase Consultation here.

	Question	Responses
1	Do you agree with the Panel's view that the Proposed Modification should be approved?	7 Yes – **Majority** 1 No
2	Do you agree with the Panel's recommended Implementation Date?	8 Yes - **Unanimous** 0 No
3	Do you agree that the legal text delivers the intention of P263?	5 Yes - **Majority** 2 No
4	What are the impacts and costs of P263 on your organisation?	8 - None/Minor impacts
5	Any further comments?	3 Yes 5 No

Did respondents support the Panel's recommendations?

The **majority** of respondents supported the Panel's initial recommendations and its views on the Applicable BSC Objectives, agreeing that P263 delivers the amended obligations in the Transmission Licence in the most efficient manner (i.e. Objective (a)). A minority of respondents also cited views against Applicable BSC Objective (d) as P263 would increase the efficiency of the BSC Modifications Procedures by allowing Modifications to be sent back to Panel. This would prevent the wastage of industry time, effort and resources by not having to repeat the full Modification Procedures in the event the Authority rejected a Modification Proposal because they were unable to make a decision based on the Modification Report.

One respondent **disagreed** with the Panel's recommendation. Whilst acknowledging that P263 would better facilitate objective (a), they argue that the impact of introducing a 'send back' process into the BSC would be **detrimental to Objectives (c) and (d)**. They believe that provisions for a 'send back' process would "*weaken the incentives for Ofgem to both fully participate in the development of modifications and make timely decisions*".

Send Back Process

Interactions with Proposer Ownership

Some respondents questioned how the proposed 'send back' process would interact with the principles of proposer ownership introduced by P247. For example; if an area of a Modification required amending, and a working group was reconvened, would the proposer of the Modification have their existing rights? (i.e. ability to agree solutions variations, request withdrawal etc). It was felt that the introduction of a process which could vary a Modification's solution, counter to the proposers wishes, would conflict with P247 principles.

ELEXON has discussed this issue with Ofgem who has made it clear that Proposer ownership does not conflict with the 'send back' process. Ofgem have stated that the 'send back' process **will not** be used to amend or develop Modification Proposal solutions and

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therefore Proposer rights will not be infringed. The 'send back' process will only be used to correct legal text if it was considered flawed (e.g. it contains errors, is incomplete or does not accurately and unambiguously reflect the intent of the proposal) and/or to complete revised or additional analysis. Ofgem would not direct that the solution contained in the Modification Proposal should be changed.

It should be noted that proposer ownership and the Send Back provisions are two separate processes; with the proposer ownership process ending at the conclusion of the Working Group during the Assessment Procedures. Hence the clarification from Ofgem is in line with the original drafting of P263. To help clarify that the 'send back' provisions is an entirely new process that does not send a Modification back 'into the Assessment Procedures', a new paragraph has been added to the P263 legal text stating:

> *2.7A.9 - For the avoidance of doubt, a Proposer shall have no right to withdraw or vary his Modification Proposal during the Send Back Process.*

The respondents who questioned the interaction with proposer ownership and the 'send back' process have been contacted. One respondent was comfortable with the assurance that Ofgem has provided by stating that they will not direct a solution should be amended. The respondent also noted that a similar guarantee had been made by Ofgem to the CUSC Panel.

Another respondent disagreed with Ofgem's view that P263 does not interact with Proposer ownership. They believe that such a clause should have been discussed by a working group, and whilst they derived comfort from the Ofgem indication that they will not direct solutions to be amended or developed, they would prefer the legal text was updated to state explicitly that the Authority cannot make such a direction. The respondent is concerned that without such a clause the Authority could issue a change back into assessment and amend a proposal counter to the proposers will. ELEXON has a great deal of sympathy for the respondents position; whilst such a clause would be very sensible, the legal position will not enable the BSC to place obligations on the Authority.

Section 2.7A.4

The provisions of P263 state that when the send back process is initiated ELEXON will draft a 'Send Back Process' (plan) for approval by the Panel which outlines the steps to be undertaken in order to meet the Authorities direction. Section 2.7A.4 of the legal text also allows that when "…requirements specified in the Send Back Direction are of a minor nature…" (such as typos in the legal text) ELEXON can carry on with completing the Authorities direction before having a plan approved by the Panel. This clause was to ensure that actions are undertaken in the most efficient manner, i.e. ELEXON do not have to wait a month for the Panel to approve a plan that allows them to correct a typo in legal text; then a further month, after the legal text has been changed, for approval of the new legal text.

A respondent did not believe it was appropriate for ELEXON to undertake any work before a plan had been approved by the Panel. ELEXON disagrees with this point on grounds of efficiency. For the avoidance of doubt the Panel would still have to approve any changes or amendments and make a recommendation before an updated report/legal text is submitted to the Authority. It is therefore believed sufficient checks and balances exist and that ELEXON is not taking powers to itself that, should properly reside with the Panel i.e. deciding what is or is not a minor update.

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Straight to Report?

Some respondents queried why P263 had progressed directly to the Report Phase as they did not feel that the changes were self-evident or inconsequential. One respondent noted that it was more efficient, but echoed views that it would have been preferable to discuss the solutions further.

V2.0 of the Modification

One respondent noted that the Proposer had updated their solution after submitting the form on Panel paper day. They were concerned that this would set a bad example as Proposers may submit a Modification "*that is 'light' on certain details, in the hope / expectation of a Report Phase consultation only to then amend the form with their intended detail*"

ELEXON agrees that it is not good practice for Proposers to update forms between submitting them and presenting them to the Panel, and every attempt should be made to complete the form as fully as possible before it is submitted (ELEXON are more than happy to provide the necessary assistance). Proposers should be aware that changing a Modification Proposal after they have submitted it may lead to the Modification Secretary refusing to accept the Modification. However, ELEXON also note that once the Panel has agreed for a Modification to enter the Report Phase the Proposer can no longer amend their Modification, and this should discourage any Party from attempting such a manoeuvre.

The respondent was also concerned that ELEXON determined what was considered a slight amendment without Panel approval, and that the amended Proposal was not published until the day after the Panel. ELEXON have spoken to the respondent to explain that the BSC Panel were requested to approve the late changes to P263 (detailed in Section 8 above) and that the updated form wasn't published until the day after the Panel meeting for this very reason. We believe that this was the most appropriate way to have dealt with these late changes and we pride ourselves in discharging the BSC requirements in the most efficient, effective and transparent way.

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Recommendation

The Panel recommend that the Proposed Modification should be made.

Interaction between Proposer ownership and Send Back and other legal text comments

ELEXON noted that two respondents had questioned the interaction of Proposer ownership and the Send Back Process. ELEXON had investigated this and noted the following:

- The original legal text implied Proposer ownership does not occur during Send Back process;
- Ofgem has confirmed to ELEXON that Proposer ownership does not occur during Send Back; and
- On that basis ELEXON proposed an update to the legal text (2.7A.9) to clarify Proposer ownership does not occur during Send Back.

A Panel member questioned whether Ofgem would ever use the Send Back process to change a solution. The Ofgem representative explained that the Send Back process was intended to ensure Ofgem could make robust decisions. It would be used in situations where the legal text did not unambiguously reflect the Proposed/Alternative solution, or where further or repeated analysis was required for Ofgem to make a robust decision. Ofgem would not use Send Back to direct solution changes. Another Panel member suggested that Ofgem could make this position clear their P263 decision letter.

The Panel agreed with ELEXON's proposed legal text clarifications (the addition of a missing bracket and the clarification that Proposer ownership does not occur during the Send Back process).

Consultation time periods

ELEXON noted that one respondent had questioned whether the maximum Report Phase Consultation period (15 Working Days) was consistent with the Code Administration Code of Practice which requires that respondents "will be given reasonable time to respond" and provided further guidance suggestion a standard consultation time period of 15 Working Days. ELEXON had discussed the comment with the respondent and explained the BSC was consistent with the Code Administration Code of Practice. The BSC Modification Procedures allow several opportunities for industry consultation. The Assessment Procedure has no maximum consultation length and Modification Groups flex consultation time periods to allow respondents a reasonable response time. The respondent, who attended Panel, added that it may be worth considering a BSC Modification to remove/extend the maximum Report Phase Consultation time period to allow the same degree of flexibility as the Assessment Procedure.

The savings of the Send Back process

One Panel member suggested that the P263 Modification Report would be enhanced with an analysis of the cost savings that could occur as a result of a Send Back process. The Panel member cited the example of P266 'Improving the allocation of Reactive Power flows between Import and Export Metering Systems'. P266 has been raised as a result of Ofgem not being in a position to make a decision on P224 'Reactive Power Flows Associated with Exemptable Generating Plant'. Essentially, P224 was rejected not because it was not necessarily better than the current arrangements, but because the Modification Report did not contain the information required by Ofgem to make a robust decision. Using the example scenarios from Section 3 (pages 8 to 10) ELEXON has analysed the

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progression savings of the Send Back process. On the basis of the Panel member's suggestion, example 3 considers a theoretical P224 Send Back process.

Cost analysis of Send Back process

Example 1 – Self evident change to the legal text

Activity	New Mod	Send Back
ELEXON		
Drafting IWA/Send Back timetable	3 WDs, £1,200	0 WDs, £0
Drafting and reviewing legal text	1 WDs, £480	1 WDs, £240
Collating consultation responses	2 WDs, £480	0 WDs, £0
Drafting Report Phase/Send Back Report	3 WDs, £720	2 WDs, £480
Sub-total	**9 WDs, £2,160**	**3 WDs, £720**
Industry		
Responding to consultations (number of consultations x 6 respondents x 2.5 man days per respondent x £605/man day)	1 consultation, £9,075	0 consultation, £0
Sub-total	**£9,075**	**£0**
Total	**£11,235**	**£1,200**
Total savings per Send Back	**£10,035**	

We have assumed that there would be a modest reduction in effort by not drafting an IWA or a full Modification Report. We have also assumed that the Panel would determine that an industry consultation is not required for the Send Back process for this self evident change. Under the Report Phase we must conduct an industry consultation, however, minor the legal text update.

Example 2 – Significant change to the legal text

Activity	New Mod	Send Back
ELEXON		
Drafting IWA/Send Back timetable	3 WDs, £1,200	2 WDs, £480
Drafting and reviewing legal text	3 WDs, £720	3 WDs, £720
Collating consultation responses	2 WDs, £480	1 WDs, £240
Drafting Report Phase/Send Back Report	3 WDs, £720	2 WDs, £480
Sub-total	**11 WDs, £2,640**	**8 WDs, £1,920**
Industry		
Responding to consultations (number of consultations x 6 respondents x 2.5 man days per respondent x £605/man day)	1 consultation, £9,075	1 consultation, £9,075
Sub-total	**£9,075**	**£9,075**
Total	**£11,715**	**£10,995**
Total savings per Send Back	**£720**	

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We have assumed that there would be a modest reduction in effort in not having to draft an IWA or a full Modification Report. We have also assumed that the Panel has determined that an industry consultation is not required for the Send Back process. Under the Report Phase we must conduct an industry consultation, however, minor the legal text update.

Example 3 – Revised or additional analysis required

The following example compares the ELEXON and industry progression costs of P266 with a theoretical Send Back process to provide Ofgem the additional assessment under P224.

Activity	New Mod	Send Back
ELEXON		
Drafting IWA/Send Back timetable	5 WDs, £1,200	2 WDs, £480
Analysis	15 WDs, £3,600	10 WDs, £2,400
Drafting Assessment Report/Consultation	15 WDs, £3,600	7 WDs, £1,680
Drafting and reviewing legal text	10 WDs, £1,200	Zero
Other activities (preparing for meetings, collating consultation responses, etc)	14 WDs, £3,360	5 WDs, £1,200
Drafting Report Phase/Send Back Report	7 WDs, £1,680	4 WDs, £1,680
Sub-total	**66 WDs, £15,840**	**28 WDs, £6,720**
Industry		
Attending Modification Group meetings (number of meetings x 5 attendees x 1.5 man days per attendee x £605/man day)	3 meetings, £13,612	2 meetings, £9,075
Responding to consultations (number of consultations x 6 respondents x 2.5 man days per respondent x £605/man day)	2 consultations, £18,150	2 consultations, £18,150
Sub-total	**£31,762**	**£27,225**
Total	**£47,602**	**£33,945**
Total savings per Send Back	**£13,657**	

We have assumed that, when compared to the full Modification Procedures, a Send Back process would require less time to draft documentation, conduct analysis, one less meeting and would not require any further legal text work.

Conclusion

The above analysis shows that the progression savings resulting from Send Back are relatively low – in the order of hundreds or thousands of pounds. What the analysis cannot take into account is the benefit from having beneficial changes implemented earlier (as a Send Back process should be shorter than raising a new Modification Proposal).

Intangible benefits of Send Back

One Panel member noted the potential progression savings but also highlighted the more intangible benefits of Send Back. There was likely to be a generic benefit in the quality of Ofgem's decision making process. More decisions were likely to be made on the basis of complete evidence and this would improve Parties' confidence in the BSC arrangements.

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Concern Ofgem will not engage in the Modification Procedures

One Panel member noted their concern that the Send Back Process would dis-incentivise Ofgem from engaging in the Modifications Procedures during the Assessment Procedure. The Panel member hoped that Ofgem would continue to engage up front in Assessment, rather than using the Send Back Process.

Final views against the Applicable BSC Objectives

The **majority** of the Panel agreed P263 **would** better facilitate Applicable BSC Objectives (a) and (d). They noted the following reasons:

Applicable BSC Objective (a):

- P263 would ensure that the BSC is consistent with the Transmission Licence in an efficient and effective manner.

Applicable BSC Objective (d):

- P263 would increase the efficiency of the BSC Modifications Procedures by allowing Modifications to be sent back to Panel. This would prevent the wastage of industry time, effort and resources by not having to repeat the full Modification Procedures in the event the Authority rejected a Modification Proposal because they were unable to make a decision based on the Modification Report.

A minority of those who believed P263 was better than the current arrangements also cited **Applicable BSC Objective (c)**, noting that:

- P263 would improve the quality of the Authority's decision making process thereby improving confidence for Parties in the BSC arrangements.

A **minority** of the Panel believed P263 **would not** better facilitate Applicable BSC Objective (a) or (c) for the following reasons:

Applicable BSC Objective (a):

One member noted that in coming to their decision they saw zero benefits against Applicable BSC Objective (a).

Applicable BSC Objective (c):

- The Send Back process defined under P263 would weaken the incentives for Ofgem to both fully participate in the development of modifications and make timely decisions. This added regulatory uncertainty could reduce the number of new entrants.

Recommendations

Having considered the P263 draft Modification Report, the BSC Panel recommends:

- that P263 should be made;
- an Implementation Date for P263 of
  - 31 December 2010 if an Authority decision is received on or before 10 December 2010; or
  - 15 Working Days if an Authority decision is received after 10 December 2010
- the proposed text for modifying the Code, as set out in the Modification Report.

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11 Further Information

More information is available in:

Attachment **A**: Proposed Modification Legal Text

For all P263 related documents see the P263 page of the ELEXON website.

Appendix 1 – Transmission Licence changes

The Transmission Licence Condition C3 changes are as follows:

Send Back Process

"4. The BSC shall include procedures for its own modification (including procedures for the modification of the modification procedures themselves), which procedures shall provide:…

b. where ~~such~~ a proposal is made in accordance with paragraphs 4(a), 4(aa) and, unless otherwise directed by the Authority, 4(ab),…

(vii) for the revision and re-submission of the panel report provided under sub-paragraphs (v) and (vi), such re-submission to be made, if required by a direction issued by the Authority under paragraph 5(aa), as soon after the Authority's direction as is appropriate (taking into account the complexity, importance and urgency of the modification)."

"5. a. Without prejudice to paragraph 13A, i~~I~~f a report has been submitted to the Authority pursuant to the procedures described in paragraph 4(b)(vi), and the Authority is of the opinion that a modification set out in such report would, as compared with the then existing provisions of the BSC and any other modifications set out in such report, better facilitate achieving the applicable BSC objective(s), the Authority may direct the licensee to make that modification.

aa. If a report has been submitted to the Authority pursuant to the procedures described in paragraph 4(b)(vi) and if the Authority determines that the report prepared in accordance with paragraph 4(b)(v) is such that the Authority cannot properly form an opinion in accordance with paragraph 5(a), the Authority may issue a direction to the panel:

(i) specifying the additional steps (including drafting or amending existing drafting of the modification to the BSC), revision (including revision to the timetable), analysis and/or information that it requires in order to form such an opinion; and

(ii) requiring the report to be revised and be re-submitted in accordance with paragraph 4(b)(vii)."

Environmental Assessment

"4. The BSC shall include procedures for its own modification (including procedures for the modification of the modification procedures themselves), which procedures shall provide:…

b. where ~~such~~ a proposal is made in accordance with paragraphs 4(a), 4(aa) and, unless otherwise directed by the Authority, 4(ab),…

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(ivA) for the evaluation required under paragraph 4(b)(iii) (and, if applicable paragraph 4(b)(iv)) in respect of the applicable BSC objective(s) to include, where the impact is likely to be material, an assessment of the quantifiable impact of the proposal on greenhouse gas emissions, to be conducted in accordance with such guidance (on the treatment of carbon costs and evaluation of the greenhouse gas emissions) as may be issued by the Authority from time to time,

(v) for the preparation of a panel report:…

- *assessing the extent to which the proposed modification or any alternative would better facilitate achieving the applicable BSC objective(s) and providing a detailed explanation of the panel's reasons for that assessment (such assessment to include, where applicable, an assessment of the quantifiable impact of the proposal on greenhouse gas emissions in accordance with 4(b)(ivA))*,"

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