

What stage is this document in the process?

- 01 Initial Written Assessment
- 02 Definition Procedure
- 03 Assessment Procedure
- ▶ 04 Report Phase

Stage 04: Draft Modification Report

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.



Initially, the Panel recommends Approval of P263



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

P263
Draft Modification Report

19 August 2010

Version 0.2

Page 1 of 17

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Any questions?

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Contents

1	Summary	3
2	Why Change?	4
3	Proposed Solution – Send Back Process	6
4	Proposed Solution – Environmental Assessment	10
5	Impacts & Costs	11
6	Implementation	12
7	The Case for Change	13
8	Panel’s Initial Discussions	13
9	Recommendations	15
10	Further Information	15
	Attachment A : Modification Proposal form	15
	Attachment B : Proposed Modification Legal Text	15
	Attachment C : Report Phase Consultation questions and response form	15
	Appendix 1 – Transmission Licence changes	16

About this document:

This document is a Draft Modification Report, which ELEXON will present to the Panel on 14 October 2010. The Panel will consider the recommendations, and agree a final view on whether or not this change should be made.

P263
Draft Modification Report

19 August 2010

Version 0.2

Page 2 of 17

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Why Change?

In November 2007 Ofgem launched the Code Governance Review. The aim of the review was to reduce complexity and fragmentation, and to increase the transparency and accessibility, of the electricity and gas codes. In July 2010 the results of the Code Governance Review were drafted into the Transmission Licence. These Transmission Licence changes now need to be reflected into the BSC.

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 to 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 a provisional initial Implementation Date for the Proposed Modification of:

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

The Case for Change

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.

Recommendations

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

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 Ofgem directed that the 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. In order to comply with the modified Transmission Licence the BSC will need to be amended to reflect the new processes and policies coming into effect.

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

We have 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.

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.



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.

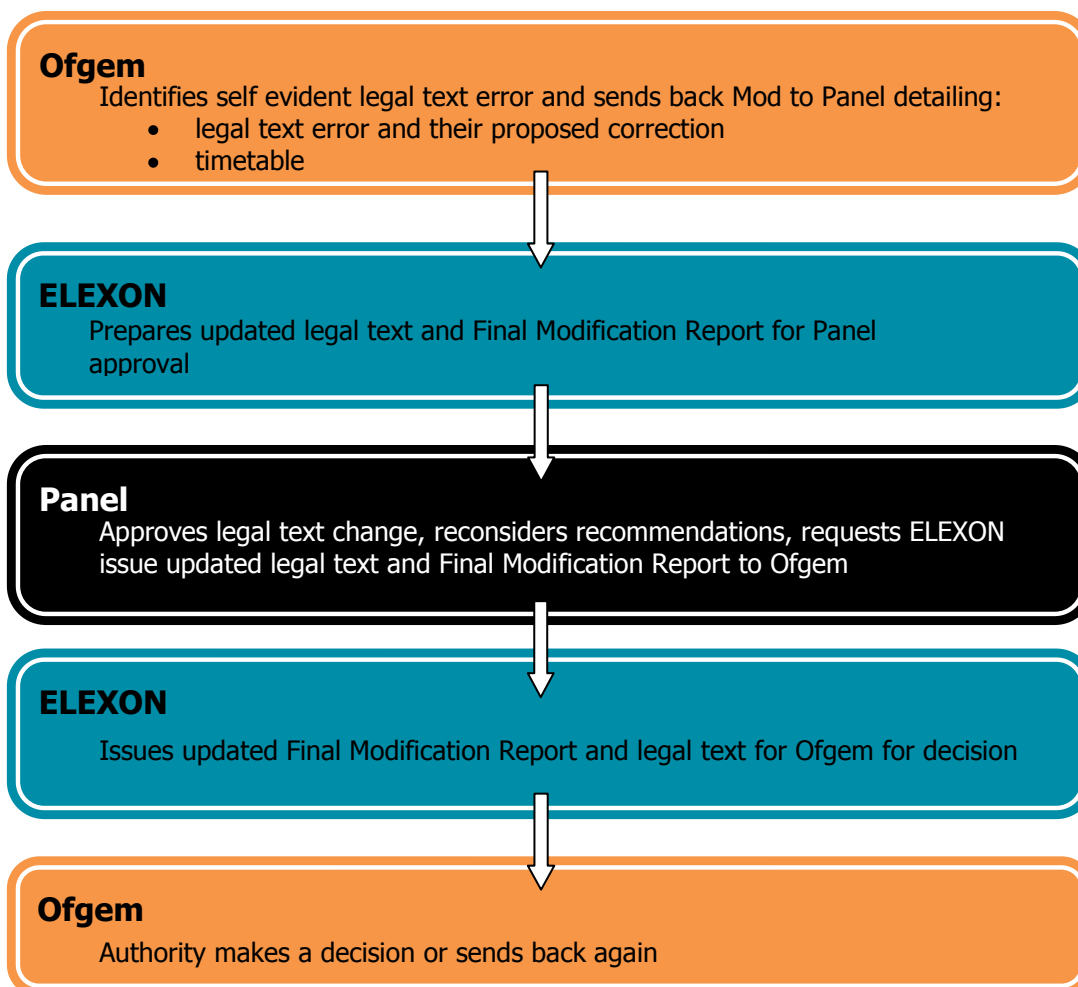
A subsequent Judicial Review ruled that if the Authority did not make a decision by the final date in the report then it lost its ability to make a decision on the Modification Proposals (such that they were effectively 'timed out').

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).

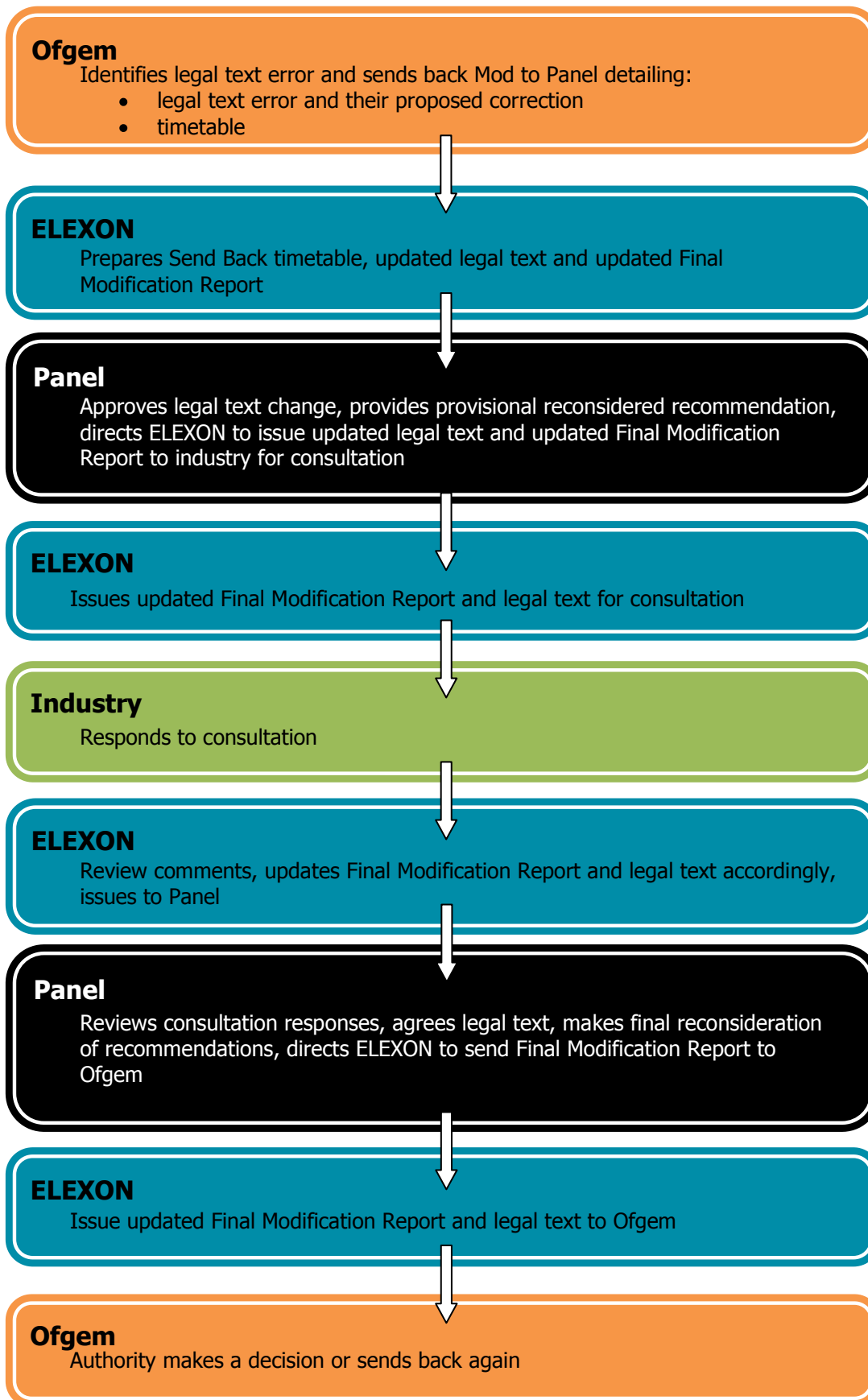
Examples of how the Send Back Process would work

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:

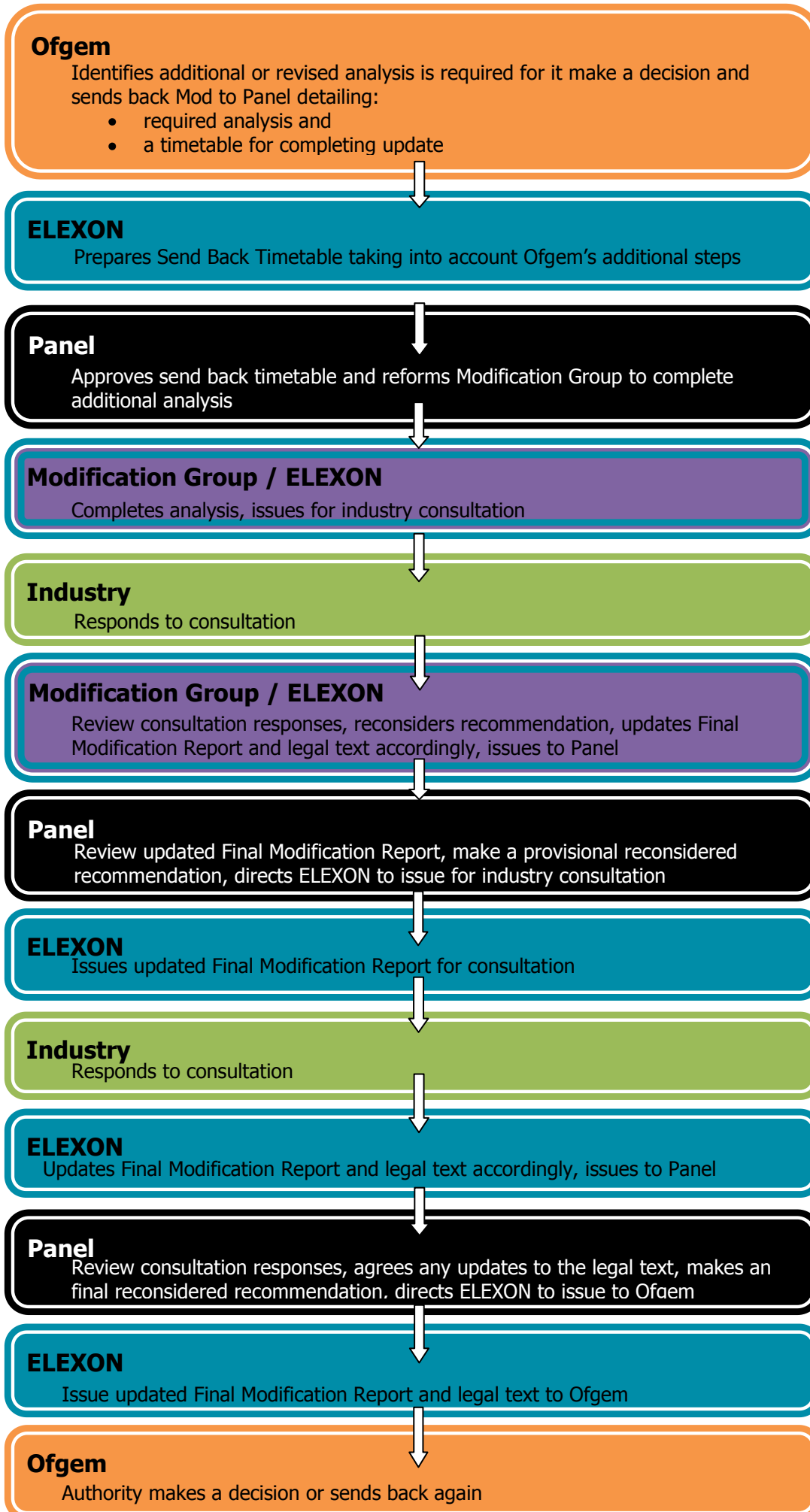
Example 1 - Self evident change to the legal text



Example 2 - Significant change to the legal text



Example 3 - Revised or additional analysis required



4 Proposed Solution – Environmental Assessment

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 B.

Report Phase Consultation

Do you agree that the legal text delivers the intention of P263?

The Panel invites you to give your views using the response form in Attachment C.

5 Impacts & Costs

Report Phase Consultation

What are the impacts and costs of P263 on your organisation?

The Panel invites you to give your views using the response form in Attachment C.

Costs

ELEXON Cost		ELEXON Service Provider cost	Total Cost
Man day	Cost		
TBC	TBC	£0	TBC

Indicative industry costs

Please let us know the costs on your organisation of P263

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	Potential impact
Change Management	<p>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.</p> <p>ELEXON will also assist the Panel and Modification Groups will 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.</p>

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

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 an Authority decision is received after 10 December 2010;

Report Phase Consultation question

Do you agree with the Panel's suggested Implementation Date?

The Panel invites you to give your views using the response form in Attachment C.

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.

Report Phase Consultation question

Do you agree with the Panel's view that the Proposed Modification should be approved?

The Panel invites you to give your views using the response form in Attachment C.

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.

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 Gas 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.



Panel's initial recommendations

The Panel initially recommends:

- that the Proposed Modification should be made;
- a provisional initial Implementation Date for the Proposed Modification of:
 - 31 December 2010 if an Authority decision is received on or before 10 December 2010; or
 - 15 Working Days following an Authority decision is received after 10 December 2010; and
- the Proposed Modification legal text for modifying the Code.

Recommendation

The Panel unanimously recommend that the Proposed Modification should be made.

10 Further Information

More information is available in:

Attachment **A**: Modification Proposal form

Attachment **B**: Proposed Modification Legal Text

Attachment **C**: Report Phase Consultation questions and response form

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, if 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),...

(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)),"*