

**Stage 03: Assessment Consultation**

What stage is this document in the process?

**01** Initial Written Assessment

**02** Definition Procedure

**03** Assessment Procedure

**04** Report Phase

# P264: Two-Thirds Majority Panel Recommendation on Licence originated Modifications

P264 proposes that for Modification Proposals the Licensee has been obligated to raise, a two-thirds majority vote of the BSC Panel will be required to recommend approval to the Authority. If a two-thirds majority is not reached, the Modification will be progressed with a recommendation for rejection.



Modification Group initially recommends Approval of the Proposed Modification



High Impact:  
BSC Panel, ELEXON

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**Any questions?**

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## About this document:

The purpose of this Assessment Consultation is to obtain views or further evidence from BSC Parties and other interested parties on matters discussed in this document. The P264 Modification Group will then discuss the consultation responses before making its recommendations to the Panel on 14 April 2011.

There are 4 documents for this Assessment Consultation:

- This is the **main document**. It outlines the solution, impacts, costs, benefits and implementation approach for the change. It includes the Group's discussion on whether the change should be approved.
- **Attachment A** Contains legal advice sought from a QC.
- **Attachment B** contains Proposed Modification legal text.
- **Attachment C** contains the Assessment Consultation questions and response form.

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## Why Change?

The concept of Significant Code Reviews (SCRs) has recently been introduced into the Transmission licence and the BSC. At the conclusion of a SCR the Licensee (National Grid) may be obligated to raise a SCR Modification Proposal to the BSC in accordance with a direction from the Authority.

The Proposer believes that this places the Authority in a position of 'judge, jury and executioner' and that extra checks and balances should be introduced to ensure that a body cannot raise and decide upon change without the right to appeal maintained, or other such restrictions.

## Proposed Solution

P264 proposes that when the BSC Panel votes to determine their final recommendation on a Modification the Licensee has been obligated to raise, a two-thirds majority will be required to recommend approval. If a two-thirds majority is not reached, the Modification will be recommended for rejection.

## Potential additions/alternatives

The Group has also developed 3 additional elements to the Proposed solution. All potential additions/alternatives relate to expanding the type of Modifications to which the two-thirds voting rule would apply.

**Potential addition 1:** All Modifications raised by the Licensee before, during or after an SCR that relate to the SCR

**Potential addition 2:** (a) All Modifications raised during an SCR Phase that have been suspended or subsumed;

(b) All Modifications whether raised inside or outside of an SCR Phase that seek to address the same defect as an SCR

**Potential addition 3:** Place an obligation on all Parties to state if they have been directed, instructed or requested by the Authority to raise the Proposal, and obligate the Panel to ask the Authority in open forum if they have directed, instructed or requested a Party to raise a Proposal.

## Impacts & Costs

P264 would impact the Panel's voting practice. The cost to implement P264 is estimated at £1,200 equating to 5 man days effort.

## Implementation

10 Working Days following an Authority decision

## The Case for Change

The Group believe that the Proposed Modification would better facilitate **Applicable BSC Objectives (a), (c) and (d)**.

## Recommendations

The initial recommendation of the Modification Group is approval of P264.



### Potential Additions

Potential additions are elements that could potentially be included in the P264 solution by the Proposer, or could form a separate Alternative solution.

### How does it work now?

#### Current Panel practice

When progressing a Modification Proposal the BSC Panel make a recommendation to the Authority as to whether or not they believe the modification should be approved. 10 Panel members have the opportunity to vote on the progression of a Modification Proposal, with the final recommendation based on a simple majority i.e. over 50% of the vote. If a majority cannot be formed and the vote is deadlocked, the Panel Chair shall have the casting vote.

#### Appealing decisions

Once the Authority has made a determination on the approval of a Modification Proposal there is an opportunity to appeal the decision to the Competition Commission. The Competition Commission has a number of criteria that must be met before an appeal can be considered. One criterion is that the Authority determination must be contrary to the majority recommendation of the BSC Panel. So, if the Panel recommend rejection and the Authority approve the Modification then an appeal can be raised. If the Panel recommend approval and the Authority approve the Modification, then no appeal can be raised.

It should be noted that if an appeal is excluded due to the criteria of the Competition Commission, it does not prevent a party from seeking to challenge the Authority's decision via an alternative route of judicial review in the High Court. Although an appeal to the High Court can only be on grounds of process, not on the merits of the case considered.

Further information on the Competition Commission appeals process can be found at the following link: [Competition Commission Appeals](#)

#### Licence originated Modifications

The Transmission Licence includes a number of obligations that National Grid, as the Licensee, must meet. Part of these obligations includes raising Modification Proposals to amend the BSC as a result of wider industry issues.

An example of such an obligation would be the SCR process. The SCR process has been introduced to facilitate the progression of significant industry wide changes. The conclusion of an SCR may result in an Authority direction being issued to National Grid that, in accordance with its licence, obligates it to raise a Modification to the BSC in order to implement the conclusions of an SCR.

### What is the issue?

In the view of the Proposer, Modifications that result from Licence obligations are likely to be high impact changes that will have significant commercial implications for Parties. As such, they are likely to be contentious. Such Modifications are also likely to address areas where historically Parties have not been able to reach a consensus, further adding to the complexity and contentious nature of the changes.

The current simple majority Panel voting process could result in a single vote making a recommendation of approval to the Authority on these contentious changes. This may increase the risk of appeals being raised where a controversial Modification is not progressed with decisive support. Equally, a single vote may ultimately remove the right for a party to appeal to the Competition Commission. This may increase the risk of judicial reviews being raised, which are more costly and time consuming than appeals to the Competition Commission.

The Proposer is also concerned that, in the case of SCRs, the direction to raise a SCR Modification Proposal will be issued by the Authority who will also make the determination.

It is also possible that any future Modifications raised as a result of a licence obligation will be directed and determined on by the Authority. Having appropriate checks and balances and ensuring Parties can appeal such changes (where appropriate) would be good governance and best practice.

Therefore, the appropriate provisions should be introduced into the BSC to ensure a suitable level of support from the industry before a licence originated Modification is recommended for approval, and to protect the ability of a party to raise an appeal on the approval of such a potentially complex and contentious change.

### 3 Proposed Solution

P264 proposes that when the BSC Panel vote to determine their final recommendation on a Modification Proposal which the Licensee has been obligated to raise, a two-thirds majority will be required to recommend approval.

If a two-thirds majority is not reached, the Modification will be progressed as recommended for rejection.

To reach a two-thirds majority approval there must be must at least twice the number of votes for approval, than the number of votes for rejection, of the total votes cast. If a Panel member chooses to abstain from the vote, then that vote is not considered a vote for rejection and does not count towards the total vote cast. For example, if 10 voting Panel members attend a meeting and 6 vote for approval, 2 vote for rejection and 2 abstain. The 'abstain' votes would not count as a vote for rejection. Therefore, the Panel recommendation would be to approve the modification as the majority would be 6 against 2 and provide the required two-thirds majority. This is in line with current procedure as detailed in Section B 4.4.3.

#### What is the driver for the Change?

The Proposer has clarified that the defect they wish to address is that the concept of SCRs has introduced a process which made Ofgem the 'judge, jury and executioner' of a change. Such a situation was not good governance and extra checks and balances should be introduced to ensure that a body cannot raise and decide upon change without greater protection of the right to appeal, or other such restrictions.

#### Licence Obligated Changes

The Proposer also clarified what they meant by 'Licence obligated Modifications'. This was any Modification which Ofgem had directed, instructed or requested the Licensee raise, and which could be linked to an obligation to raise such a change in the Transmission Licence. After discussion the Group believed that such a definition would currently only cover the SCR process under the BSC.

Although it had been the Proposer's intention to only cover off the SCR process within the BSC, they used the phrase 'Licence obligated Modifications' as an attempt to future-proof the Code for any similar processes, implemented at a later date, that also obligated a licensee to raise Modifications.

The Group questioned whether any Department of Energy and Climate Change (DECC) directed changes should come under this umbrella. However, the Group agreed that since DECC have to undergo a parliamentary process before directing a change, there was no case of judge, jury and executioner.

## 4 Potential alternative solutions

The Group has developed 3 potential additions/alternatives to the Proposed solution.

These additions may be included into the Proposed solution at the next Group meeting, or may form an Alternative solution. Either way the P264 Group request your views.

To help simplify the requirements of P264 and the potential alternatives, the following table highlights where a two-thirds majority Panel vote would be required.

		P264	Alt 1	Alt 2(a)	Alt 2(b)	Alt 3
Licensee Modifications Raised:	Before SCR Phase		X		X	X
	During SCR Phase		X	X	X	X
	Post SCR Phase	X	X	X	X	X
	Anytime					X
All Parties Modifications Raised:	Before SCR Phase				X	X
	During SCR Phase			X	X	X
	Post SCR Phase			X	X	X
	Anytime					X

### Potential alternative 1 - All Modifications raised by the Licensee before, during and after an SCR

P264 Proposed solution focuses solely on those Modifications which Ofgem have directed, instructed or requested the Licensee to raise, and which could be linked to an obligation to raise such a change in the Transmission Licence.

Under the current License and BSC provisions, the Proposed solution only applies to those Modifications that National Grid are obligated to raise as a result of an SCR conclusion.

#### Significant Code Reviews

The SCR process has been introduced to facilitate the progression of significant industry changes in the most efficient manner. Ofgem has the sole right to raise SCRs, but will consult on the scope of the review before commencing the SCR.

Once commenced, the SCR will utilise a number of industry workshops to develop an SCR conclusion. The SCR conclusion may result in an Authority direction that:

- Requires National Grid as the licensee to raise SCR Modification Proposal(s) to the BSC; or
- States no changes to the BSC are needed.

The period between the SCR commencing and SCR closing is known as the 'SCR Phase'.

Modification Proposals raised before the commencement of the SCR Phase progress through the standard BSC Modification Process as normal. The Proposers may choose to withdraw their Modifications or 'suspend' them awaiting the outcome of the SCR Phase.

Modification Proposals raised during an SCR Phase which are linked to the SCR topic will be subsumed. If a Modification is subsumed it will 'freeze' in the Modification Process until the conclusion of the SCR Phase. Once the SCR phase is complete the Modification will re-enter the change process (unless the proposer believes their issue has been addressed by the SCR and they withdraw the Modification). The intention is to subsume those Modifications that are linked to the SCR topic to prevent the same work being done under the BSC and the SCR. If Ofgem believe a Modification is not linked to a SCR then they may declare it exempt and it will progress through the Modifications Process as normal.



#### SCRs

Further information on SCRs can be found in [Modification P262 Final Modification Report](#) or at the following link: [Ofgem Code Governance Review](#)

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## Potential Alternative 1

As noted above, P264 Proposed solution includes only those Licensee Modifications raised at the end of an SCR Phase. Potential alternative 1 would expand this to include any Modifications raised by the Licensee before and during a SCR Phase (which relates to an SCR).

Any Licensee Modification that is Subsumed or suspended will automatically require a two-thirds majority Panel vote.

For any Licensee Modification raised before an SCR phase, that has not yet been subject to a final Panel recommendation, the BSC Panel shall decide if as to whether or not such a Modification relates to an ongoing SCR. If the Panel decide that it does relate to an ongoing SCR then the Modification Proposal will be subject to a two-thirds majority vote. If the Panel decide that it is not related then the usual simple majority vote shall apply. This Panel decision may take place at any time up until their final recommendation.

## Group's discussion

The majority of the Group thought that extending the provisions of P264 to cover all Licensee raised Modifications relating to an SCR would be beneficial as:

- P264 would cover the situation where the Licensee has raised a Modification as a result of an SCR conclusion. However, it would not cover any Modifications raised by the Licensee before or during an SCR which could potentially tackle the same issue. For completeness a two-thirds majority vote should apply to any Modifications raised by the Licensee relating to an SCR not just those raised at the end of the SCR Process.
- The Licensee is the most likely Party to be asked or directed by Ofgem to raise a Modification Proposal. Expanding the P264 arrangements would ensure that if Ofgem or the Licensee wish to short cut the SCR process, by raising a Modification before the SCR conclusion, then such a Modification would also be subject to a two-thirds majority Panel vote.

A minority of the Group felt that this was not a suitable alternative as it could prove potentially discriminatory against any changes raised by National Grid during an SCR.

Concern was also raised that the SCR process had been developed such that Modifications raised before an SCR would follow the normal Modification process and not be automatically affected by an SCR. The reason for this being that amending the process a Modification would follow after it had been raised, was not a transparent process. As such changing the voting arrangements for pre SCR Modifications would appear to run counter to the principle of not amending the process to be followed by a Modification after it has been raised.

### Assessment Consultation question

Would potential alternative 1 provide any benefits over and above the Proposed solution?

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

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## Potential alternative 2

Potential alternative 2 is split into two parts, (a) and (b). The solution in part (b) builds on those requirements in part (a).

### **Potential Alternative 2(a) – Including all Modifications raised during an SCR Phase that have been suspended or subsumed**

During the SCR Phase, Modifications that relate to the SCR topic may either be subsumed or suspended. In effect these provisions mean that Modifications are put on hold until the conclusions of an SCR. Potential Alternative 2(a) would expand the scope of the P264 Proposed Modification to include such all subsumed or suspended Modifications that are re-entered into the change process following the conclusion of the SCR Phase.

Any Modification that is Subsumed or suspended will automatically require a two-thirds majority Panel vote.

### **Group's discussion**

The Group thought that it would be beneficial to include subsumed and suspended Modifications into the scope of the Proposed Modification for two main reasons:

1. Subsumed or Suspended Modifications will be seeking to address the same issue and defect as the Licensee raised Modification following the SCR Phase. Since the Modifications will be seeking to address the same issue they should all be treated consistently, to treat them differently would not be an efficient or fair process;
2. There is a potential that Ofgem could request National Grid or another Party to raise a Proposal to tackle the SCR issue before the end of the SCR Phase in order to avoid coming under the provisions of P264. Similarly another Party, on their own accord, could raise a change before National Grid had a chance to raise their SCR Modification simply to avoid the two-thirds majority vote at the Panel.

#### **Assessment Consultation question**

Would potential alternative 2 (a) provide any benefits over and above the Proposed solution?

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

### **Potential Alternative 2(b) – All Modifications, whether raised inside or outside of an SCR Phase, that seek to address the same defect as an SCR**

In addition to any Modification that has been subsumed or suspended, as described in 2 (a) above, alternative 2 (b) will also include those Modifications that relate to the SCR but which have been raised outside of an SCR phase; albeit before or after.

For any Modification raised before an SCR phase, that has not yet been subject to a final Panel recommendation, the BSC Panel shall decide if as to whether or not such a Modification relates to an ongoing SCR. If the Panel decide that it does relate to an ongoing SCR then the Modification Proposal will be subject to a two-thirds majority vote. If the Panel decide that it is not then a normal majority vote shall apply. This Panel decision may happen at any time up until their final recommendation.

Any Modification that is Subsumed or suspended will automatically require a two-thirds majority Panel vote.



#### **Pending Modifications**

Pending Modifications are those Modifications which the Authority has not yet made a decision to approve or reject.

It includes all Modifications in assessment, in Report Phase or awaiting decision with the Authority.

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For any Modification raised after an SCR Phase the BSC Panel shall decide as to whether or not such a Modification relates to a Pending SCR Modification (i.e. any Modification raised by the Licensee as a result of an SCR conclusion). If the Panel decide that it does relate to an ongoing SCR Modification then the Modification Proposal will be subject to a two-thirds majority vote. If the Panel decide that it is not, then a normal majority vote shall apply. This Panel decision may happen at any time up until their final recommendation.

## Group's discussion

The majority of the Group thought that it would be beneficial to include these additional requirements as:

- It is not just National Grid that may 'jump the gun' during or before an SCR Phase. Including all Parties would ensure that no such changes could be progressed without being subject to a two-thirds majority vote.
- Ofgem may ask or direct other Parties apart from National Grid to raise Modification Proposals in order to get SCR changes in place quickly. These provisions would ensure such changes were subject to a two-thirds majority vote.

Some of the Group questioned the benefits of including these requirements. An argument was raised that this was potentially catching innocent Parties and adding additional frustration to an already complicated process. Other Group members felt that such an inclusion was outside the scope of the Modification. They believed that P264 was seeking to address License obligated Modifications raised by the Licensee. Adding additional constraint on all Parties could unintentionally slow down the process when it should be about trying to maintain the rights of appeal.

### Assessment Consultation question

Would potential alternative 2 (b) provide any benefits over and above the Proposed solution?

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

## Potential alternative 3 – Requirement to state where all Modifications originate

Potential alternative 3 would place a requirement on Parties to state if they have been requested by Ofgem to raise a Proposal. It would also obligate Ofgem to state in an open forum where they have requested a Party to raise a Proposal.

The Modification Proposal Form would be updated to include a section which requires Parties to state if Ofgem had directed, instructed or requested them to raise the Proposal. This would be mandatory to complete.

Additionally, an obligation would be placed on the Panel to ask Ofgem, at the Panel meeting where the Modification Proposal is first presented, if they had directed, instructed or requested the raising Party to raise the change.

## Group's discussion

A minority of the Group felt that it was not only the Transmission Company who may be directed, instructed or requested by Ofgem to raise change, and that there was potential for Ofgem to approach other Parties. Therefore, they believed that this potential Alternative had merit as it would cover off all Parties who had the ability to raise changes to the BSC, not just National Grid. They also believed that having both Parties and Ofgem

publicly stating the reasons to why a change has been raised, and the level of Ofgem involvement, would ensure honesty. Such a public statement could also be used as evidence in court if it became necessary to do so.

The majority of the Group believed that such a process would be very hard to 'police' and that it would be difficult to prove if a Party had been requested or instructed by Ofgem to raise a change. Some Group members also felt that under such a solution it would place those Parties who had had conversations with Ofgem, when forming their Modification, in a difficult position. A Party who had spoken to Ofgem when drafting a Proposal to seek their views might be seen as colluding with Ofgem, when in fact it was an innocent conversation asking for the input of Ofgem.

Some Group members also felt that this would be out of scope of P264. This potential alternative solution would not focus on License obligated Modifications, but would instead encompass all Modification Proposals raised by all Parties. This was not the intention of P264 and it was felt by many to not address the defect identified.

#### **Assessment Consultation question**

Would potential alternative 3 provide any benefits over and above the Proposed solution?

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

#### **Assessment Consultation question**

Are there any alternative solutions, which the Modification Group has not identified, that they should consider?

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

## 5 QC Advice

As part of the assessment of P264 the Group sought external Legal advice from a QC. The Group wished to understand the interaction between the Statutory Instrument, the BSC and P264. The full QC advice is attachment A to this document and contains views for both P264 and CAP190 (a similar proposal raised under CUSC).

The Group initially asked 5 questions of the QC. These are summarised below:

Q1. What is the meaning of 'a majority' under Articles 5 of SI 2005/1646?
The meaning of "majority recommendation" is a recommendation made in accordance with the votes of more than half the total number of votes cast by Panel Members.
Q2. Can the definition of a majority be changed in the BSC as proposed under P264?
Yes you could. However, it would not change the meaning of "majority" in the SI. The effect of such a change on the right to appeal is summarised in answer to question 3 below.
Q3. If P264 were implemented, would an appeal be possible to the Competition Commission if the Panel did not reach a two-thirds majority (and therefore did not recommend a Modification) but a simple majority voted in favour of a Modification?
Yes, because the SI only excludes the right of appeal where Ofgem's decision endorses a recommendation by the Panel. If the Panel did not recommend a modification then the right of appeal would remain, even if a simple majority of Panel Members had voted in favour.
Q4. If P264 were implemented certain proposals would require a two thirds majority vote, whereas other Proposals would only require a simple majority vote (i.e. 50% or more), would this inconsistency cause any issues?
No.
Q5. Given the differences in the change processes set out in the BSC and CUSC, does your advice differ in any way with respect to P264 and CAP190?
Yes, due to the drafting of the CUSC the proposed CAP190 is not possible.

### Follow up questions

The Group followed up the QC's advice with a further 3 P264 related questions. Again these are summarised along side the answers below.

Q1. Would the proposed P264 amendments be likely to stand the test of a Competition Commission appeal if they were implemented in the Code? Our concern is introducing a process into the Code that has less than 50% chance of being upheld when challenged.
Yes, it would be robust to challenge.
Q2. The response to question 3 above means that if Ofgem rejects a Modification, regardless of whether or not there has been a majority recommendation to approve by the Panel, it is appealable to the Competition Commission. Is our understanding correct?
Yes. The wording of the SI allows for any rejected Modification to be appealed to the Competition Commission. However, the supporting documentation available which clearly states that this was not the intention of the SI would mean that such an appeal would be unlikely to be accepted.
Question 3. Would any of the Alternatives alter your advice?
No. They are all viable changes.

### **Appeal all rejected Modifications?**

As noted in the questions above the Group queried the QC's advice that any rejected Modification, regardless of Panel majority vote, could be taken to the Competition Commission for appeal.

This view seemed contrary to the current industry understanding of the circumstances in which a right of appeal arises. It is currently believed that an appeal may only be made to the Competition Commission when Ofgem has made a determination on a Modification that is counter to the majority recommendation of the Panel i.e. the majority of the Panel recommends approval and Ofgem rejects or via versa.

This is based on the DTI's response to the consultation on the draft order for the Energy Act 2004 which states "The final Order provides for decisions where Ofgem agrees with a Panel recommendation based on a majority panel view to be excluded from appeal". This is further supported by 5 (i) of SI 1646 which states and appeal is excluded if "...the decision consists in giving of a consent to a majority recommendation made by the Panel..."

After discussing this issue with the QC they believed that the SI could be interpreted to allow an appeal any decision to reject. The QC noted that this interpretation is not in line with the DTI's stated intention in drafting the order (para 36(a)), however, given that a potential ambiguity exists, it may be worth clarifying this within the SI.

The Work Group has contacted DECC on this matter and we are awaiting a reply.

## 6 Impacts & Costs

### Costs

ELEXON Cost	ELEXON Service Provider cost	Total Cost
£1,200 (5 Man Days)	£0	<b>£1,200</b>

### Impacts

#### Impact on BSC Systems and process

None identified

#### Impact on BSC Parties and Party Agents

None identified

#### Impact on Transmission Company

Modification Proposals raised will be subject to a two-thirds majority Panel vote.

#### Impact on ELEXON

Change Management to support the BSC Panel and ensuring correct process.

#### Impact on Code

Code section	Potential impact
Section F	To allow for the new processes as defined above

### Assessment Consultation question

What are the impacts and costs of the Proposed Modification on your organisation?

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

## 7 Implementation

The P264 Group are proposing an implementation approach of **10 Working Days** following an Authority decision

The Group also propose that P264, if approved, should only apply to Modifications raised after the implementation date of P264 and would not impact those Modification Proposal already in the process.

### Assessment Consultation question

Do you support the Modification Group's preferred implementation approach?

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



## Proposed Modification vs. current arrangements

The Group agreed that the Proposed Modification would better facilitate **Applicable BSC Objective (a)** as:

- National Grid are obligated under their license to raise SCR changes. If there is certainty that such changes can be appealed they are better delivering their licence obligation, providing safe guards for themselves and others. This is more efficient hence better facilitates Applicable Objective (a); and
- If National Grid fulfil their License obligation by having Licensee raised SCR Modifications recommended for approval by a two-thirds majority, Parties are less likely to appeal the decision and therefore National Grid would have completed their obligation in the most efficient way.

The Group also agreed that the Proposed Modification would better facilitate **Applicable BSC Objective (c)** as:

- Minority industry views are better able to influence a Panel if two thirds votes are required;
- The BSC is a contract. P264 would better protect Parties rights to appeal when there is a change to that contract which may discriminate Parties;
- Small Parties may not have the time and resource to become involved in SCRs. P264 would safeguard their right to appeal SCR changes;
- Keeping the appeals route open would make it easier for Parties to enter the market as there is certainty that Parties can appeal;
- Ensuring that sufficient checks and balances exist results in a more robust governance process and therefore encourages greater investor strength within the market; and
- Providing a strong Panel view to Ofgem helps makes issues clear and safeguards interests of the majority view of the industry.

The majority of the Group believed that the Proposed Modification would better facilitate **Applicable BSC Objective (d)** as:

- Appeals route to the competition commission better protected, providing certainty over process; and
- Future proofs the Code for any new processes introduced into the Transmission License that are similar in nature to the recently introduced SCR process.

A minority of the Group believed that the Proposed Modification would not better facilitate **Applicable BSC Objective (d)** as although P264 may be good governance and a good principle, they were not convinced such provisions in the Code would be more beneficial than current arrangements.

## Recommendation

Modification Group recommends approval of the P264 Proposed Modification.

The Group is also interested for your views on their potential alternatives.

## Assessment Consultation question

Would the Proposed Modification P264 help to achieve the Applicable BSC Objectives when compared to the current arrangements?

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

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## Potential alternatives

Due to the number and potential combination, the Group have not made an initial recommendation against the Applicable Objectives for each potential alternative. However in order to help Parties respond to this consultation the following section provides a summary of benefits and drawbacks identified by the groups in section 4.

### Potential alternative 1 - All Modifications raised by the Licensee before, during and after an SCR

Benefit	Drawback
<ul style="list-style-type: none"><li>For completeness a two-thirds majority vote should apply to any Modifications raised by the Licensee relating to an SCR not just those raised at the end of the SCR Process.</li><li>The Licensee is the most likely Party to be asked or directed by Ofgem to raise a Modification Proposal relating to an SCR.</li></ul>	<ul style="list-style-type: none"><li>Potentially discriminatory against any changes raised by National Grid during an SCR.</li></ul>

### Potential alternative 2

#### Potential Alternative 2(a) – Including all Modifications raised during an SCR Phase that have been suspended or subsumed

Benefit	Drawback
<ul style="list-style-type: none"><li>Subsumed or suspended Modifications will be seeking to address the same issue and defect as the Licensee raised Modification following the SCR Phase. They should all be treated consistently.</li><li>There is a potential that Ofgem could request National Grid or another Party to raise a Proposal to tackle the SCR issue before the end of the SCR Phase in order to avoid coming under the provisions of P264.</li></ul>	

#### Potential Alternative 2(b) – All Modifications, whether raised inside or outside of an SCR Phase, that seek to address the same defect as an SCR

Benefit	Drawback
<ul style="list-style-type: none"><li>Covers all Parties, not just the Transmission Company</li></ul>	<ul style="list-style-type: none"><li>Potentially catches innocent Parties and adds additional frustration to an already complicated process</li></ul>



## Potential alternative 3 - Requirement to state where all Modifications originate

Benefit	Drawback
<ul style="list-style-type: none"><li>• Captures all Modifications that may have been raised by Ofgem through another Party</li></ul>	<ul style="list-style-type: none"><li>• Hard to 'police'</li><li>• Out of scope</li><li>• Down to interpretation</li></ul>

## 9 Further Information

Attachment **A**: Legal Advice from the QC.

Attachment **B**: Proposed Modification Legal Text

Attachment **C**: Assessment Consultation response questions

All related documents can be downloaded from the [P264 page](#) of the ELEXON website.