

## Stage 03: Attachment A: Detailed Assessment for P247

### P247: Proposer 'ownership' of Modification Proposals

What stage is this document in the process?

**01** Initial Written Assessment

**02** Definition Procedure

**03** Assessment Procedure

**04** Report Phase

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#### About this document:

This is Attachment A to the Assessment Report. This attachment provides additional detail, including details of the Modification Group's discussions.

## 1 Terms of Reference

The P247 Modification Group consists of members of the Governance Standing Modification Group.

The table below summarises the areas which the Group has considered as part of its P247 Terms of Reference, as set by the Panel. Sections 2 and 3 detail the Group's discussion.

**Table 1 – Terms of Reference**

P247 Terms of Reference	
Ref	Area
1	Explore the extent of refinements allowed to the Proposed Modification
2	Explore the role of Modification Groups, ELEXON and the Panel
3	Consider the role of the Definition Procedure under a Proposer ownership model
4	Consider the appropriateness of the Amalgamation process under a Proposer ownership model
5	Consider the resource impact of P247 Proposers
6	How would P247 apply to Panel raised Modifications?
7	How will the withdrawal process work under P247?
8	Consider the Urgent Modifications process under P247
9	Consider whether P247 better facilitates the Applicable BSC Objectives
10	Consider whether an Alternative Modification is required
11	Identify the most effective implementation approach for P247



### Any questions?

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P247  
Detailed Assessment

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### Proposer ownership of a Modification Proposal

#### How does the Proposer see Proposer ownership working

The Proposer of P247 outlined how they saw the processes working. Control of the Proposed Modification would rest with the Proposer. They would be able to amend the Proposed Modification solution to any extent as long as it met the original issue or defect outlined in the Modification Proposal. The Modification Group would still be able to offer advice on how to develop the Proposed Modification solution, but the Proposer would have veto over any suggestions they disagreed with and would be able to make changes without requiring the Group's agreement. The Group would still be able to develop an Alternative Modification if a majority believed it was better than the Proposed Modification (providing it met the defect or issue).

The Group noted this view and developed the details of the solution.

#### Benefits of Proposer ownership

The Proposer outlined the benefits of the Proposer being able to amend the solution of the Proposed Modification.

There have been a number of instances in the past where the drafting of a Modification Proposal has constrained the Modification Group's ability to develop the best solution to the defect in the most efficient way. For example:

P245 'Changes to Long Term Vacant Site Timescales' seeks to address the defect where current Long Term Vacant processes lack clarity and potentially exclude some legitimate Long Term Vacant sites. During the Assessment Procedure the P245 Modification Group identified additional improvements to the Long Term Vacant process. As these improvements were not mentioned in the Proposed Modification solution they had to be included in the Alternative Modification even though they were unanimously supported by the Group. It is possible that the P245 Proposer, if the P247 Proposer ownership provisions had been introduced, would have amended the Proposed Modification to include the additional Long Term Vacant process improvements. This would have saved the need for an Alternative Modification and hence reduced the work required to develop two solutions (report writing, legal drafting, Panel discussion).

The Proposer noted that P247 would remove this issue, allowing Modification Proposals to be progressed more efficiently.

The Group noted that P247 was therefore not simply about giving the Proposer the right to veto a Modification Group's solution suggestions. It would also give the Proposer more flexibility to incorporate a Group's suggested refinements by 'varying' the Proposed Modification solution, should they wish to do so, from that originally set out in the Modification Proposal form. Rather than having to 'waste' an Alternative Modification on minor refinements, P247 would give a clearer distinction between the solution supported by the Proposer (the Proposed Modification) and any solution supported by the Group but not the Proposer (an Alternative Modification). This would also allow Modification Groups to use the single Alternative Modification permitted under the BSC to reflect more material/contentious divergences in views.

The Group noted that the current process can result in a Group developing an Alternative which includes both minor refinements and more controversial solution changes. This risks the minor refinements being lost if the more controversial element leads to rejection of that Alternative. The Group believed that P247 could potentially resolve this problem.

The Proposer noted that it is unlikely that someone will have perfect foresight at the time of drafting a Modification Proposal, and that under the current Modification Process is it very easy to inadvertently constrain solution development in the wording of the Modification Proposal form.

## Extent of solution amendments?

The Group discussed the extent to which solution amendments should be allowed under P247. The Modification Proposal outlined that refinements would only be allowed to the Proposed Modification solution and not to the original issue or defect set out in the Modification Proposal form. Therefore any amendment would be allowed to the Proposed Modification solution as long as it continued to meet the original issue/defect.

One Group member was concerned that this might give too much scope for the Proposer to amend the Proposed Modification solution, and to constantly change the solution such that it became very difficult for a Modification Group to undertake its assessment. If material solution changes were made repeatedly, and/or at a late stage, this could mean that the Group needed to conduct significant additional work in order to assess the amended solution. The member suggested that it might be possible to use the Definition Procedure in order to amend the solution which would then be fixed for the Assessment Procedure. Effectively, this would make use of the Definition Procedure mandatory for all Modification Proposals which do not go straight to the Report Phase. The rest of the Group were not in favour of this approach as it would lengthen the Modification Process. The Proposer's representative noted that P247 was trying to reduce the length and bureaucracy of the Modifications Process. ELEXON also noted that feedback from Groups who had been through the Definition Procedure was that it was often not until a Group began to assess a change in detail that potential improvements/refinements to the solution were identified. Previous feedback has therefore been that the distinction between the Definition and Assessment Procedures is somewhat artificial. ELEXON noted that there was also a broader question about the role of the Definition Procedure under a 'Proposer owns' model.

The Group agreed that the Proposer should be able to amend the Proposed Modification solution to any extent as long as it seeks to address the Modification Proposal issue/defect. The Group noted that this would be consistent with the existing BSC criteria under which a Modification Group can develop an Alternative Modification, i.e. the Alternative must address the defect detailed in the Proposal form. The Group agreed that limiting the Proposer's ability to vary their solution in this way would also help prevent too much 'scope creep', where what started as a non-contentious change could grow into something far more material. Similarly, it would prevent a change from evolving out of all recognition. It was noted that it would be difficult for the Group to develop an Alternative if the Proposer was able to alter the issue/defect as well as the Proposed Modification solution. The Group agreed that, if the Proposer wished to effectively 'start again' with a completely different issue/defect, then it was more appropriate for them to use the P247 withdrawal process to halt that proposal and submit another new Modification Proposal.

The Group agreed that, each time the Proposer amended the solution, they would need to provide rationale so that ELEXON could document this in the relevant reports. The Group also agreed that the Proposer would need to provide rationale for the times where it vetoed a change to the solution proposed by the Modification Group, for the same reason.

The Group noted the risk that the Proposer might make multiple or late changes to the solution. It considered that this was similar to the current risk that a Modification Group may (perhaps after consultation) make solution changes and/or develop an Alternative

Modification at a late stage. The Group noted that there are existing processes in place to deal with this situation, in that the Panel (with Ofgem's involvement) decides whether to extend the timetable to allow further consultation/assessment. The Group also agreed to put in place an additional safeguard under P247 for the Panel to manage any behaviour of the Proposer which might be persistently disrupting or frustrating the work of the Group.

### **Up until what point can the Proposer amend the solution?**

The Group agreed that the key point where the Proposed Modification solution should be fixed is just before the Modification Group make its final recommendations.

The Group agreed that this was the appropriate cut-off point for any solution changes because it would:

- allow the Proposer to control the Proposed Modification solution for the entire Assessment Procedure. The Group could see no good reason why the Proposer would need control of their Proposed Modification following the Assessment Procedure. This would be inconsistent with the Group's ability to develop and refine an Alternative Modification, which only applies up to the end of the Assessment Procedure;
- ensure the Group's and Panel's recommendations were against the same solution. It would be difficult for Modification Groups, the Panel and Report Phase consultation respondents to assess the Modification Proposal against the Applicable BSC Objectives if the solution could change during the Report Phase. It could also make it difficult to develop and consult on legal text; and
- ensure the Authority would be considering the same solution as the Modification Group, the Panel and Report Phase respondents.

The Group agreed that a step should be added into the Modification Groups' working practices (potentially through the standard Terms of Reference set by the Panel) to fix the Proposed Modification solution. This would occur just before the Group makes its final recommendations in the Assessment Procedure. The Modification Group Chair would ask the Proposer's representative if the solution is final. Once the Proposer's representative agrees that the Proposed Modification solution is final then no further changes would be allowed. The Modification Group would then be able to make final recommendations and agree the legal text. ELEXON noted that this would simply be an extension of current working practice where, after considering the Assessment Consultation responses, the Group confirms its final Proposed Modification and Alternative Modification solutions before proceeding to give its final views on those solutions against the Applicable BSC Objectives.

### **What if the Proposer's Representative is frustrating the process?**

One member noted that the P247 process gave much greater power to the Proposer than the current Modification Process. With that additional control came additional responsibility, and a risk that the Proposer could use that control to frustrate the process. The Group noted that P247 made it much more important for the Proposer to attend Modification Group meetings. The Group agreed that it would be very difficult to progress a change without the Proposer being present at the meetings – as, even though the Group could make solution decisions in their absence, the Proposer would still have the right to subsequently veto these such that the work of the meeting would have to be repeated. This could entail additional Group work, and most likely an extension to the Assessment Procedure.

ELEXON commented that, in the event that the solution changed significantly and the Modification Group needed to conduct additional analysis, then the Modification Chair

could request extra time from the Panel. It is Panel's responsibility to ensure the Modification Process proceeds to time and that solutions are appropriately assessed and consulted on. The Panel would therefore need to make a decision whether to extend the timetable.

The Group considered whether there should be a requirement on the Proposer to attend all meetings, or at least a certain percentage of meetings. ELEXON queried whether this could have resource implications for smaller Parties. The Group noted that such Parties can (and sometimes do) use consultancies to represent them at Modification Group meetings, and can always use teleconference facilities to ease the travel burden. They can also nominate an Alternate to attend if the main Proposer's Representative is unavailable for any given meeting. It was also suggested that Proposers might have a greater incentive to attend meetings if they kept ownership of the solution – currently some Parties may feel that their voice may not be heard at meetings and that they are unable to affect Groups' decisions.

The Group agreed that it was difficult to say what a suitable level of attendance was. There could always be unforeseen events that prevent attendance at a particular meeting. And a percentage requirement would have different resource implications depending on the overall timetable (50% of 2 meetings, for example, would still make it possible for the Proposer to only attend the last meeting).

The Group noted that the Panel already has the power to replace a member of a Modification Group who it has previously appointed. This occurs where that member is 'deliberately and persistently disrupting or frustrating the work of the Modification Group' (F2.4.11). This ability does not currently apply to the Proposer, as the Proposer automatically has the right to appoint a member of the Group (i.e. they are not appointed by the Panel). Therefore the Group proposed that, under P247, the Panel would have additional powers to initiate the withdrawal process for a Modification Proposal if, in the Panel's reasonable opinion, the Proposer was deliberately frustrating the Modifications Process. ELEXON (as the Modification Group Chair) would highlight to the Panel if a Group had any concerns over the Proposer's behaviour. It would be for the Panel to decide on a case-by-case basis whether initiating withdrawal was justified. The Group envisaged that this was safeguarding against an unlikely risk, and would only be used as a last resort.

## How do you appoint a new Proposer's Representative?

The Group noted that as the Proposer's Representative had greater power under P247 it was important that any changes to the Proposer's Representative be notified to ELEXON. This would ensure that the Proposer's Representative was in the position to control the development of the solution in a manner which the Proposer wanted. The Group agreed that it was unnecessary to make this a Code requirement, and could be covered in the standard Modification Group Terms of Reference and/or working practices.

## What would the role of the Modification Group be in the new process? How would the Alternative Modification process work?

The Group agreed that, while P247 gave the Proposer control of the Proposed Modification solution, all other aspects should still be under the control of the Modification Group (who would agree things by simple majority as now). This included:

- Agreeing Implementation Dates;
- Agreeing the legal text;
- Reviewing reports as the record of the Group's discussions, and which would record all the views expressed; and

- The ability to develop an Alternative Modification.

The Group noted that, when it came to the Proposed Modification legal text, the Group would be reviewing for the robustness/clarity with which the text delivered the Proposer's solution – rather than the solution itself.

## What would the role of ELEXON and the Panel be in the new process?

The Group agreed that the role of ELEXON should remain as it does under the current arrangements. This included:

- ELEXON drafts the legal text for the Proposed Modification and any Alternative Modification;
- ELEXON chairs the Modification Group meetings and provides a lead analyst and any other necessary technical/legal support;
- ELEXON drafts all Modification Process Reports (e.g. Initial Written Assessment, Assessment Report, Assessment Consultation, etc.); and
- ELEXON continues its role as 'critical friend', both for the Proposer and the Group.

The Group agreed that ELEXON could be the Proposer's representative where a Proposer could not find another representative. However, if ELEXON is the Proposer's Representative then the Proposer would not own the Proposed Modification solution. The Modification Group would be run as it is currently, with the Group making decisions on the Proposed Modification solution by majority. ELEXON would impartially feed the Proposer's views into the Group, as they would do under the current arrangements for anyone who has views but cannot attend the meeting. ELEXON would not act as an advocate for the change and would remain impartial and independent. The Proposer would still have the right to withdraw their Modification Proposal.

The Group also agreed that the role of the Panel should remain as it does under the current arrangements. For example, the Panel would continue to be able to make minor non-material changes to legal text during the Report Phase, following the Report Phase consultation on the text. It would continue to set the progression route/timetable for any new Modification Proposal, and the Terms of Reference for any Modification Group.

In addition, P247 would introduce an ability for the Panel to initiate the withdrawal of Modification Proposals where it considers the Proposer is deliberately frustrating the Modifications Process.

## Who represents Panel raised Modification Proposals?

The Group agreed that (as now) it would be for the Panel to appoint a Proposer's Representative for their change. Current working practice is that ELEXON acts as Proposer's Representative on the Panel's behalf, as most Panel-raised modifications are raised on ELEXON's recommendation (either on its own behalf, or on behalf of a Panel Committee). The Group saw no reason for this to change under P247.

However, for such Modifications, the Group believed that Proposer ownership should not apply. Where the Panel has raised a Modification Proposal and sent it to Assessment the Panel is requesting that industry develop a solution (as opposed to identifying the Modification Proposal was self-evident and sending it to the Report Phase). In those cases the Group would operate as they do now, with decisions about the Proposed solution made by majority.



## What about Proposers who have limited resources? How would the new process work for them?

The Group noted that P247 would place greater resource demands on the Proposer than the current process to attend meetings and engage in discussions. On the one hand this would encourage greater participation from Proposers as they would have greater control over decision, but it could also deter Parties with limited resources from raising a change. This would clearly be undesirable. The Group considered how this might be mitigated.

The Group noted that a Proposer can appoint anyone as their Representative and on that basis a Party with limited resources should be able to identify at least one person in the industry who can represent them (e.g. someone from another Party of consultancy). Failing to do secure a representative could indicate a lack of support for the change. The Group also noted that ELEXON reimburses Proposers' reasonable travel expenses, and offers teleconference facilities for meetings if travel is an issue.

One member wondered whether a Modification Group could be the Proposer's Representative, acting in the way they do now. The Group agreed that appointing the Modification Group as the Proposer's Representative would not be ideal as the Proposer Representative should be a person. However, if the Proposer choose to appoint ELEXON as the Proposer's Representative then (as discussed above) the Group would act as they currently do and make decisions by majority. In this way ELEXON would be the Proposer's Representative of last resort – impartially feeding the Proposer's views into the discussions but unable to advocate or vary the solution on the Proposer's behalf. However, the Proposer would still retain the right to withdraw their change.

The Group therefore believed that P247 would not put undue strain on Parties with limited resources, as there would always be someone to assist them.

## How would Proposer ownership impact the Definition Procedure?

The Group considered whether the Definition Procedure was still required under P247. One of the key reasons for having a Definition Procedure is to develop the Proposed Modification solution when it is not fully defined in the Modification Proposal form. To an extent, this would be possible during the Assessment Procedure under P247. Some Group members commented that they would agree with removing the Definition Procedure completely. However, others believed that it could still have a role to play in a 'Proposer owns' model (i.e it might be useful to focus effort on defining the solution up front, even if the Proposer could subsequently vary that solution during the Assessment Procedure). The Group agreed that P247 was already a multi-faceted change and removing the Definition Procedure would be an additional facet which might detract from other aspects of the change. The Group noted that there were questions about how useful a separate Definition Procedure might be under P247 but concluded that leaving the flexibility in the Code to use this procedure could be beneficial for the time being until the P247 arrangements are 'bedded down' and a fuller assessment can be undertaken of the implications of removing it. This view was supported by a majority of consultation respondents (see Section 3). The Group therefore agreed that any proposal to remove the Definition Procedure should be a separate change

The Group also noted that if a Modification was sent to ELEXON with an incomplete, undefined solution then it should ideally be sent to the Standing Issues process instead. The Standing Issues process was a better place to turn a defect into a workable solution as it has less constraints than the Definition Procedure. The Group noted however that use of the Standing Issue process is currently optional.



## How would Proposer ownership impact the Amalgamation process?

Currently, the Panel can choose to amalgamate one or more Modification Proposals. This occurs where the subject-matter of those Modification Proposals is sufficiently close so that it is more efficient to amalgamate them, or where Modification Proposals are logically dependent on each other. ELEXON queried whether this ability remained appropriate if the Proposer keeps ownership of their solution, although it noted that the CUSC and UNC Panels have similar abilities under their 'Proposer owns' models so the two principles may not necessarily be incompatible.

The Group agreed that the amalgamation powers of the Panel should still exist. As now, the Proposers would co-operate in deciding which of them would be the Proposer for the amalgamated Modification Proposal, and if they could not agree the Panel would appoint one of them as Proposer.

The Proposer of P247 queried whether amalgamation would offer any benefit under a 'Proposer owns' model. If the Panel attempted to amalgamate a Modification where the Proposer did not agree, then the Proposer could always withdraw the Modification Proposal. Even if the proposals were amalgamated, the appointed Proposer for the amalgamated change would own it and could choose to vary the solution and/or withdraw it at a later point. The person who was not appointed as Proposer for the amalgamated change would lose ownership. However, the Proposer of P247 noted that amalgamation is historically little-used by the Panel, and that leaving the flexibility to use it would not unduly disadvantage Proposers.

The Group therefore concluded that it was not obvious that P247 removed the purpose of amalgamation, and that if there were questions over its usefulness these would be better considered as a separate change.

## How would Proposer ownership work for an Urgent Modification?

The Group noted that the Urgent Modification process is necessarily shortened and Proposer owned Urgent Modifications could place a burden on a Proposer. However, if the Proposer considered their Modification to be Urgent then it is likely that they would be prepared to invest the time and resource to progress the Urgent Modification quickly.

The Group considered what would happen if ELEXON or the Transmission Company requested urgency for a Modification (as opposed to the Proposer). The Group agreed that in that case, if the Proposer disagreed with the proposed urgency then they would be able to withdraw the Modification Proposal. The Group noted that the Urgent Modification process did not lend itself to the withdrawals process (as detailed below). On that basis the Group agreed that once an Urgent Modification was withdrawn it could not be picked up by another Party. If another Party was sufficiently concerned to progress the issue then they could raise another Modification Proposal.

The Group agreed that the Proposer would still have the right to vary the Proposed Modification solution for an Urgent Modification Proposal (if the timetable included a Modification Group, and subject to any timetable restrictions set by the Panel). The Modification Group would also have the ability to develop an Alternative Modification if necessary (as now).

## Withdrawals Process

### Why have a withdrawal process?

The Proposer outlined the problems with the current process. Once a Modification Proposal has been presented to the Panel for the first time it cannot be withdrawn, even if the Group and the Proposer agree that no further work should be undertaken. The best that can happen is the Group asks the Panel to stop the Definition or Assessment Procedure and proceed directly to the Report Phase. Following that the Report Phase must be completed (including a consultation) and the Final Modification Report issued to the Authority.

ELEXON commented that there had been a couple of occasions in the last two years where the Proposer had informally indicated that they would have withdrawn their Modification Proposal if such a facility had been available.

The Modification Group noted their support for a broader withdrawal ability. This would be a sensible addition to the Modification Process and is present in other codes such as the CUSC, DCUSA and UNC.

### When can you withdraw a Modification?

The Group noted their previous discussion on the point at which the Proposer can no longer vary the Proposed Modification solution (the point before the Group makes its final recommendations). A Group believed the same cut off point should apply for withdrawing a Modification Proposal.

The Group reasoned that a Proposer might withdraw a Modification Proposal because:

- It was not supported by the Group/consultation respondents;
- The costs/impacts of the solution made it impractical; and/or
- The defect on further investigation proved either to not be a defect, or a defect that could not be fixed by the BSC.

The Group commented that one reason why a Proposer might withdraw a Modification Proposal would no longer exist under P247. In the current arrangements if the description of the Proposed Modification solution was not correctly worded in the original Modification Proposal then the Proposer might want to withdraw the Modification Proposal (although this is not currently possible). Under P247 the Proposer would be able to amend the solution as long as it still met the issue/defect.

Based on the reasons given above, the Group believed that the Proposer would have had ample opportunity to withdraw a Modification Proposal before the Group made its final recommendations. Once that had happened the Modification should be considered by the Panel and the Authority as the bulk of the effort in progressing it had already been completed.

On that basis the Group agreed that at the point where the Modification Group Chair asked the Proposer's Representative if there were any further changes to the solution, the Chair would also ask whether the Proposer's Representative wanted to withdraw the Modification Proposal. If the Proposer's Representative did not want to withdraw the Modification Proposal, then the opportunity to withdraw would have passed and the Group would make its final recommendations.

## What would happen if the Modification Group has developed an Alternative Modification?

The Group noted that the situation could arise where the Proposer wanted to withdraw the Proposed Modification but the Modification Group had developed a well supported Alternative Modification. What would happen in that situation?

One member noted that an Alternative Modification can only exist where there is a Proposed Modification, because they are part of the same Modification Proposal. In their opinion, once the Proposer had instructed ELEXON that their Modification Proposal was to be withdrawn then the Alternative Modification should cease to exist.

Another member noted that it was possible for another Party to adopt a withdrawn Modification (see below). Where there was a well supported Alternative Modification, a Party could adopt the Modification Proposal and continue to develop the Alternative Modification. There may even be situations where a Party supports the Alternative but not the Proposed. In that case the Party could adopt the withdrawn Modification Proposal and then refine the Proposed Modification solution to be the previous Alternative Modification solution. On that basis the Group agreed that when a Modification Proposal is withdrawn both the Proposed and the Alternative Modification shall lapse (although this would not necessarily mean the Alternative Modification was lost).

## What if another Party wants to adopt a withdrawn Modification?

P247 suggested that once a Modification Proposal has been withdrawn there should be a process where it can be 'picked up' by another Party – i.e. another Party becomes the Proposer. The Group believed that anyone who has the power to raise a Modification Proposal under the current arrangements should be able to adopt a withdrawn Modification Proposal under P247. This currently includes:

- Parties;
- the National Consumer Council;
- other bodies designated by the Authority; and
- the Panel.

The Group believed that the new Proposer should have all of the powers of the previous Proposer. This included amending the Proposed Modification solution as long as it still satisfies the defect, and being able to withdraw the change.

The Group discussed whether it would be possible for the Modification Group to adopt a withdrawn change. On reflection the Group considered this to be undesirable. The Proposer had to be a single organisation, not a Group. Modification Groups cannot currently raise Modification Proposals.

The Group questioned whether it would be possible for an 'affiliated' Party to adopt a withdrawn Modification Proposal (i.e. another organisation who is able to raise a Modification Proposal, and who is part of the same company group as the original Proposer). One member noted their concern that the withdrawals process might be used to filibuster on a contentious Modification. The member believed that a Party could raise a Modification Proposal to an issue where it disagreed with any change to the current arrangements (although it obviously wouldn't put this view in the Modification Proposal form!). The Modification Proposal would be assessed until the point at which the Proposer is asked whether they want to withdraw the solution. At the point the Proposer would request to withdraw the solution. Following withdrawal a Party affiliated to the Proposer would adopt the Modification Proposal, request significant amendments to the Proposed Modification which would require extra assessment and the cycle would continue. In this

way the change would not be presented to the Authority for quite some time but could act as a 'spoiler' for another change in the same area.

Another potential spoiling tactic would be for a Party (affiliated or not) adopting a withdrawn Modification and then changing the Proposed Modification solution to such an extent that it becomes unpalatable and therefore is eventually rejected. Thus potentially delaying the introduction of any change.

The Group noted both of these scenarios were highly unlikely. However, in order to reduce the chances of them happening the Group agreed that once a Party had withdrawn a Modification Proposal it, and any of its affiliated Parties, would not be able to adopt the Modification Proposal at any point in its future life cycle. The Group noted that this restriction would need to be 'self-policed' by the industry, as ELEXON do not monitor Parties' ownership groups.

### **What's the time limit for picking up a withdrawn Modification?**

The Group noted that the CUSC gave two 5 Working Days time periods for picking up withdrawn changes (i.e. there is an extra 5 WD window if no-one comes forward in the first 5 WD). The Distribution Connection and Use of System Agreement (DCUSA) gives 10 Working Days. The Group believed that a single window of **5 Working Days** was an appropriate length of time. This would give Parties enough time to complete the necessary preparation to adopt a Modification Proposal without drawing out the process. The Group agreed this was a sensible time limit to apply to the BSC process.

### **How would the Proposer inform ELEXON of a withdrawal?**

The Group agreed that the Proposer would inform ELEXON in writing that they were withdrawing the Modification. In practice, this could be by email. This is the current practice where a Proposer wishes to withdraw their change before its first Panel meeting.

### **How would ELEXON inform industry of a Modification withdrawal?**

The Group agreed that the adoption process for withdrawn Modifications had to be fair to all Parties. They did not want a process which gave undue advantage to Parties that have 24 hour operations, or Parties that have Modification Group members sitting on the Modification Group in question. For that reason the Group agreed that following notification of withdrawal by the Proposer ELEXON would notify the industry via email that Parties would have 5 Working Days to adopt a Modification Proposal from 12pm the following Working Day. Parties would be able to email ELEXON to request to adopt the Modification Proposal from 12pm of that following Working Day.

### **What if multiple Parties want to adopt a withdrawn Modification?**

The Group noted that there could be the instances where more than one Party wants to adopt a withdrawn Modification Proposal. One member commented that the CUSC has a first-past-the-post approach to picking up Modifications. The Group agreed that the first-past-the-post should be used for P247. This had some efficiency advantages, as it avoided the need to wait till the end of the 5 Working Day adoption window to resume the modification's progression if someone came forward before then. It was also potentially fairer/more transparent than having to decide between Parties on other grounds. Potentially ELEXON could ask the Parties to agree between themselves, but this could draw out the process and there was still the potential that the Parties might not reach agreement.

## Proposers' ability to attend the Panel

### How the Proposer saw this working

The Proposer explained how they saw this working in practice. The Proposer would have a right to address the Panel when the Assessment Report is presented to Panel. This would be in order to explain:

- any amendments they had made to the original Proposed Modification solution; and
- why they deviated from the Group's view (where this had occurred).

### What can be achieved in the current arrangements?

ELEXON outlined that all of the above can already be achieved under the current arrangements:

- Any BSC Party or Modification Group member (including the Proposer) has the right to attend any Panel meeting as Modification business is conducted in open session (see B4.5 and F6.12 of the Code); and
- Any BSC Party and anyone else attending a Panel meeting can speak if invited by the Panel Chairman.

It is unusual for anyone other than Panel Members to have an automatic right to address a Panel meeting. For example, ELEXON does not have the 'right' to present a Modification Group's Assessment Report but has a standing invitation from the Panel to do so (see F2.6.12). Similarly, while working practice is that the Proposer's representative is always invited to present their change at the first Panel meeting at which it is discussed, they do not have an automatic right to do so (see F2.2.2).

The Proposer noted that it is not currently normal practice for the Panel Chairman to grant requests by observers to speak at meetings, which was why they sought to introduce a right for the Proposer to do so at the Assessment Report stage.

### Group's concern about an unbalanced view

One Group member noted that they were concerned with this part of the Proposal. They differed from the Proposer in how they saw the Proposer's Panel attendance working. In their eyes this would be a chance for the Proposer to put across their unbalanced view as to why to approve the Proposed Modification. A better solution would be for a Modification Group member, appointed by the Group via the Modification Group Chairman, to also attend to give a counterview (any counterview) to the Proposers view. This would provide a balanced view to the Panel.

Another member commented that the Assessment Report documents all of the discussions the Group has had and includes all Group views. The Group is charged with reviewing the Assessment Report to ensure it is an accurate portrayal of Group discussions. The Panel should use the Assessment Report to give them the complete view of Modification Group's discussions. ELEXON also noted that it was the role of the Modification Group Chairman to impartially provide the Panel with the Group's balanced opinion at the Panel meeting (including any counterviews).

One member commented that they did not consider that ELEXON was always in a position to passionately articulate on certain issues. ELEXON exist outside of many of the processes and so does not have direct understanding of how they impact industry. It would be better for the Panel to listen to two industry members to inform their debate.

Another member cautioned the Group that the Proposer and Modification Group member could potentially introduce new arguments not captured in the Assessment Report, or could (either intentionally or unintentionally) place emphasis only on particular arguments in the report such that the overall message was skewed. In that case, information presented to the Panel might not have been presented to the Modification Group or the Group's views might not be fully reflected (especially for contentious changes where there might be many conflicting counterviews). That would raise questions about the validity of the Modification Group's recommendation.

Another member commented that they believed that the Panel does not engage enough in the Modifications process and so was not always up to speed with the discussions that had occurred at the Modification Groups. This compared poorly to the CUSC where many CUSC Panel members sit on CUSC Amendment Proposal Working Groups. ELEXON suggested that a possible alternative could be for a Panel member to attend the key Modification Group meetings (e.g. the Group's final vote) so they could understand the key arguments.

One member noted that they did not want the Modification Group debate to spill into the Panel. Therefore a better approach would be for the Proposer and a Modification Group representative to have a right to attend the Panel to answer any questions the Panel might have once ELEXON has presented the Assessment Report. The Group considered this could be a possible Alternative Modification.

Another Group member noted that everything that they discussed was allowed under the current arrangements. They proposed rather than including more obligations for attendance a better approach would be to leave Proposer/Modification Group Representative out of an Alternative Modification – i.e. neither would have a right to address the Panel and the current provisions regarding observers would remain.

The Group noted that they would consult on both these approaches as potential Alternative Modifications (see below).

## **Are there any potential Alternative Modifications?**

The Group initially identified two potential alternative solutions. The sections on Proposer ownership and withdrawal are identical to the Proposed Modification. However, the alternatives differ over the Proposer's right to address Panel.

### **Alternative A – Proposer and Modification Group member attend the Panel to answer questions for Assessment Report**

The Proposer and a Modification Group member appointed by the Modification Group Chairman have a right to attend the Panel in order to answer any questions the Panel has following ELEXON's presentation of the Assessment Report. The appointed Modification Group member must represent the Modification Group's counterview where this is different to the Proposer's.

### **Alternative B – Remove Proposer's right to attend the Panel as this can already be achieved under the current arrangements**

Under Alternative B the Proposer's would not have a right to address the Panel. This is because the Proposer already has the ability to attend Panel and may request to speak if they so choose.

Following the Assessment Consultation the Group choose to take forward Alternative B. See below for the reasons why.



### 3 Assessment Consultation responses and Group's final conclusions

#### Is the Proposed Modification better than the current baseline?

##### Assessment consultation responses

The majority view of the respondents is the Proposed Modification is **not better** than the current arrangements (4 out of 7). Respondents cited Applicable BSC Objectives (a), (c) and (d). 3 respondents believed the Proposed Modification was better than the current arrangements and cited Applicable BSC Objectives (c) and (d).

##### Arguments against the Proposed Modification

Applicable BSC Objective (a), (c) and (d):

- Proposed Modification would introduce discrimination into the Modification process:
  - by giving the Proposer the right to address the Panel. A right which no other Modification Group members or ELEXON would have; and
  - by putting in place a process where Parties that appoint ELEXON as their representative do not own their Modification Proposal.

Applicable BSC Objective (d):

- The Proposed Modification introduces the potential for significant variations late in the Assessment Procedure which would require additional Mod Group work – inefficient and time consuming.

##### Arguments for the Proposed Modification

Applicable BSC Objective (c):

- Would make the Modifications processes clearer and more user friendly. This would encourage maximum engagement and participation by Parties, including classes of user who may hold a minority view or do not often engage in the process; and
- Proposer ownership of Modification Proposals would give all Parties confidence that their original solution could be presented to the Authority for decision. This would encourage all classes of Party to raise Modification Proposals.

Applicable BSC Objective (d):

- Introducing the ability for a Proposer to further develop and refine their initial would allow the Proposer to correct any minor errors or oversights in the original wording. This increase the efficiency of the BSC arrangements; and
- Introducing the withdrawals process would allow the Proposer to withdraw Modifications which had no business case. This would increase the efficiency of the BSC arrangements.

#### Group's final conclusions

##### How would Modification Groups work with ELEXON as Proposer's representative?

The Group commented that a number of respondents had questions about ELEXON's role as Proposer's Representative under P247. This should be clarified. If ELEXON is the Proposer's Representative then the Proposer would not own the Proposed Modification solution. The Modification Group would be run as it is currently, with the Group making decisions on the Proposed Modification solution by majority. ELEXON would impartially

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feed the Proposer's views into the Group, as they would do under the current arrangements. ELEXON would not act as an advocate for the change and would remain impartial and independent. The Proposer would still have the right to withdraw their Modification Proposal.

The Group hoped that, in practice, all Proposer's would be able to find an industry representative. However, if they couldn't then allowing ELEXON to impartially represent their views would mean that there was not a barrier to them raising a Modification Proposal. The Group also concluded that, if ELEXON could only advise the Group of the Proposer's views, and could not advocate the change, vary the solution or vote, then there was no conflict with ELEXON's impartiality obligations.

### **The Proposer's right to speak at Panel**

The Proposer's representative noted the concern that the majority of respondents had reported. This was linked to the Proposer having a right to address the Panel. The Proposer explained why they had included this part of the solution in the Modification Proposal. The underlying ethos of P247 was to create a more inclusive and fairer Modification process. The Proposer's representative had noticed that different Code Panels have different working practices. Some Panels were more open to comment from the floor than the BSC Panel. The Proposer's representative believed that being more open to floor comments was good customer practice and improved debate in other Panels. They strongly believed that it would be beneficial to have a similar working practice in the BSC Panel. This was the reason that they included a right for the Proposer to address the Panel in P247. It was not to lobby the Panel, but to assist and explain – thus improving the Modifications process. However, the Proposer's representative understood the concerns of industry and was prepared to support Alternative B on the basis that ELEXON would highlight the Proposer's concerns to the Panel, and working practice would alter to being more open to accepting comments from the floor.

While the other members of the Group did not support the Proposer having a right to speak which was not shared by other Parties, some members did support making Panel working practice more informal and more regularly inviting comments from the floor. One member noted that the formality of the BSC Panel may deter attendees from asking to speak a potential barrier for those less used to attending. Another member thought that any attempts by the Proposer to lobby the Panel would be counterproductive. The Panel would identify such lobbying and it would work against the Proposer's interests.

### **Significant variations late in the Assessment Procedure**

The Group noted that two respondents had concerns that significant variations from the Proposer late in the Assessment Procedure could cause additional Modification Group work. The Group commented that late variations to the solution were a possibility now (with the Alternative Modification). Although they accepted that the likelihood of the majority of the Group coming up with a late Alternative Modification variation were less than the Proposer's representative. The Group noted that there were safeguards in place for late variations in P247. In the event of a late variation the Group would probably need to either request an extension to the Assessment Procedure from the Panel, or decide that the variation was not material and hence did not require further assessment and consultation. If late variations occurred repeatedly and the Group considered that the Proposer was frustrating the process, then the Panel could initiate the withdrawal procedure. The Group noted the concern but believed the benefits of P247 outweighed this concern.

## Which Alternative should the Group choose?

### Assessment consultation responses

The unanimous view of respondents was that Alternative B (no change to current Panel attendance rules) is better than the Alternative A (Proposer and another Mod Group member attends). All but one of the respondents noted that Alternative B was better than the current arrangements as it removed the discrimination concerns over the Proposer having a right to address the Panel. Respondents believed the existing arrangements for Proposer attendance were sufficient as Proposers can already be invited to address the Panel. Respondents also noted that the Assessment Report as presented by ELEXON should already cover all Modification Group views (including the Proposer's).

### Group's final conclusions

The Group noted the responses unanimously supported Alternative B. The Group also unanimously supported Alternative B. The Proposer's representative noted that their support was on the basis that ELEXON would highlight the Proposer's concerns to the Panel, and working practice would alter to being more open to accepting comments from the floor.

## Do you support the implementation option preferred by the Modification Group?

### Assessment consultation responses

5 respondents supported the Group's Proposed Implementation Date. One respondent suggested that P247 applied to all open Modification Proposals, rather than those raised following the implementation of P247. One respondent suggested that the Implementation Date should be 10 Working Days after an Authority decision rather than the 5 Working Days that the Group had suggested in the Assessment Consultation.

### Group's final conclusions

The Group's view can be found in Section 6 of the main Assessment Report document.

## Are you impacted by the Proposed Modification?

### Assessment consultation responses

Respondents noted between a slight impact and no impact. One respondent commented that there could be an increase in costs from late variations to the Proposed Modification. Another respondent noted a potential increase in costs due to more Modification Proposals being raised

### Group's final conclusions

The Group noted the responses were in line with their views at the first Modification Group meeting. For discussion on the potential for late variations see page 15. For discussion on the potential increase in Modification Proposals see page 19.

## Are you impacted by the Alternative Modification?

### Assessment consultation responses

Respondents noted a similar impacts for Alternative B (which the Group are taking forward).

### Group's final conclusions

The Group noted the responses.

## Are there any other alternative solutions?

### Assessment consultation responses

1. SSE suggested that the Proposer should be required to get majority Group support to vary their solution following the Assessment Consultation, to avoid late material change being made without the Group's agreement. The Group could not vary a solution where the Proposer disagreed.
2. SSE also suggested that the Proposer should only be able to vary their Modification Proposal during the Definition Procedure. During the Assessment Procedure the Modification Group would own the solution as currently happens.
3. Drax suggested the Proposer only retains ownership during the Definition Procedure if such a procedure is required due to the Proposer not being able to provide enough detail in the Modification Proposal form

### Group's final conclusions

The Group considered the three suggestions. It was noted that all three were looking to limit the Proposer's ownership in order to prevent significant variation late in the process. One member noted that there might be merit in suggestion (1). It would still allow the Proposer to keep ownership of the change for part of the Assessment Procedure, but would prevent any significant variations in the Proposed Modification unless the majority of the Group believed they were a good idea.

One member commented that limiting variation to the Definition Procedure would not satisfy the defect of the Proposer being unable to fix errors with their solution during the Assessment Procedure. Group members noted that issue with the solution sometimes only arise once you start assessing it. Hence the Group did not favour limiting variation to the Definition Procedure. The Group also noted that forcing all Modifications to pass through Definition would extend the timescale for Modifications – a retrograde step.

In conclusion, the Group agreed to not change the Alternative Modification solution. The Group believed that these suggestions were trying to safeguard against a risk that it was unconvinced would arise regularly in practice. The Group noted that it had already included an extra safeguard for the Panel to be able to withdraw a change if the Proposer was deliberately frustrating the process, plus the Panel already had the ability to extend assessment if more time is needed to deal with late variations. If problems with late variation regularly occurred then a subsequent Modification Proposal could always be raised to fix this.

## Comments on the legal text

### Assessment consultation responses

4 agreed that it delivered the Proposed Modification, 2 respondents provided no comment and 1 respondent noted two comments.

Respondent's comment	ELEXON's response	Group's view
Should the reference in 2.1.1.2B(b) be to "noon" rather than "12:00" to avoid confusion with midnight?	"12:00 hours" is the standard convention in the BSC	The Group agreed with ELEXON's view .
The revision in 2.2.3(b)(iii) implies the Proposer has the right to withdraw or vary his Modification Proposal up to the point in time when the Panel determines if the Proposal should proceed to the Report Phase. If so this appears to be counter to the wording in 2.1.12(a) and (b) which indicates that the ability for the Proposer to vary / withdraw would cease just prior to the final evaluation by the Modification Group.	The wording in 2.2.3(b)(iii) applies to Modifications that go straight to Report. In that case there would be no chance to vary the solution under the Proposed Modification (as there would be no Modification Group). Hence the wording was correct.	The Group agreed with ELEXON's view.

### Group's final conclusions

#### Amalgamation

The Proposer's representative noted that they had deliberately stayed silent on amalgamation in their Modification Proposal form. The Proposer's representative noted that they were not proposing a change to the P247 legal text, but requested it be noted that amalgamating Modifications in a P247 world would go against the principle of Proposer ownership. ELEXON noted that amalgamation was very rarely used and may be even less used under P247.

#### Addressing Panel

The Proposer's representative noted that, as drafted, the legal text describing the Proposer's right to address Panel was narrower in scope than they had originally envisioned. They wanted the Proposer to have an opportunity to comment on debate at the Panel. However, given that the Group unanimously preferred the Alternative which removed this right they suggested no change to the current wording.

## Definition Procedure

### Assessment consultation responses

The majority of respondents (6 out of 7) supported keeping the Definition Procedure.

### Group's final conclusions

The Group agreed with the respondents.

## Do you have any further comments on P247?

### Assessment consultation responses

The following additional comments were made by respondents:

1. SSE believed ELEXON should not act as the Proposer's representative for a Party as they should retain their impartiality
2. Drax requested the Group consider the following:
  - 2.1. P247 does not yet appear to address the potential for a Party to frustrate the process by not recognising that a Modification is effectively "unworkable". This means an unworkable Modification could be forced through the Modification process;
  - 2.2. P247 would mean the Modification Group is limited to a single solution (the Alternative Modification). Should there be more than one Alternative Modification (as under CUSC) or provision to allow the Panel to intervene if the Proposed Modification is determined unworkable; and
  - 2.3. P247 may encourage Parties to raise new Modifications rather than suggest an alternative to a live Modification, i.e. in order to be able to "fix" the parameters of their proposal.

### Group's final conclusions

The Group noted their previous discussions had clarified that ELEXON would keep its impartiality if they were required to be Proposer's representative.

With (2.1) the Group noted the comment but believed that the risk of the Proposer raising an unworkable Modification Proposal was similar to the current arrangements, where the Proposer may unintentionally word their Modification Proposal in a way which subsequently proves to make the solution unworkable. In fact, the Group generally believed that P247 would reduce the risk of unworkable Proposed Modification solutions, because it would allow Proposers to incorporate refinements. As with the current arrangements the Group would assist the Proposer where they could, and would work up an Alternative Modification if needed. If the Group deemed the Proposed Modification to be unworkable, then under P247 (as now) it would recommend its rejection.

The Group noted that the suggestion of having multiple Alternative Modifications (comment (2.2)) was outside the scope of P247 and any proposal to introduce this would need to be a separate change.

The Group noted comment (2.3). It was possible that P247 would encourage additional Modification Proposals. This was not necessarily a bad thing, as P247 was attempting to encourage engagement from those participants who do not usually raise Modification Proposals. One member suggested that P247 may result in fewer Alternative Modifications. They used the example of P245 (see page 3) where, in a P247 world, the Proposer may have amended their Proposed Modification to incorporate the improvements suggested by the Group, rather than create an Alternative Modification complete with the improvements.

### Transmission Company analysis

The Transmission Company:

- did not support the Proposed and supported Alternative B;
- believed Alternative B was better than the Proposed; and
- noted no impacts on them.

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## 4 Timetable and Responsibilities

**Table 2 – P247 Assessment Procedure timetable**

Date	Assessment activity
14/01/10	Present P247 IWA to Panel
19/01/10	P247 Modification Group meeting 1
5/02/10	Issue Assessment Consultation and Impact Assessment to industry, ELEXON, BSC Agent and the Transmission Company for 10 working days
22/02/10	Assessment Consultation and Impact Assessment responses returned
24/02/10	P247 Modification Group meeting 2
5/03/10	Issue Assessment Report to Panel
11/03/10	Present P247 Assessment Report to Panel

**Table 3 – Estimated P247 progression costs up to an Authority decision**

Estimated progression costs based on proposed timetable	
Meeting costs (including Modification Group member expenses)	£2,500
Non-ELEXON legal and expert costs	£0
Service Provider impact assessment costs	£0
ELEXON resource	60 man days of effort, equating to £14,500

**Table 4 – P247 Modification Group attendance**

Member	Organisation	19/01/10	24/02/10
Adam Lattimore	ELEXON (Chairman)	Yes	Yes
Andrew Wright	ELEXON (Lead Analyst)	Yes	Yes
Esther Sutton	E.ON UK (Proposer's representative)	Yes	No
Peter Bolitho	E.ON UK (Representative's Alternate)	No	Yes
David Smith	National Grid	Yes	No
Chris Stewart	Centrica	Yes	Yes
Martin McDonald	SAIC	Yes	Yes
Garth Graham	Scottish and Southern	Yes	No
Lisa Waters	WatersWye	Yes	No
John Stewart	npower	Yes	Yes
Steven Eyre	EDF	No	Yes
		19/01/10	24/02/10
Nick Brown	ELEXON (Lawyer)	Yes	Yes
Kathryn Coffin	ELEXON (Design Authority)	Yes	Yes
Catherine Wheeler	Ofgem	Yes	No
Clare Cameron	Ofgem	No	Yes
Rosie McGlynn	EDF	Yes	No
Alex Thomason	National Grid	No	Yes

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