

## Interim Report for Modification Proposal P129 Changes to Panel Determination Process and Panel Election Procedures

Prepared by: Governance Standing Modification Group (GSMG)

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

### (Interim report) RECOMMENDATIONS

The GSMG invites the BSC Panel to:

- a) **NOTE the P129 interim report and the recommendations of the Governance Standing Modification Group (GSMG);**
- b) **AGREE to cease assessment of P129 in accordance with Section F2.2.11, and proceed directly to the Report Phase;**
  - **AGREE that the draft Modification Report should contain a provisional recommendation that the Proposed Modification P129 should not be made;**
  - **AGREE that the draft Modification Report be issued for consultation and submitted to the Panel at its meeting on 11 September 2003;**
  - **In the event that the Authority determines that the Proposed Modification P129 should be made, AGREE an Implementation Date of:**
    - **1 May 2004 if an Authority determination is received before 19 April 2004; or**
    - **1 May 2006 if an Authority determination is received on or after 19 April 2004; and**
  - **NOTE that no legal text has been prepared with respect to the Proposed Modification P129 and CONSULT with the Authority to determine if they require the draft Modification Report to contain legal text; or**
- c) **In the event the Panel does not endorse the GSMG's recommendation to cease assessment of P129:**
  - **AGREE revised terms of reference for the P129 Modification Group for the continuing assessment of P129; and**
  - **AGREE that the Assessment Report be presented to the Panel at its meeting on 11 September 2003.**

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<sup>1</sup> The current version of the Balancing and Settlement Code (the 'Code') can be found at [www.elexon.co.uk/ta/bsc/el\\_docs/bsc\\_code.html](http://www.elexon.co.uk/ta/bsc/el_docs/bsc_code.html)

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**PURPOSE OF THIS REPORT**

The GSMG have produced this interim report 2 months into the assessment of P129 as requested by the Panel. At its meeting in June the Panel agreed to a 3 month Assessment Procedure.

The GSMG recommend that assessment of P129 cease, as they are satisfied that Proposed Modification P129 does not better facilitate the Applicable BSC Objectives.

If the Panel agrees to cease assessment of P129, in accordance with Section F2.2.11, the draft Modification Report will be submitted to the Panel at its meeting on 11 September 2003 with a provisional recommendation that P129 NOT be made.

**SUMMARY OF IMPACTED PARTIES AND DOCUMENTS**

As far as the GSMG has been able to assess, the following parties/documents have been identified as being potentially impacted by Modification Proposal P129.

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

X = Identified in Report for last Procedure  
N = Newly identified in this Report

Estimated cost for progressing P129 though Modification Procedures	£ 8,500 + 66 ELEXON man days
Cost of implementing Proposed Modification: Change specific Operational/maintenance Total:	£0 £0 £ 0 + 124 ELEXON man days

# 1 DESCRIPTION OF PROPOSED MODIFICATION AND ASSESSMENT AGAINST THE APPLICABLE BSC OBJECTIVES

## 1.1 Modification Proposal

Modification Proposal P129 "Changes to Panel Determination Process and Panel Election Procedures" ("P129") was raised on 7 May 2003 by Powergen UK plc.

P129 seeks to revise the election procedures for those Panel Members elected by Trading Parties (Industry Panel Members), pursuant to Section B2.2 of the Balancing and Settlement Code (the 'Code'), and to introduce new powers to allow the Balancing and Settlement Code Panel (the 'Panel') to make determinations on Modification Proposals, where there is agreement by a "substantial majority" of voting Panel Members.

## 1.2 Proposed Modification

### 1.2.1 Panel composition

The changes that P129 seeks to introduce are changes to the way in which Industry Panel Members are elected, pursuant to Section B2.2 of the Code. Specifically, P129 seeks to replace the current system of biennial elections using a preference voting system with a constituency-based annual election process that employs a "first past the post" approach.

The Proposer suggests that each trading party group (Annex B2, paragraph 3.1.5 of the Code) would be permitted to cast one vote in each of its two designated constituencies. The proposed criteria by which trading party groups are categorised as belonging to constituencies are as follows:

#### Small Supplier constituency

One vote would be allocated if the annual metered energy offtake by a trading party group is "greater than zero TWh and less than 25 TWh", except where the trading party group is allocated a vote in the Trading Constituency since its annual energy metered offtake is less than or equal to 50% of the annual metered energy delivered by that trading party group.

#### Small generator constituency

One vote would be allocated if annual metered energy delivered by a trading party group is "greater than zero TWh and less than 10 TWh", except where the trading party group is allocated a vote in the Trading Constituency since its annual metered energy delivered is less than or equal to 50% of the annual metered energy offtake by that trading party group.

#### Large Supplier constituency

One vote would be allocated if annual metered energy offtake by a trading party group is "more than 25 TWh"<sup>2</sup>, except where the trading party group is allocated a vote in the Trading Constituency since its annual metered energy offtake is less than or equal to 50% of the annual metered energy delivered by that trading party group.

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<sup>2</sup> The Proposer has, subsequent to submitting the Modification Proposal, clarified the definition of a Large Supplier constituency to be as written in this section.

### Large generator constituency

One vote would be allocated if annual metered energy delivered by a trading party group is “more than 10 TWh”<sup>3</sup> except where the trading party group is allocated a vote in the Trading Constituency since its annual metered energy delivered is less than or equal to 50% of the annual metered energy offtake by that trading party group.

Trading constituency (Representing ‘pure’ traders (two votes) and net purchasers or sellers of electricity (one vote))

- One vote allocated if a trading party group’s annual metered energy offtake is less than or equal to 50% of the annual metered energy delivered by that trading party group (the ‘Electricity Seller Vote’).
- One vote allocated if a trading party group’s annual metered energy delivered is less than or equal to 50% of the annual metered energy offtake by that trading party group (the ‘Electricity Buyer vote’).

P129 proposes to introduce 5 constituency classes (one for each elected Industry Panel Member) with each trading party group having 2 votes; one vote in each of two constituencies within which that trading party group belongs. In the case of pure Trading Parties, 2 votes would be allocated in a single constituency. The Proposer believes that the proposed revised process for electing industry Panel Members would, together with the proposal to make the Panel elections annual, rather than biennial, make the Panel more representative of the industry.

### **1.2.2 Panel power to make determinations on Modification Proposals**

Presently, the Panel makes *recommendations* on each Modification Proposal in a Modification Report, which is sent to the Authority for determination. P129 proposes that, where there is a “substantial majority” of Panel Members in agreement, the Panel could make determinations in respect of such Modification Proposals. Where there is no “substantial majority” agreement, the Modification Report would be passed to the Authority for determination.

The Proposer quantifies a “substantial majority” as 7 votes out of 9 from voting Panel Members (or 7 votes out of 10, if the Panel Chairman has appointed a sixth Industry Panel Member, pursuant to Section B2.6.1 of the Code).

P129 recognises that the Panel has no jurisdiction over other industry documents, such as the Grid Code for example, and that some Code Modifications may require consequential amendments to such documents. P129 proposes that in such cases, the Panel could “conditionally approve” a Modification Proposal.

The Proposer believes that Panel recommendations and Authority decisions do not always reflect the views of a cross section of the industry, and that they should do so. If the Panel were to make determinations instead of recommendations, as proposed in P129, then the constitution of the Panel is of primary concern to the Proposer. The Proposer believes that if P129 were to be made, the Authority would be able to refocus its resources on more complicated or controversial Modification Proposals that would be passed to it due to a lack of a majority decision by the Panel.

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<sup>3</sup> The Proposer has, subsequently to submitting the Modification Proposal, clarified the definition of a Large Generator constituency to be as written in this section.

P129 does not seek to:

- alter the requirement of impartiality on Panel Members, pursuant to Section B2.8.1(a) of the Code; or
- change the process whereby the Panel apply to the Authority to change the Implementation Date of Approved Modification Proposals, pursuant to Section F2.11.9 of the Code.

### **1.2.3 Timetable**

The P129 Initial Written Assessment (IWA) was presented to the Panel at its meeting on 12 June 2003. The Panel recommended that P129 should be submitted to a 3 month Assessment Procedure, to be undertaken by the GSMG. The Panel requested that an interim report be presented to them at its meeting on 14 August 2003. The Assessment Report will be submitted to the Panel at its meeting on 11 September 2003 unless the Panel agrees to cease Assessment, in accordance with Section F2.2.11 of the Code, at its meeting on 14 August 2003.

### **1.2.4 Implementation Date**

In the event that the Authority determines that P129 should be made then it should have an Implementation Date of:

- 1 May 2004 if an Authority Determination is received before 19 April 2004; or
- 1 May 2006 if an Authority Determination is received on or after 19 April 2004.

The provisional Implementation Dates have been determined as a result of the dates of the next two scheduled Panel elections. P129 consists of changes to two different processes (revisions to Panel election procedure and the Modification Proposal determination process) but the changes are included in the Modification Proposal as a package. Therefore, the first Implementation Date would allow changes to BSCCo systems and processes to be in place for the July 2004 Panel election, and the second Implementation Date for the July 2006 Panel election (depending on the date of the Authority's decision). Only once a new Panel were in place, formed using the revised election procedures for Industry Panel Members, could the Panel make determinations on Modification Proposals.

## **1.3 Issues raised by the Proposed Modification**

During its three meetings, on 18 June, 9 July and 5 August 2003, the GSMG discussed the issues raised in P129. Although the GSMG recognised the need to consider the Modification Proposal as a "single package", the group initially considered the implications of the revised Panel election procedures, followed by the issues related to the proposed remit for the Panel to make determinations when there is "substantial majority" agreement.

### **1.3.1 Revised Panel election procedures**

The following sections outline the GSMG's views on the issues concerning the proposed process for electing Industry Panel Members.

- **Comparison of the preference voting system with the first past the post system**

The GSMG agreed that replacing the current preference voting system with a first past the post system could mean that the voting procedure would be clearer to participants. The GSMG observed that the revised election procedures proposed in P129 may increase Parties' perception of their ability to

influence Panel Member selection, as they would be fully aware of which Panel Members' election they directly participated in.

The first past the post voting system forms part of the Proposed Modification. The GSMG consulted the industry on this matter (see section 4.1 of this report).

- **Optimum number of constituencies to achieve the desired balance within the Panel**

P129 proposes that trading party groups would declare which constituencies they believed they belonged to, but this would be open to challenge by other Parties. BSCCo would investigate any challenge, and if necessary refer to annual metered energy offtake or delivery to establish constituency class. The 5 constituency classes proposed in P129 will result in the election of 5 Industry Trading Members, which is no change from the current number.

The GSMG discussed the balance of the Industry Panel Members to non voting Panel Members and agreed that there should be no refinement to the balance as described in the Modification Proposal for the Proposed Modification. The GSMG consulted the industry on this matter (see section 4.1 of this report).

- **Criteria for constituency classes**

The GSMG discussed the thresholds (defined in TWh) by which a trading party group would declare its constituency class.

Two votes would be allocated to each trading party group, as described in section 1.2.1 above. Whilst non-physical traders would have two votes, these votes would be within one constituency and therefore non-physical traders would only be involved in electing one Panel Member. They would, however, have greater influence over the election of the Panel Member for that constituency.

A GSMG member indicated that the cut-off threshold for constituency classes would have an influence on their size. The GSMG consulted with the industry to determine whether or not the threshold levels for constituency class, as defined in the Modification Proposal, should be reviewed and changed and who should be responsible for this process. The GSMG considered the fact that, if the threshold levels for constituency class were written into the Code, a Modification Proposal would be required to amend them. If the Panel was the body making the determination on the Modification Proposal, it would effectively be involved in setting the parameters for its own re-election. An alternative approach would be for the Authority to authorise the thresholds.

The Proposed Modification does not include a change to the number of candidates allowed within the industry Panel Member election process (which remains at 5). A candidate will only be able to stand for election within a single constituency.

The GSMG assessed whether a further constituency class needed to be included as a refinement in the Proposed Modification, but decided against introducing more constituency classes. The GSMG included a question on this matter in the consultation with the industry, the responses to which are shown in section 4.1 of this report.

- **Panel Chairman's right to appoint an additional industry Panel Member**

The Modification Proposal is silent on the matter of whether or not the Panel Chairman should retain the right to elect a further Panel Member, pursuant to Section B2.6 of the Code. The Panel Chairman would appoint an additional Industry Panel Member if he believed that there was an industry sector not represented by the 5 elected Industry Panel Members. The GSMG decided that the Panel Chairman's ability to appoint an additional Industry Panel Member should be retained in the Proposed Modification.

- **Changes to the current non-voting appointments on the Panel**

The GSMG decided that changing the non-voting status of some Panel Members was not necessary to address the defect documented in P129 and would, therefore, not be considered further.

- **Distribution System Operators and the Transmission Company**

P129 is silent on the appointment of the Distribution System Operator and Transmission Company Panel representatives. The GSMG decided that the Proposed Modification would not propose to change the status quo for the Panel Members appointed by the Transmission Company and Distribution System Operators.

- **Publication of number of votes for each candidate in the Panel Election**

The Modification Proposal was raised with the intention that only the *number* of votes for each candidate be published, as opposed to who voted for which candidate. This differs from the existing election rules, under which no voting information is made available. The GSMG agreed that the publication of the number of votes for each candidate would make the process more transparent without compromising the Panel's independence.

- **Annual elections**

The GSMG discussed the impact of elections being annual, rather than biennial, as they currently are. The group noted the importance of preserving Panel Member continuity and that this might be compromised by annual elections. The group discussed the possibility that the Industry Panel Members should be elected for two years, but that the voting for different constituencies' Panel Members be staggered. This suggestion was, however, discounted by the GSMG as overly complex and impractical.

The GSMG discussed whether the entire Panel should be reappointed on an annual basis or just the elected industry members. The group observed that the Proposed Modification implied that only the elected members would be appointed annually; however, the GSMG favoured biennial elections. The GSMG consulted the industry on this matter (see section 4.1 of this report).

- **Constitution of the Panel and impact on Panel Committees**

The GSMG agreed that since the processes for choosing Panel Members and Panel Committee Members are different, a change to the Industry Panel Member election procedure would have no immediate impact on the Panel Committee appointment processes. Moreover, the GSMG concluded that it would not be practical to introduce any such changes, as Panel Committees are based largely on industry experts appointed by the Panel, as opposed to being elected by Parties.

### **1.3.2 Principle of Panel making determinations on Modification Proposals rather than recommendations to the Authority**

At its meetings on 18 June, 9 July and 5 August 2003, the GSMG discussed the principle that the Panel could, where there is "substantial majority" agreement between Panel Members, make determinations on Modification Proposals.

- **Efficiency**

A view was put forward that allowing the Panel to make decisions on Modification Proposals would result in a more efficient decision-making process regarding whether or not Modification Proposals are made or not, as the time taken for the Authority to make a decision would be eliminated in many instances.

However, it was also observed that it would be the more controversial Modification Proposals that would be referred to the Authority and these are the Modification Proposals that take time for the Authority to decide upon. The majority of the GSMG members did not believe that the proposal to allow the Panel decision making powers for Modification Proposals would significantly cut down the time it takes for determinations to be made. The principle that the Panel could, where there is “substantial majority” agreement between Panel Members, make determinations on Modification Proposals is part of the Proposed Modification. The GSMG consulted the industry on this matter (see section 4.1 of this report).

- **Wider statutory obligations**

Currently, the Authority is able to consider the implications of Modification Proposals in the context of the regulatory and statutory frameworks, within which it operates. If the responsibility for determining whether or not Modification Proposals are made were to fall to the Panel, it would not, as compared with the Authority, be able to fully consider the wider context of its determinations (for example, environmental issues or consumer protection objectives), since the Panel is currently confined to considering whether a Modification Proposal would better facilitate the achievement of the Applicable BSC Objectives (which can be found in the Transmission Licence in section C3).

One member of the GSMG pointed out that the Authority had never cited as a reason for rejecting a Modification Proposal that the proposal would be contrary to a wider statutory obligation. However, the Authority representative observed that the Authority always take their wider statutory obligations into account when making determinations on whether Modification Proposals should be made or not. The GSMG consulted parties on this issue (see section 4.1 of this report).

- **Conditional approval**

The GSMG discussed the issue of approval of Modification Proposals which are conditional on the modification of industry documents not under the vires of the Panel. The group felt that if a deadline for the non-BSC documentation to be changed were to be included in the conditional determination, then configuration of the Code could be successfully managed. The GSMG consulted the industry on this matter (see section 4.1 of this report).

- **Panel’s ability to raise and make determinations on Modification Proposals**

The GSMG considered whether it would still be appropriate for the Panel to raise Modification Proposals as, additionally, it would hold powers to make determinations on Modification Proposals. The GSMG agreed that, as the Panel are only able to raise Modification Proposals in limited circumstances, e.g. for housekeeping or efficiency, the GSMG did not believe this would be an issue.

- **Code Sections not determinable by “substantial majority”**

The GSMG noted that, currently, there are certain matters enshrined within the Code that require Authority approval to make any change. These matters range from parameters set within the Code to the timetable set for Modification Proposals etc. The GSMG also noted that under the current proposal, were a Modification Proposal to be raised, and a “substantial majority” of the Panel so minded, the Authority’s role in such decisions could be eliminated from the process. Certain members of the GSMG believed that it may be apt for certain paragraphs of the Code to be reserved, such that Authority approval would be required to vary those provisions. The majority of the GSMG decided that limiting the sections of the Code that the Panel could make determinations on could be included as part of an option to form an Alternative Modification (see section 1.5 of this report).

- **Competing Modification Proposals**

The Panel is obliged to consider each Modification Proposal, with which it is presented, in terms of whether it better facilitates the Applicable BSC Objectives. The GSMG considered what would happen in the event that two Modification Proposals, which addressed the same defect but proposed different solutions, were presented to the Panel for determination at the same Panel meeting. P129 proposes that the Panel should consider which Modification Proposal *best* facilitated the Applicable BSC Objectives.

A question was asked about what would happen where competing Modification Proposals both achieve a “substantial majority” in relation to whether they better facilitate the Applicable BSC Objectives. In the event that a “substantial majority” could not be reached on which *best* facilitates the Applicable BSC Objectives overall, the GSMG agreed that both the Modification Proposals should be sent to the Authority for a decision.

- **Appeals mechanism**

The process by which an Approved Modification is currently appealed is by way of an application for judicial review. The GSMG considered whether or not Parties should be able to appeal a decision regarding a Modification Proposal, when the decision has been made by the Panel, as opposed to the Authority.

The GSMG requested legal advice from BSCCo on whether to adopt an appeals process in relation to the revised Modification Procedures proposed under P129. The legal advice stated that establishment of an appeals process may render any revised Modification Procedures better able to withstand any potential challenge than perhaps if the Panel decision was final. For this reason the GSMG included an appeals mechanism in the Proposed Modification.

The GSMG discussed what the grounds for appeal of a decision by the Panel should be. The GSMG were mindful of the fact that the grounds needed to be stringently defined, such that Parties didn't routinely appeal Modification Proposal decisions that they disagreed with.

The GSMG believed that the grounds for appeal should be that:

- new evidence could be presented that the appealing Party felt had not been sufficiently explored during the Modification Procedures;
- the Code Modification will, or is likely to, unfairly prejudice the interests of the appealing Party;  
or
- the Code Modification will cause that appealing Party to be in breach of the Code or its licence.

The GSMG reached the conclusion that anyone who can raise a Modification Proposal should be able to appeal a Panel determination on Modification Proposals.

The GSMG decided that there should be a time limit on when an appeal against a Panel decision could be made. The GSMG decided that this timeframe should be 10 working days after the Panel meeting at which the decision was made. The GSMG consulted industry participants on this matter (see section 4.1 of this report).

- **Increased indemnification for the Panel**

The GSMG requested that BSCCo provide legal advice on whether or not the revision of the Modification Procedures (such that the Panel can decide to approve or reject Modification Proposals) requires a strengthening of the terms of the indemnity granted to Panel Members by BSCCo.

The legal view is that Section B2.9.1 of the Code, together with the current terms of the indemnity, will be sufficient to protect Panel Members in the event that the Code is amended to require the Panel to make determinations on Modification Proposals, as outlined in P129.

The GSMG believed that the Panel would be appropriately indemnified to cover any new powers of determination for Modification Proposals.

- **Urgent Modification Proposals**

The GSMG discussed whether or not the Panel should be able to make determinations on Modification Proposals that had been granted urgent status. The GSMG noted that P129 is silent on Urgent Modification Proposals. The GSMG decided that the Proposed Modification should not include any change to the process for progressing Urgent Modification Proposals, and that the Authority should continue to determine whether Modification Proposals should be granted urgent status and determine on those Modification Proposals.

#### **1.4 Assessment of whether the Proposed Modification will better facilitate the Applicable BSC Objectives**

As a result of its discussions and after consideration of the consultation responses the majority of the GSMG agreed that the Proposed Modification would not better facilitate the achievement of any of the Applicable BSC Objectives.

Several GSMG members did not believe that the Proposed Modification would improve efficiency of the implementation and administration of the balancing and settlement arrangements, and the majority were of the opinion that any suggested time saving, as a result of the processes proposed in the Proposed Modification, was not proven. The majority of the GSMG were also in agreement that the Proposed Modification would lead to an increase in the risk and uncertainty in the market because:

- the Modification Proposal where there is the greatest elapsed time in the decision making process, are the ones that would still be referred to the Authority and would take the same amount of time;
- the process by which Parties could appeal to the Authority against a determination made by the Panel would result in an increase in the time for Modification Proposals to be implemented. In addition, work undertaken by ELEXON to implement Code Modifications would have to be delayed until the deadline for an appeal to be lodged had passed;
- independent regulation by the Authority was a more appropriate model;
- it was appropriate that decisions should be guided by the wider statutory obligations of the Authority. The Panel's remit in this regard was too narrow; and
- revised Panel election rules could lead to an undue increase in the influence of larger players and was therefore anti-competitive.

The minority view of the GSMG (who supported the implementation of the Proposed Modification) was that it would allow the industry a greater degree of self regulation and would, in the majority of cases, cut down the time taken for determinations to be made on Modification Proposals. These members believed that this would increase the efficiency of the implementation and administration of the

balancing and settlement arrangements and better facilitate the achievement of Applicable BSC Objective (d).

## 1.5 Alternative Modification

**No Alternative Modification Proposal was identified by the GSMG.** However, two potential options for an Alternative Modification were discussed and discounted as the GSMG did not believe that either option would better facilitate the achievement of the Applicable BSC Objectives. The remainder of this section describes those options.

### Option 1:

Instead of the Panel being able to make determinations on the Modification Proposals (where there is a "substantial majority" agreement) it would be able only to reject Modification Proposals (where there is substantial majority agreement). The rationale for this potential solution to the defect identified by the Proposer is that the Panel would be able to identify and reject Modification Proposals that they believed had little chance of success. There would still be an appeal mechanism.

Option 1 would, as for the Proposed Modification, include the changes to the Panel election process. However, the election process would be biennial, rather than annual, as stated in the Proposed Modification.

### Option 2:

This potential solution to the defect identified in the Modification Proposal is based on the Proposed Modification, however, the Panel would be restricted in the clauses in the Code on which it could make determinations. This would preserve the Authority's powers over particular Sections of the Code.

## 1.6 Assessment of whether the two options to form an Alternative Modification would better facilitate the Applicable BSC Objectives

The majority of the GSMG were of the opinion that neither of the options (outlined in section 1.5 of this report) overcame the issues they had with the Proposed Modification and that neither therefore better facilitated the achievement of the Applicable BSC Objectives.

The majority of the GSMG did not support option 1 as they believed that it would add layers of bureaucracy to the Modification Procedures without completely addressing the perceived defect identified in P129. They believed it was a "middle ground" solution that would further complicate BSC governance by effectively introducing split decision making procedures.

The majority of the GSMG did not support option 2 as they believed that it would not solve the perceived defect identified in P129, and that the format of the Code was not conducive to an easy identification of clauses that the Panel should be restricted from making determinations in respect of.

The GSMG decided that neither of these options should form an Alternative Modification. In addition, the GSMG believed it was not possible to define a viable Alternative Modification within the scope of Modification Proposal P129.

## 2 IMPACT ON BSC SYSTEMS AND PARTIES

An assessment has been undertaken in respect of BSC Systems and Parties and the following have been identified as potentially being impacted by the Proposed Modification.

### 2.1 BSCCo

Potential impacts that have been identified to date in the Assessment Procedure are shown below. Timescales and costs of any changes are also given where this information is available:

- I. The Guidelines for the Panel Election Process and the Guidelines for the Panel Process, the local working instructions (LWIs) for the Voting Database will be impacted – *10 ELEXON man days*.
- II. Probable impact on the election voting database, which is currently configured to reflect 2 votes per Trading Party/trading party group and will have to be amended/replaced to reflect the subdivisions of voting constituencies and revised vote allocations – *20 ELEXON man days*.
- III. There may be an impact on the Service Delivery department, in that it may be used as a source of information for the consumption or production data that BSCCo would use if a Party challenged the “Constituency” status of another. To obtain the relevant data for all Parties – *1 ELEXON man day*.
- IV. Annual Panel elections, new Panel election processes and different processes to challenge appointment of Parties to constituencies will require significantly more administrative work for BSCCo – *40 ELEXON man days*.
- V. There may be additional work required to publish the guideline for, and results of, the Challenge process – *10 ELEXON man days*.
- VI. New internal processes for submitting Modification Reports to the Panel for decision, and of notifying Parties of decisions would need to be implemented (a).
- VII. The Modifications Register, Status Report and Change Report would need to be amended to reflect new decision-making processes (b).
- VIII. The current process for notifying Parties of Authority decisions would need to be amended to reflect the new decision-making process. The new process would need to be communicated to industry, and BSCCo may have to respond to a high number of enquiries (c) – *(a, b and c) = 20 ELEXON man days in total*.
- IX. LWIs for the Assurance department and Key Performance Indicators (KPIs) would need to be revised – *5 ELEXON man days*.
- X. It is anticipated that new responsibilities on the Panel with regard to the Modification Process may prolong discussions and increase the requirement for BSCCo Panel support resources.
- XI. The Modification area of the BSC Website may need to be amended to reflect the new Governance arrangements – *3 ELEXON man days*.
- XII. The obligations register, used by the Assurance Department, may need to be updated – *1 ELEXON man day*.
- XIII. The ASSYST database, used by the Change Delivery to reflect action types for Panel, rather than Authority, determinations may need to be updated – *2 ELEXON man days*.
- XIV. There may be an impact on the ELEXON Business Process Model, depending on the solution chosen by the Modification Group – *2 ELEXON man days*.

## **2.2 BSC Systems**

No impact has been identified to any BSC Systems and processes.

## **2.3 Party Agents**

Three Party Agent responses were received to the request for an impact assessment of P129. From these no impacts were identified on Party Agents.

### 3 IMPACT ON CODE AND DOCUMENTATION

#### 3.1 Balancing and Settlement Code

Legal text has not been commissioned, at this stage. It is believed, however, that the impact would be on Annex B2 of the Code, which would need to be revised. In addition, a new annex, Annex B-3, would be included in the Code to describe and define the constituency categories outlined in the Modification Proposal. Section F and Annex X-1 of the Code would also require amendment. It is estimated that the work required by this will take a total of 5 *ELEXON man days*.

#### 3.2 Code Subsidiary Documents

An initial assessment has been undertaken in respect of all Code Subsidiary Documents and it has been determined that BSCP76 "Submission of Modification Proposals" may need to be amended. It is estimated that the work required by the Change Process will take a total of 5 *ELEXON man days*.

#### 3.3 BSCCo Memorandum and Articles of Association

No impact has been identified.

#### 3.4 Impact on Core Industry Documents and supporting arrangements

No impacts have been identified on any Core Industry Documents or supporting arrangements.

### 4 SUMMARY OF CONSULTATIONS

A consultation document and questionnaire was issued to the industry on 11 July 2003, with 31 July 2003 as the deadline for responses. 15 responses (50 Parties and 1 non-Party) were received and are attached as annex 3 of this report.

#### 4.1 Modification Group's summary of the consultation responses

The following questions were asked of the respondents and the arguments are summarised below each question.

<b>Q.1. Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives?</b>	
Yes	2 (23 Parties)
No	13 (27 Parties and 1 non Party)
No Comment	-

The majority of respondents did not believe that the Proposed Modification better facilitated the Applicable BSC Objectives.

An argument from one of the minority who did believe that the Applicable BSC Objectives would be better facilitated by the Proposed Modification was that reducing the level of involvement of the Authority in Modification Proposal decision making would speed up the process. This respondent felt that a Panel which was elected by the new process would be able to make better decisions regarding Modification Proposals, and would increase the efficiency of the implementation and administration of the balancing and settlement arrangements and therefore better facilitate Applicable BSC Objective (d). Another respondent felt that the Proposed Modification could lead to a reduction of bureaucracy and, hence, better facilitate the same Applicable BSC Objective.

A counter argument put forward by one respondent was that as the Panel would be making determinations on Modification Proposals and the Authority determinations on others, the BSC governance arrangements would be complicated and there would be an increase in market uncertainty. Another respondent stated that any time savings are doubtful, as the Authority would be likely to be passed the more contentious Modification Proposals and the respondent believed that it is these Modification Proposals that are the ones that take the most time for the Authority to decide upon.

***The GSMG had mixed opinions as to whether or not the Proposed Modification would speed up the decision making process and hence increase efficiency. The majority of members noted that this point had not been proven. The majority of the GSMG members agreed that the Proposed Modification would lead to an increase in risk and uncertainty in the market.***

***The GSMG also noted that the timetable for progressing Modification proposals through the Modification Procedures would not be shortened by P129.***

Another respondent noted that if the Panel were to make determinations on Modification Proposals then there could be inconsistencies between the BSC and other industry codes and licences which would decrease the efficiency of the implementation and administration of the balancing and settlement arrangements.

Arguments from 3 respondents who did not think that the Proposed Modification better facilitated the Applicable BSC Objectives, stated that the Distribution System Operators (DSOs) would be disadvantaged by the Proposed Modification. The Authority has an obligation to take into account the DSOs licence obligations when making its decisions. The Applicable BSC Objectives are the yardstick by which the Panel must judge Modification Proposals, but do not explicitly take DSO licence obligations into account.

***The GSMG were concerned that the Panel would have to make determinations based only on the Applicable BSC Objectives and were not satisfied that the wider statutory obligations would be taken into account in a Panel determination process.***

One respondent stated that they believed that larger generators and Suppliers would have their market power increased by the Proposed Modification and that smaller Suppliers and generators would be under-represented.

An argument put forward by another respondent was that effective competition can only be maintained if amendments to the Code are made by a independent regulatory body. The respondent believed that Applicable BSC Objective (c) is therefore not better facilitated by the Proposed Modification.

One respondent noted that there are already provisions in the Code for accelerating Modification Proposals that require rapid determinations. While another respondent noted that the Modification Proposal was a retrograde step back towards the Pool constituencies and governance.

***The GSMG believed that the weight of argument was on the side of the respondents who did not believe that the Applicable BSC Objectives would be better facilitated by the Proposed Modification. The Majority of the GSMG stated that they believed that the Proposed Modification did not better facilitate the Applicable BSC Objectives.***

<b>Q.2. Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered?</b>	
Yes	2 (15 Parties)
No	13 (35 Parties and 1 non Party)
No Comment	-

One respondent suggested that the Panel should only be able to reject Modification Proposals (where there is “substantial majority” agreement between Panel Members). In all other cases the Modification Proposal would be forwarded to the Authority for determination.

***This alternative solution was the basis for option 1, the GSMG’s views of which have been discussed in section 1.5 of this report.***

One respondent asserted that the Panel should not be given the power to make determinations on Modification Proposals, but where the Authority makes a determination that is different from the recommendation by the Panel, the Authority must provide more detail than it currently does about its rationale. Along a similar vein, one respondent noted that they too were concerned with the lack of transparency of the Authority decision making. They suggested that a process could be developed whereby Authority determinations could be appealed to a body outside the governance of the industry Codes such as, for example, the Competition Commission.

***The GSMG noted that these issues were outside the vires of the Code.***

<b>Q.3. Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members?</b>	
Yes	4 (30 Parties)
No	8 (10 Parties and 1 non Party)
No Comment	3 (10 Parties)

The majority of respondents did not believe that 5 was the optimum number of constituency classes and that the balance of the non-voting to voting Panel Members is correct. As described below this was mainly because they didn’t support the constituency based Panel election model.

Four respondents believed that 5 constituency classes allowed the industry to be adequately represented by the Panel, and that the balance of voting to non-voting Panel Members is correct. However, one of these respondents was concerned with the proposal that parties fall into “large” or “small” player constituencies and that this may distort the good representation that the constituency classes could introduce.

Two respondents noted that they believed that having Panel Members elected by constituencies could not be reconciled with the Panel’s requirement for impartiality. One stated that the need for constituencies is not clear since the current voting procedures already allow market participants to form “informal” constituencies in voting for individual candidates.

Three respondents were concerned about the lack of a DSO constituency class and felt that this left DSOs un-represented.

One respondent asserted that there was no evidence to suggest that the Panel does not already adequately represent the industry, while another respondent stated that they believed that the proposed constituency classes would not accurately represent the industry. One respondent noted that

the Panel could never really be representative of the industry due primarily to the large number of BSC Signatories. The same respondent was concerned that there has not been provision made for a “Renewables” constituency.

Two further respondents stated that they also did not believe in the constituency voting procedures and therefore could not comment on the optimum number of them.

***The GSMG had considered the fact that there was not a “Renewables” constituency class, but came to the conclusion that the additional industry Panel Member that the Panel Chairman is at liberty to appoint could allow this industry sector to be represented.***

<b>Q.4. Do you believe that the criteria for defining constituency class should be open to review?</b>	
<b>If so, who do you think should be responsible for this process?</b>	
Yes	6 (20 Parties)
No	5 (18 Parties and 1 non Party)
No Comment	4 (12 Parties)

There was no majority agreement between respondents as to whether or not the criteria for defining constituency class should be open to review.

One respondent, who believed that the criteria for defining constituency class should be open to review, noted that the current market structure compared with that at the time of Go-Live is very different. Therefore, the respondent felt that the criteria for defining constituency class should be open to review to contend with the changing industry landscape. Another respondent felt that the criteria should be reviewed automatically every 5 years, while another believed that the trigger for the review should be a Modification Proposal.

Two respondents felt that ELEXON should be the body responsible for reviewing the criteria, two other respondents thought that the responsibility should lie with the Authority and another was undecided as to with whom the responsibility should lie (however, they were particularly against the review being conducted by the Panel or the Authority undertaking the task). This view was also held by another respondent who was particularly concerned that the Panel should not be involved in reviewing criteria that could be a factor in whether or not they are re-elected.

One respondent replied with an opinion of what the criteria should be. The respondent’s view differed from the Modification Proposal in that the respondent believed that the size of the constituencies should be the deciding factor rather than the annual metered offtake and delivery of electricity. The respondent believed that the split of the number of trading party groups in the “large” and “small” constituency classes should be 50/50.

***The majority of the GSMG were of the view that a 50/50 split of trading party groups between “large” and “small” constituencies would not result in trading party groups being grouped according to their specific requirements, which depend on their actual size rather than their relative size to other trading party groups.***

<b>Q.5. Do you believe that Interconnector Users should have their own constituency class?</b>	
Yes	1 (1 Party)
No	8 (34 Parties and 1 non Party)
No Comment	6 (15 Parties)

The majority of respondents believed that Interconnector Users should not have their own constituency class.

The argument put forward by one respondent in favour of introducing a constituency class was that they are an un-represented group whose specific views might be swamped by some other classification.

The arguments against introducing a constituency class for Interconnector Users mainly were based on the fact that the Interconnector users would be included, just not in an Interconnector user specific constituency class. One respondent believed that Interconnector users should fall into the Trading constituency, another the supplier or generator constituency depending on which direction the net electricity was flowing. One respondent pointed out that the percentage of Parties that are Interconnector users is significantly less than 20% and therefore having their own constituency class is not justified. Another respondent believed that since membership of each constituency is for the whole trading party group, and most Interconnector users are affiliated with Suppliers and/or generators, it is likely that Interconnector users would fall into one of these groups anyway.

***The GSMG believed that Interconnector users would be a small part of a large trading party group that would fall into one of the proposed constituency classes and therefore an Interconnector constituency class is unnecessary for all trading party groups to be adequately represented.***

<b>Q.6. Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives?</b>	
Yes	4 (19 Parties)
No	10 (29 Parties and 1 non Party)
No Comment	1 (2 Parties)

The majority of respondents were in favour of Panel elections remaining biennial, rather than annual.

One of the respondents in favour of annual elections noted that the Proposed Modification would bring BSC governance into line with other industry codes, such as the Network Code. Another respondent was in favour of annual elections as the industry has undergone rapid and significant changes and is likely to continue to do so. Annual elections, this respondent believed, would enable the Panel to remain representative of the market place. Another respondent stated that annual elections would not necessarily impact continuity of the Panel as the same Panel Members could be elected every year.

Arguments against introducing an annual Panel election process fell into three categories; the 4 respondents that believed that an annual election would be inefficient; the 4 respondents who believed that there would be a loss of continuity in the Panel makeup (and that continuity is beneficial); and the 3 respondents that simply stated that the Applicable BSC Objectives would not be better facilitated by having annual, rather than biennial, Panel elections.

***The GSMG were unanimous in its view that the existing provision in the code for biennial rather than annual (as proposed in P129) was the better solution as it better ensures efficiency and continuity of the Panel.***

<b>Q.7. Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement?</b>	
Yes	2 (23 Parties)
No	13 (27 Parties and 1 non Party)
No Comment	-

The majority of respondents believed that the Panel should not have the ability to make determinations on Modification Proposals (where there was a substantial majority agreement).

Of those respondents in support of the Panel making determinations (where there is a substantial majority agreement) the basis of their argument was that the Panel, as it is currently formulated, understands, and therefore well represents, the views of the industry.

There were a significant number of reasons from those respondents who did not support the Panel making determinations (where there was a substantial majority agreement). In summary, these respondents did not believe that the Panel should have the ability to determine on Modification Proposals, as the Panel cannot provide an independent role. Another concern was that the Authority was better placed to co-ordinate changes across the range of industry documents than the Panel which is restricted to considering Modification Proposals against the Applicable BSC Objectives. Respondents indicated that the role of decision-making should continue to lie solely with the Authority on the basis that they have independence and also have wider statutory obligations that the Panel cannot take into account in when making their determinations.

***While the majority of the GSMG recognised that the electricity market suffers from fractured governance arrangements, the majority agreed that the best way to address this was for the Authority to have decision making powers across the various industry documents. They also believed that the Panel could not consider any of the Authority’s wider statutory obligations when making determinations on Modification Proposals and that it was appropriate that decisions should take these into account.***

<b>Q.8. Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives?</b>	
Yes	10 (25 Parties)
No	4 (24 Parties and 1 non Party)
No Comment	1 (1 Party)

The responses to this question were nearly evenly split, the reasons for which are explored further below.

Respondents in support of the Panel making determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations in addition to the Applicable BSC Objectives, believed that since the role, expertise and respective governances of the Panel and the Authority are different it was not appropriate for the Panel to consider wider statutory obligations when making determinations on Modification Proposals.

Respondents not in favour of the Panel making determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives, believed that it would not be appropriate for the Panel to make determinations without an understanding of the statutory requirements.

<b>Q.9. Do you believe it is appropriate for the Panel to make conditional determinations?</b>	
Yes	3 (27 Parties)
No	12 (23 Parties and 1 non Party)
No Comment	-

The majority of respondents believed that conditional determinations were not appropriate.

Respondents in favour of conditional approval noted that it would be a pragmatic solution for situations where, to ensure consistency, changes would be required to other industry documents. Another respondent stated that each conditional determination should be reviewed 6 months after it was made. However, this same respondent offered an alternative solution to solving the problem of aligning all industry documents. The solution proposed is that the Panel only be allowed to reject Modification Proposals.

***The GSMG based option 1 on this suggested solution. Option 1 has been discussed in section 1.5 of this report.***

Two main arguments were put forward by respondents who believed that conditional determinations by the Panel are not appropriate: that conditional determinations in themselves were disadvantageous; and that the Panel itself is not suitable to make determinations.

The reasons given against conditional determinations were that they would be inefficient, could result in development work in delivering the agreed solution being undone, that there would be extra costs incurred subsequent to an Authority decision and that conditional approval would result in increased market uncertainty and risk for all BSC Parties.

<b>Q.10. Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval?</b>	
Yes	12 (39 Parties)
No	2 (3 Parties and 1 non Party)
No Comment	1 (8 Parties)

The majority of candidates believed that it is appropriate that certain parts of the Code can only be changed with Authority approval.

However, the main argument that respondents gave that certain parts of the Code should not be reserved for an Authority decision, was that this would increase complexity and that all parts of the Code should be changed with Authority approval.

One respondent felt that it was important that the Panel (made up of trading party group elected members) should only be allowed to decide upon Modification Proposals that impact Trading Parties. Two respondents stated that the Authority should make determinations for certain Modification Proposals, one of whom specifically named Modification Proposals that relate to the election of the Panel and the Panel's decision making powers.

One respondent believed that the likelihood of the Panel reaching a "substantial majority" agreement on Modification Proposals is unlikely, and therefore it is more pragmatic that the Authority retain the power to make all determinations on Modification Proposals and two further respondents stated that they believed that the Authority should retain the responsibility for making determinations on all areas of the Code.

**Q.11. Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be?**

Yes	8 (34 Parties)
No	5 (12 Parties and 1 non Party)
No Comment	2 (4 Parties)

The majority of respondents believed that parties should be able to appeal determinations made by the Panel on a Modification Proposals.

One respondent, who did not support the Proposed Modification, stated that they were opposed to the introduction of an appeals mechanism within the current baseline. However, if the Panel were given decision making powers then all Parties should be able to appeal the decision, as is the process for the Past Notification Errors.

Another respondent stated that Parties should be able to appeal to the Authority and further suggested that there should be a totally independent appeals process for all decisions made by the Authority. Another respondent supported this view, and added the suggestion that the Authority should invite Parties to comment on the appeal and consider the previous responses made and the previous views of the Panel. Another respondent suggested that the appeals process should involve a public hearing.

With regard to whom has the right to lodge an appeal, one Party suggested that it should be open to those capable of submitting Modification Proposals.

One respondent stated that it was not necessary for the Modification Group to introduce a process for appealing a "substantial majority" decision of the Panel. This respondent did not agree with the proposal to allow the Panel to make implementation decisions. However, a respondent who did not support the Proposed Modification stated that an appeals process was an inevitable consequence of this proposal, and another respondent stated that an appeals process must be introduced to reduce the potential for those Parties disenfranchised by any Modification Proposal to make legal challenges.

**Q.12. Do you believe that the grounds for appeal suggested in the consultation document are appropriate?**

Yes	2 (13 Parties)
No	7 (10 Parties)
No Comment	6 (27 Parties and 1 non Party)

The majority of respondents who made a comment with respect to the grounds for appeal, stated that they believed the grounds for appeal suggested by the GSMG required some amendment.

One respondent suggested that the grounds for appeal should be wide enough to allow any party to appeal to ensure that the eventual decision is the best policy outcome, not necessarily the most popular one. They further stated that administrative and procedural grounds should also be included as grounds for appeal.

Another respondent stated that the grounds for appeal should include: where a decision unfairly discriminates against a party or class of parties; where a decision is made without a clearly proven cost/benefit analysis; and where a decision is made without due consideration being given to the views of dissenting Parties.

One respondent stated that the grounds for appeal should also cover the possibility of the Panel's decisions being inconsistent with the Applicable BSC Objectives. That is, participants should have the right to appeal if they can demonstrate material flaws in the Panel's reasoning. Another respondent suggested that the grounds for appeal should mirror those utilised by the Judicial Review process. They further suggested that any appeals process should consider the grounds highlighted in the consultation document with an additional reference to due process not having been complied with. And, finally, one respondent suggested that one reason why an appeal might be allowed is that of unreasonable costs being incurred.

***The GSMG was concerned to make the hurdle for lodging any appeal against a Panel decision quite high as this would discourage frivolous or vexatious appeals being lodged. The group was also concerned that the grounds for appeal should not allow decisions to be appealed just because the appellant did not agree with the result of the determination.***

***After considering the consultation responses the GSMG was satisfied that the grounds for appeal outlined in this report were adequate and sufficient to achieve the objectives stated above.***

<b>Q.13. Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made?</b>	
Yes	4 (17 Parties)
No	8 (21 Parties and 1 non Party)
No Comment	3 (12 Parties)

The majority of respondents were against the deadline for an appeal to be initiated against a Panel decision being 10 days after the Panel meeting at which the decision was taken.

Of the respondents who did not agree with the proposed timescale, all of them believed that a longer timescale was necessary. One respondent stated that since the examination of new evidence was one reason for an appeal to be raised, more than 10 days was necessary for the Party to raise an appeal based on this evidence. Three other respondents believed that the timescale should not be 10 days from the Panel meeting, but from the publication of the meeting minutes. One respondent pointed out that the minutes were not approved until the following Panel meeting, and so the appeal should be lodged by 10 days after the meeting following that at which the determination was made.

One respondent, who was in favour of the 10 day time limit for the submission of an appeal against a Panel decision, believed that this was sufficient time for Parties to prepare and submit the initial appeal papers. Another respondent in favour of this timescale believed that a 10 day period would reduce the risk and uncertainty that would be inherent in a longer time period during which Parties could raise an appeal against a Panel determined Modification Proposal.

***While considering the consultation responses the GSMG believed that it was important to distinguish between the point by which a party must advise the relevant body that an appeal will be made, and the point at which evidence supporting the appeal (including reasons for appealing the Panel's decision) must be submitted. The majority of the GSMG believed that an appeals process should be included in the Proposed Modification and that the appeal (and relevant supporting papers) should be submitted 20 working days after the publication of the minutes for the Panel Meeting at which the Modification Proposal determination was made.***

**Additional respondent comments:**

Respondents included several other comments unrelated to specific questions in their consultation responses.

One respondent noted that they were not convinced that the Authority had the power to delegate its legislated authority to the Panel. The respondent was also concerned that the implementation of constituency voting for Panel Members may result in cartel-type behaviour in regard to the Modification Proposal decision making.

One respondent believed that in a fully competitive market “intrusive” regulation is inappropriate and that the Proposed Modification would allow “lighter touch” regulation.

Whilst they believed that non-voting members on the Panel should not be provided with a vote, one respondent believed that they were involved in the decision making process by being able to suggest the referral of particular Modification Proposals to the Authority for decision.

One respondent suggested that perhaps the time taken for the Authority to make a decision could be cut down if it was provided with sufficient information. The respondent felt that to solve the defect identified by the Proposer in P129 the industry needs to better understand the root causes for the Authority’s delays in providing a determination on Modification Proposals.

One party, responding to the request for an impact assessment, noted that 5 constituency classes seemed appropriate, although recognised that all Parties should have the opportunity to be represented. This respondent also stated a preference for biennial Panel elections and that were the Panel to make decisions by substantial majority then it would be necessary to introduce a timely appeals process.

## **5 SUMMARY OF TRANSMISSION COMPANY ANALYSIS**

### **5.1 Analysis**

The Transmission Company identified a potential conflict that could arise as a result of any decision with respect to a Modification Proposal being made by the Panel as opposed to the Authority. As the Panel have to assess each Modification Proposal with regard to whether it better facilitates the achievement of the Applicable BSC Objectives, whilst the Authority has wider statutory obligations to consider, a decision reached by the Panel without reference to wider statutory obligations could create a conflict between the Code and the Transmission Licence.

The Transmission Company identified several areas within the Transmission Licence that would require a change as a result of any decision to approve P129 and observed that any such changes would require a statutory consultation under Section 11 of the Electricity Act 1989 and would be subject to the consent of the licensee. Specifically, changes would be required: to define the Balancing and Settlement Code Panel under Condition C1; to allow Modification Proposals to be referred to the Panel for determination (paragraph 4 of Condition C3); and to allow the Balancing and Settlement Code Panel to direct a Code Modification (Paragraph 5 of Condition C3).

In undertaking an impact assessment for P129, the Transmission Company observed that the P129 Proposer had identified P129 as better facilitating Applicable BSC Objective (d) by providing for a more timely and effective decision making process. The Transmission Company observed that there were means within the existing governance arrangements to facilitate a more efficient and timely decision in respect of Modification Proposals. Specifically, the Transmission Company highlighted the Urgent Modification Procedures and the regular housekeeping Modification Proposals raised by the Panel.

A copy of the Transmission Company analysis in full can be found in annex 3.

## 6 DOCUMENT CONTROL

### 6.1 Authorities

Version	Date	Author	Reviewer	Change Reference
0.1	16 July 2003	Change Delivery	Richard Clarke	Technical Review
0.2	21 July 2003	Change Delivery	Gareth Forrester	Technical Review
0.3	7 August 2003	Change Delivery	GSMG	Review
0.4	11 August 2003	Change Delivery	Justin Andrews	Technical Review
0.5	12 August 2003	Change Delivery	Ceri Hughes	Quality Review
1.0	12 August 2003	Change Delivery	Panel	Decision

## ANNEX 1 DRAFT LEGAL TEXT

Not provided at this stage.

## ANNEX 2 MODIFICATION GROUP DETAILS

Three GSMG meetings took place on 18 June, 9 July and 5 August 2003. The following have been involved in the GSMG assessment of Modification Proposal P127.

Name	Organisation
Gareth Forrester (Chairman)	ELEXON
Rachel Lindstrom-Thomas (Lead Analyst)	ELEXON
Richard Clarke (Analyst Support)	ELEXON
Peter Bolitho	Powergen
Clare Talbot	National Grid
John Sykes	Scottish and Southern
Mark Manley	British Gas Trading
Terry Ballard	Innogy
Rachel Lockley	British Energy
Lisa Waters	Waters Wye
Phil Russell	TXU
Paul Mott	London Electricity
Man Kwong Liu	Scottish Power
Katharine Morrison	energywatch

## ANNEX 3 CONSULTATION RESPONSES

Representations were received from the following parties:

No	Company	File Number	No. BSC Parties Represented	No. Non-Parties Represented
1.	Entergy-Koch Trading Ltd	P129_ASS_001	1	0
2.	NEDL/YEDL	P129_ASS_002	2	0
3.	East Midlands Electricity Distribution	P129_ASS_003	1	0
4.	Western Power Distribution	P129_ASS_004	2	0
5.	Powergen	P129_ASS_005	14	0
6.	British Energy	P129_ASS_006	3	0
7.	EDF Energy	P129_ASS_007	8	0
8.	Barclays Capital	P129_ASS_008	1	0
9.	Aquila Networks	P129_ASS_009	1	0
10.	Alcan Smelting and Power	P129_ASS_010	0	1
11.	Innogy	P129_ASS_011	9	0
12.	NGT	P129_ASS_012	1	0
13.	British Gas Trading	P129_ASS_013	1	0
14.	Scottish and Southern	P129_ASS_014	4	0

15.	ConocoPhillips (late response)	P129_ASS_015	2	0
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**P129\_ASS\_001 – Entergy-Koch Trading Ltd**

<b>Respondent:</b>	<i>Entergy-Koch Trading Europe Ltd</i>
<b>No. of BSC Parties Represented</b>	1
<b>BSC Parties Represented</b>	
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	
<b>Role of Respondent</b>	<i>Trader</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	The effective removal of independent regulatory decision making for many modification proposals is a retrograde step that will be detrimental to promoting effective competition in the generation, sale, purchase and supply of electricity.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	No	
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	There is no optimal number of constituency classes as modification proposals ought to be assessed on the relevant arguments, rather than by votes from constituent blocks. We consider that it is not possible to reconcile constituent structures with a requirement for impartiality. Further, it is far easier to ensure impartiality in panel considerations when an independent regulator is responsible for decisions.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes / No	See answer to 3
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	Yes / No	See answer to 3
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	In respect of this modification, we do not consider that changing the election period will have any material effect.

Q	Question	Response	Rationale
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is “substantial majority” agreement? Please give rationale.	No	We do not support the panel being able to make decisions at all. Further, the number of votes is not always an indication of the best decision against the relevant objectives.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	Yes	It is difficult to see how the panel could make decisions without considering Ofgem’s wider objectives, given that these wider objectives are statutory requirements. However, it would make no sense trying to adjust the BSC objectives to align with Ofgem’s wider objectives, as BSC parties do not have the expertise or the relevant public policy experience to consider the broader Government framework.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	If the panel is empowered to make decisions it should do so. It would be inappropriate to have conditional decisions in place while consideration of other codes is underway. Having the panel make decisions raises a further issue on whether this body should have the ability to force a licence holder to take supplementary action to ensure that there is consistency between codes.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	All of it. See previous answers stating why we do not support this modification.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	Yes	If this modification proposal is implemented there will be a need for an appeals mechanism that is open to any BSC party within prescribed timeframes. Appellants should be able to lodge an appeal directly with Ofgem outlining a case for the appeal. Ofgem should invite parties to comment on the appeal, and also consider the previous responses and assessment of the panel.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	No	The grounds for appeal should be wide enough to allow any party to participate to ensure that the eventual decision is the best policy outcome, not necessarily the most popular one. The grounds should also include the right to appeal on administrative and procedural grounds.

Q	Question	Response	Rationale
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	Yes	This will reduce some of the risk that an appeals mechanism will prevent the development of further policy issues.
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale.	Yes	It is not clear whether Ofgem has the ability to delegate its legislated authority to the panel. During the MALC considerations, it was clear that Ofgem's authority could not be delegated even from an appeals perspective, so it would be difficult to see how primary decision making processes could be offered out to a party not subject to primary legislation. At the very least, it seems that there is a requirement to change NGT's transmission licence.
15.	Are there any further comments on P129 that you wish to make?	Yes	<p>We consider that it is inappropriate for industry participants to decide on modification proposals because this model is less likely to reach decisions based on the quality of the arguments, runs the risk of accusations of cartel behaviour in some circumstances and may be viewed as increasing the barriers to entry for companies to the detriment of competition.</p> <p>A move to industry based decision-making is a retrograde step with respect to continued industry reform in the England and Wales and is counter to the principles of having an independent regulator as envisaged in the European electricity directive.</p>

**P129\_ASS\_002 – NEDL/YEDL**

<b>Respondent:</b>	<i>Mike Harding</i>
<b>No. of BSC Parties Represented</b>	2
<b>BSC Parties Represented</b>	<i>Northern Electric Distribution Limited Yorkshire Electricity Distribution plc</i>
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	
<b>Role of Respondent</b>	<i>Licensed Distributor</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	BSC objectives are narrower in scope than those of the Authority  This means that by moving the decision making, away from the Authority the Panel will not be able to take account of LDSO Licence obligations. This would unduly discriminate against LDSO's who are obligated through their licence to be a party to the BSC. We believe this new regime would open up the scope for an abuse of power.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	No	We believe the existing arrangements better consider the impact on overall industry players and customers
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	We are concerned that this proposal to make the Panel omnipotent in all things related to the BSC chooses to ignore proper representation of LDSO on the Panel (i.e. as a voting Panel member).
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes	The Authority should be responsible in order to ensure impartiality
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	Yes / No	No view
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	

Q	Question	Response	Rationale
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	Yes	Although some changes may lie within the scope of the BSC objectives the impact and implications of such changes may lie outside that scope. It is therefore inappropriate that the Panel should be able to make such determinations from a relatively narrow perspective..
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	Where conditional determinations are made, any work that is done as a consequence will need to be undone if the Authority subsequently rejected the proposal.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	Rationale similar to above: the Authority has a wider scope.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	Yes	See above
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	N/A	Appeal should also be allowed on the grounds of unreasonable costs.
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	A longer time period is required for detailed comments / evidence can be collated for an appeal
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale.	Yes	Customers are a key focus in the processes of industry participants. The Panel has no direct responsibilities in ensuring that the needs of customers are properly served

Q	Question	Response	Rationale
15.	Are there any further comments on P129 that you wish to make?	Yes	We are concerned that the Panel members with a narrow remit as the BSC should be given powers to authorise changes that could have much wider consequences and implications.

#### P129\_ASS\_003 – EME Distribution

<b>Respondent:</b>	<i>Name</i> <b>Andrew Neves</b>
<b>No. of BSC Parties Represented</b>	<b>1</b>
<b>BSC Parties Represented</b>	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i> <b>East Midlands electricity Distribution plc</b>
<b>No. of Non BSC Parties Represented</b>	<b>nil</b>
<b>Non BSC Parties represented</b>	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>Role of Respondent</b>	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state)</i> <b>DSO</b>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	Moving the decision making from The Authority to the BSC Panel removes the protection enjoyed by DSOs by virtue of The Authority's obligation to take account of the DSOs licence obligations. This would unduly discriminate against DSOs. Under BSC B1.2.1(c) the Panel has a duty to ensure "that the Code is given effect without undue discrimination between parties or classes of Party".
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	No	The current arrangements are reasonably satisfactory, apart from the absence of a DSO vote on the Panel
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	DSOs are poorly served by the current Panel and should have a dedicated voting representative.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes / No	

Q	Question	Response	Rationale
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	Yes / No	
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	The benefit of stability in Panel membership would be lost if members terms were shorter. Volatility in the makeup of the panel is not in the interests of the industry
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	DSOs do not get a vote and their interests are not adequately protected by the Applicable BSC Objectives
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	No	This could lead to undue discrimination (see above)
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	DSOs do not get a vote and their interests are not adequately protected by the Applicable BSC Objectives
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	All of it
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	Yes / No	
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	N/A	

Q	Question	Response	Rationale
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	Yes / No	
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale.	No	
15.	Are there any further comments on P129 that you wish to make?	No	

#### P129\_ASS\_004 – Western Power Distribution

<b>Respondent:</b>	<i>Graham Smith</i>
<b>No. of BSC Parties Represented</b>	2
<b>BSC Parties Represented</b>	<i>Western Power Distribution (South Wales) Ltd &amp; Western Power Distribution (South West) Ltd</i>
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	
<b>Role of Respondent</b>	

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	In its current form the modification will require The Panel to make decisions without considering the impact on Distributions Businesses, as the applicable BSC objectives do not adequately take in to account the interests of Distributors. This would unfairly discriminate against Distributors, who have a license obligation to be a BSC Party. Given that The Panel has a duty to ensure that the code is given effect without undue discrimination between Parties or classes of Party, (BSC Section B1.2.1(c)), this modification would appear to be irreconcilable with the Code.

Q	Question	Response	Rationale
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	No	
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	The balance is wholly inadequate given that Distributors will not be able to vote on issues that impact them.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes / No	We do not have a view on this issue.
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	Yes / No	We do not have a view on this issue.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	Yes / No	We do not have a view on this issue.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	We do not consider that the Panel should make decisions at all if they will be failing to take in to account the interests of Distributors.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	Yes	Changes to the BSC can have a direct or consequential impact on areas not covered by the Applicable BSC Objectives and it is important that these are adequately considered by any decision making body. Not considering them will increase the likelihood of legal challenges to decisions, which will potentially increase the uncertainty in the market.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	A benefit of the current system is that the Authority is able to coordinate BSC changes with those required to other Industry Governance documents. Conditional determinations, made with no control over other changes, will create uncertainty and confusion.

Q	Question	Response	Rationale
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	Should the modification be implemented then its scope should be limited to require Authority approval if the change impacts anyone other than Trading Parties. IE: Allow the Trading Parties to vote on, and implement, changes that will only affect those Parties who have a vote.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	Yes	An appeals process must be introduced to reduce the potential for legal challenges. It would provide some protection for Parties who are disenfranchised by the voting mechanism and, potentially, adversely affected by the proposal.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	No	Additional reasons would be: That a decision unfairly discriminates against a party or class of parties. That a decision is made without a clearly proven cost/benefit analysis. That a decision is made without due consideration being given to the views of dissenting Parties.
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	Elexon should distribute comprehensive minutes of the meeting and votes taken. These minutes should set out the basis on which each Panel Member has made their decision and, in a similar manner to current Ofgem decision letters, should make reference to the views of Parties who have made responses to the proposals. This reference should include reasons why each Panel Member agrees or disagrees with the respondents' views thereby demonstrating that those views have been considered. Following distribution of the minutes, a minimum period of ten working days should be allowed for any appeal.
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale.	No	
15.	Are there any further comments on P129 that you wish to make?	No	

#### P129\_ASS\_005 – Powergen

<b>Respondent:</b>	Powergen UK plc
<b>No. of BSC</b>	14

<b>Parties Represented</b>	
<b>BSC Parties Represented</b>	Powergen UK plc, Powergen Retail Limited, Cottam Development Centre Limited, TXU Europe Drakelow Limited, TXU Europe Ironbridge Limited, TXU Europe High Marnham Limited, Midlands Gas Limited, Western Gas Limited, TXU Europe (AHG) Limited, TXU Europe (AH Online) Limited, Citigen (London) Limited, Severn Trent Energy Limited (known as TXU Europe (AHST) Limited), TXU Europe (AHGD) Limited and Ownlabel Energy
<b>No. of Non BSC Parties Represented</b>	0
<b>Non BSC Parties represented</b>	
<b>Role of Respondent</b>	Supplier, Generator, Trader and Exemptable Generator.

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	Yes	It will speed up the decision making process by avoiding the need to for Ofgem to be involved the approval or rejection of the majority of modification proposals. By establishing a Panel that is more likely to reflect the diversity of stakeholder views such a Panel will be in a better position to make decisions that stand the test of time, reducing the need for further modification proposals.  Overall the proposal will promote efficiency in the implementation and administration of the balancing and settlement code.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	Yes	As the proposer of P129 Powergen was concerned to counter potential arguments that the Panel cannot decide to approve something that may be dependent on a change to a document that sits outside the governance of the BSC. Hence we proposed the concept of 'conditional' Panel decisions.  Nevertheless respondents to this consultation may remain concerned about the Panel making conditional decisions. One solution would be to allow the Panel to reject proposals, but not approve proposals, on a "substantial majority" vote. The modification group may wish to consider this as an alternative.
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	Yes	The constituency classes would seem to encourage the election of Industry Members that are likely to reflect a reasonable balance of industry views. The current balance between voting members and non-voting members seems about right, as does the balance between Industry Members and the members appointed by energywatch and the Panel Chairman.

Q	Question	Response	Rationale
4.	<p>Do you believe that the criteria for defining constituency class should be open to review?</p> <p>If so, who do you think should be responsible for this process?</p> <p>Please give rationale.</p>	No	<p>Changes to the constituency class (including the threshold values) should only be made by means of another BSC modification. It would be entirely inappropriate for changes to constituency classes, for example, to be instigated by the BSC Panel, given that this may directly affect the chance of particular Industry Panel Members being re-elected.</p>
5.	<p>Do you believe that Interconnector Users should have their own constituency class?</p> <p>Please give rationale.</p>	No (see qualifying comment)	<p>Interconnector users are likely to form part a trading party group's activity, and it a trading party group [a defined BSC term] that defines individual constituents. The 5 categories defined under P129 are therefore likely to reflect the range views of constituents.</p> <p>There may be an argument for trading organisations with some physical interconnector flows to vote only in the Trading constituency. This could be achieved by allocating trading party groups with a modulus of their net annual interconnector flows (i.e. imports less exports) of less than X, two votes in the Trading constituency. This would only apply where such a party did not have not have physical metered deliveries or offtakes at any other BMUs.</p>
6.	<p>Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives?</p> <p>Please give rationale.</p>	Yes	<p>We proposed annual elections primarily to encourage the elected industry members to remain actively in touch with the concerns of their constituents. It was also intended to ensure alignment with other codes such as the Network Code which have annual elections.</p> <p>This is not a critical feature of the modification proposal and we would be happy to see biennial elections as a refinement to the original proposal. Precedent (see P37 modification group proceedings) allows a modification group to agree to such refinements.</p>
7.	<p>Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement?</p> <p>Please give rationale.</p>	Yes	<p>The newly elected Panel will reflect the full diversity of stakeholder views and thus should be in a good position to make robust decisions on a "substantial majority" basis. The 4 non industry appointees will ensure minority interests are safeguarded. This decision making process will encourage consensus wherever possible.</p>

Q	Question	Response	Rationale
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	No	<p>It would be preferable if the Panel could consider proposals using the same criteria as the Authority. In practice we do not believe the different decision making criteria is a major concern, and to date we are not aware of Ofgem overturning a Panel recommendation solely on the basis of its wider statutory obligations.</p> <p>That said, the introduction of an appeals process (see question 11) would allow parties to appeal a decision and allow Ofgem (or a relevant appeals body) to consider matters based on these wider statutory duties.</p>
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	Yes	<p>It is common practice to have conditions precedent in contracts. There are no reasons to suggest why the BSC is should be any different. The concept of condition Panel decision recognises this issue. It will allow changes to other documents which sit outside the governance of the BSC to be prosecuted, without the need for the Panel to delay its decision making.</p> <p>It may be prudent to allow the Panel to review its decision where the relevant changes to non BSC documents have not been made within say [6] months.</p> <p>An alternative to conditional Panel decision making may simply be to allow the Panel to reject, but not accept modification proposals on a substantial majority vote. This avoids the problem of inter-dependencies with non BSC documents. Clearly if such an alternative were to be adopted it would mean the benefits of quicker decision making for proposals that the Panel support would be lost compared to the original.</p>

Q	Question	Response	Rationale
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	Changes that relate to the appointment/election of the Panel and/or changes to the Panel's decision making powers should not only be made with the approval of the Authority. There may others areas that should be subject to Authority approval, however there must be very compelling arguments to limit the proposed new Panel decision making powers proposed under P129.  All existing areas of the code that require Authority approval of Panel determinations such as BRL and CADL should also come within the scope of P129, i.e. the Panel should be permitted to approve or reject proposed changes to these parameters, provided a substantial majority agreement can be reached.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	Yes	The appeals process should ideally involve a public hearing chaired by the appeals body at which an appellant can make his case.  The DTI have recently consulted on the transparency and accountability of the code modification process. The consultation considered whether an appeals process should be established for modification decisions. If the DTI were to establish the right of appeal to an as yet unnamed appeals body, we would envisage that appeals of Panel decisions would be to that body. In the absence of such a decision we would envisage that the Authority would be the appeals body for Panel decisions.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	N/A	We agree with the criteria for allowing appeals set out in the consultation document.
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	Yes	This period provides parties with a reasonable time in which to prepare and submit its initial appeal papers.
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale.	No	

Q	Question	Response	Rationale
	Are there any further comments on P129 that you wish to make?	Yes	<p>Under fully competitive markets intrusive regulation is inappropriate. We accept that Ofgem should be involved in major electricity market reforms, typically where new legislation is require to such implement change, such as BETTA. However, we do not believe it as efficient or particularly effective for the regulator to continue to make decisions on every modification proposal.</p> <p>It is pleasing to note that Ofgem is seeking to achieve 'lighter-touch' regulation of other industry codes. A recent Ofgem consultation on the new gas SPAA agreement stated;</p> <p><i>"...every change to the Network Code , no matter how insignificant or patently beneficial, currently requires Ofgem's approval. Whilst this level of regulatory involvement ensures a high degree of accountability, it is perhaps no longer necessary in many instances."</i></p> <p>Approving P129 would ensure this principle is also applied to the BSC.</p>

**P129\_ASS\_006 – British Energy**

<b>Respondent:</b>	<i>Name</i>
<b>No. of BSC Parties Represented</b>	British Energy Power & Energy Trading, British Energy Generation Ltd, Eggborough Power Ltd
<b>BSC Parties Represented</b>	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>Role of Respondent</b>	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state)</i>

Q	Question	Response	Rationale
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Q	Question	Response	Rationale
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	The proposal will complicate the governance arrangements and increase market uncertainty. While the panel would be able to make determinations where a 'substantial majority' of its members are in agreement the right of appeal would mean that the Authority would continue to have the final say in many cases. In all other cases, including for urgent cases, the Authority would continue as now to make the determinations. This modification will potentially therefore result in greater delays, uncertainty and reduce efficiency. Consequently, we consider it would not better facilitate Applicable Objective (d) as compared with the current baseline.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	No	Principally, the existing governance arrangements within the BSC work relatively well. The procedures are well defined, inclusive and flexible. Our concerns arise with the process following the Panel recommendation to the Authority. There are serious deficiencies in the transparency and accountability of the Authority's decision making process. British Energy considers that a separate appeals procedure on Authority decisions outside the governance of the industry codes to an independent body such as the Competition Commission is the appropriate solution to the present market governance problems.
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	Yes / No	It is always possible to develop alternative ways of identifying constituencies but the one proposed seems sensible. The current balance between voting and non-voting Panel members seems about right.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes	A review of constituency class could be held (say) every 5 years. This could be conducted by Elexon but the Authority should make the final decision.
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	No	There is no case for Interconnector Users since they can be accommodated within the proposed constituency classes identified in the proposal.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	The present two-year term of office seems about right, as more regular election process would reduce the Panel efficiency and continuity.

Q	Question	Response	Rationale
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	See below.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	Yes	The Panel is rightly restricted to considering modifications against the BSC Applicable objectives. Furthermore, it is recognised that the Authority, when deciding upon code modifications, can only act in a manner that is consistent with its statutory duties. We consider it essential that these wider duties together with the Government's overall energy policy objectives are considered when significant code modifications are proposed. Consideration of these issues is clearly a role for the Authority and not the BSC Panel. . Therefore allowing the panel to make determinations would prevent these wider issues being considered.. In addition, it could be argued that allowing the Panel to make determinations will inevitably lead to appeals and the Authority continuing to make its own determination. Such a governance process would appear to be cumbersome and inefficient and may well increase market uncertainty. Consequently, we do not support the proposal to allow the Panel to make determinations on modification proposals.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	Such an arrangement is inefficient and will introduce additional market uncertainty and risk.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	No	At present all code changes require Authority approval. A move to a situation where certain parts can only be changed with Authority approval will create unnecessary complexity and uncertainty.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	N/A	This is an inevitable consequence of this proposal. Any right of appeal would have to be open to all parties recognised in the BSC. . However, for the reasons stated above we do not support the proposal to allow the Panel to make determinations.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	N/A	

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	N/A	
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale.	Yes / No	
15.	Are there any further comments on P129 that you wish to make?	Yes / No	

## P129\_ASS\_007 – EDF Energy

<b>Respondent:</b>	Tony Diccio
<b>No. of BSC Parties Represented</b>	8
<b>BSC Parties Represented</b>	EDF Energy plc, Jade Power Generation Ltd, Sutton Bridge Power Ltd, West Burton Power, London Power Networks plc, EPN Distribution Ltd, Seeboard Power Networks plc, Seeboard Energy Ltd
<b>No. of Non BSC Parties Represented</b>	-
<b>Non BSC Parties represented</b>	-
<b>Roles of Respondent</b>	<i>Supplier/Generator/Trader</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives?	No	Modification 129 does not better facilitate any of the 5 objectives in particular it does <u>not</u> better facilitate (d) "Promoting efficiency in the implementation and administration of the balancing and settlement arrangements".
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered?	No	There are none that are within the remit of a BSC Mod. As a matter of interest we have responded separately to the DTI on its consultation on appeals of regulatory decisions on matters considered by the industry panels – this is outside the remit of the BSC so we'll say no more than that.
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members?	-	We would not support a change to convert the panel elections to a constituency basis of any variety, and so cannot comment on the optimum number.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process?	-	We would not support a change to convert the panel elections to a constituency basis, and so cannot comment on this question.
5.	Do you believe that Interconnector Users should have their own constituency class?	-	We would not support a change to convert the panel elections to a constituency basis, and so cannot comment on this question
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives?	No	We see no need for change to the stability that is inherent in the present arrangements.

Q	Question	Response	Rationale
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement?	No	We see no need for change to the present arrangements relying on a simple majority decision – this has worked well to date at the Panel level, notwithstanding the serious issue about appeals of regulatory decisions which is outside the BSC.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives?	Yes	We believe that, disregarding modification 129 which lacks merit against the applicable objectives, it would generally represent an improvement if BSC Panel decisions were on the same basis and criteria as Ofgem decisions. In the absence of this, Ofgem in respect of its additional criteria – the "wider" ones – is making its decisions in splendid isolation, without the benefit of advice in these respects either from the industry panel or from industry consultees. This cannot be a good thing.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? (conditional on decisions by other bodies such as the CUSC panel)	No	In the absence of P129, which lacks merit against the applicable objectives, we see no reason for this conditionality – the question is only relevant if the Panel's decisions are final.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval?	-	See reply to questions 1,2, 3 and our remarks that we have views, elucidated elsewhere, on appeals of Authority decisions.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be?	No	We believe that modification 129 Lacks merit against the applicable objectives, therefore this question is not relevant.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? (new evidence, unfair prejudice to interests of appellant, would cause appellant to be in breach of licence)	-	See above
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made?	-	See above

Q	Question	Response	Rationale
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure?	-	See above
15.	Are there any further comments on P129 that you wish to make?	No	

#### P129\_ASS\_008 – Barclays Capital

<b>Respondent:</b>	Barclays Capital
<b>No. of BSC Parties Represented</b>	1
<b>BSC Parties Represented</b>	Barclays Capital
<b>No. of Non BSC Parties Represented</b>	None
<b>Non BSC Parties represented</b>	None
<b>Role of Respondent</b>	Trader

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	The proposal directly contravenes applicable objective (a) "the efficient discharge by the licensee of the obligations imposed upon it by this licence". Section C3 Paragraph 5 of the licence provides for the Authority to direct changes to the BSC and permits NGC to make modifications in response to such directions. The condition explicitly states that NGC "shall not have power to modify the BSC in any other circumstance". The proposal could therefore only work if Ofgem committed to direct NGC to make any modification backed by a Panel majority. We understand that Ofgem cannot legally fetter their discretion in this way. To implement the proposals detailed in the modification would therefore appear to require a licence change rather than a code modification.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	No	It is not clear that the current system is flawed and therefore in need of a "solution".

Q	Question	Response	Rationale
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	<p>The notion of constituency classes is inconsistent with the impartiality obligations set out in section B2.8 of the Code. The suggestion that non-physical traders have “less interest in the Code” and hence should be confined to voting in a single constituency class is not only wholly false but is indicative of a “representative” rather than impartial approach to Panel membership. It is no less anomalous to confine a trading party to one constituency than it is to allow a vertically integrated participant who may have a net generation or net supply position to vote in two separate constituencies.</p> <p>The need for constituencies is also not clear since the current voting procedures already allow market participants to form “informal” constituencies in voting for individual candidates.</p>
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	No	If a constituency approach is adopted, it makes sense to review the criteria for establishing those constituencies. However, this begs the question of who would perform that review. Neither the Panel (which reflects the existing contingencies) nor Ofgem seem to be the appropriate body to conduct this.
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	No response	See answers above relating to the problems with constituency voting.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	Yes	The benefits of continuity are likely to be overstated and, if significant, can be captured by voting for existing Panel members to continue on an annual basis.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is “substantial majority” agreement? Please give rationale.	No	See answers to questions 1 and 2 above. It is not clear why this would lead to better decisions or reduced administration to the current system. A substantial majority of constituency-based Panel members is also no guarantee of making the correct decisions. In particular, decisions taken by a majority of incumbent representatives are probably less likely to take decisions likely to foster greater competition further to the BSC objective to promote effective competition in the generation and supply of electricity.

Q	Question	Response	Rationale
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	No	The Panel does not legally have “wider statutory objectives” over and above those objectives specified in NGC’s licence. While a licence change could remedy this, the case for extending the Panel’s scope to address consequences beyond the scope of the BSC appears weak.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	See answers to questions 7 and 8. We do not believe that the Panel should make any determinations, conditional or otherwise.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	We believe that the Authority should retain the power to approve all modifications to the Code. However, if this modification proceeds, there should be areas of the Code that cannot be changed by the Panel without Authority approval.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	Yes	We believe that the Authority should retain the power to approve all modifications to the Code. However, if this modification proceeds, any Panel modification decision should be subject to Appeal.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	No	The grounds for appeal should also cover the possibility of the Panel’s decisions being inconsistent with the applicable BSC objectives. That is, participants should have the right to appeal if they can demonstrate material flaws in the Panel’s reasoning.
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	Yes	10 working days should be sufficient to lodge an appeal.
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale.	No	

Q	Question	Response	Rationale
15.	Are there any further comments on P129 that you wish to make?	No	

### P129\_ASS\_009 – Aquila Networks

<b>Respondent:</b>	<i>Name R Gardener</i>
<b>No. of BSC Parties Represented</b>	
<b>BSC Parties Represented</b>	<i>Please list all BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>Role of Respondent</b>	<i>( Party Agent )</i>

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	P129 is unlikely to have any impact on any of the stated objectives.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	No	It is not clear what issue, or issues require resolution through such a proposal.
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	I do not believe that the constituents of the Panel accurately reflect the industry.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes	OFGEM , they must have ultimate responsibility for ensuring that the constituents of the industry are properly represented and without bias.
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	Yes	They are a specific and unrepresented group where their own specific views might be swamped by some other classification.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	I do not believe it will have any impact on the performance of the stated objectives.

Q	Question	Response	Rationale
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	The panel should only make recommendations, as they are not necessarily in a position to consider the holistic view.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	Yes / No	Doesn't seem to matter which way round you answer this question.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	I do not believe the Panel should have such authority.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	Responsibility must lie with the Authority
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	No	Appeals shouldn't be necessary at this stage of the process.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	N/A	
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	Yes	Not sure if this is ten days, or working days, this isn't an unreasonable time frame.

Q	Question	Response	Rationale
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale.	Yes	Definition for the constituents of the panel should be reconsidered in view of non-party involvement.
15.	Are there any further comments on P129 that you wish to make?	No	

#### P129\_ASS\_010 – Alcan Smelting and Power

<b>Respondent:</b>	Jonathan Scott
<b>No. of BSC Parties Represented</b>	0
<b>BSC Parties Represented</b>	
<b>No. of Non BSC Parties Represented</b>	1
<b>Non BSC Parties represented</b>	Alcan Smelting and Power UK
<b>Role of Respondent</b>	Other – Licence Exempt Generator

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	<p>Alcan does not believe that the Modification Proposal better facilitates the achievement of Applicable BSC objectives (c) and (d).</p> <p>The Revised Election Procedures would lead to an increase in market power by larger players and reduce the representation of smaller organisations and reduce the number of independent Panel members. Whilst the Modification does provide Constituencies for 'small' generators and suppliers the qualification criteria would encompass most independent generators and suppliers. This would reduce the representation of non-BSC Parties, licence exempt generators and suppliers, and hence not facilitate effective competition, Applicable BSC Objective (c).</p> <p>Whilst the Modification would reduce time spent in the decision making process through the revised Panel Determination Procedures, Alcan does not agree that the proposal better facilitates Applicable BSC Objective (d). The proposed system for annual elections would unnecessarily increase the 'churn' of Panel members, and Alcan does not agree with the proposer that the Revised Election Procedures</p>

Q	Question	Response	Rationale
			would not alter the requirement of impartiality on Panel Members.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	No	
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	Alcan does not support Modification Proposal P129
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	No	Alcan does not support Modification Proposal P129
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	No	Alcan does not support Modification Proposal P129
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	Alcan does not agree that a move to annual elections would better facilitate Applicable Objectives and indeed would have a detrimental effect on Applicable Objective (d), efficiency of implementation and administration of balancing and settlement arrangements.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	This would reduce the time spent in decision making and hence better facilitate Applicable Objective (d), however as stated above Alcan does not agree with the proposed changes to Panel Election Procedures and therefore does not support giving the Panel right of determination as outlined in the Modification Proposal.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	No	

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	No	
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	No	
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	N/A	
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale.	No	
15.	Are there any further comments on P129 that you wish to make?	Yes	Alcan would generally support a solution that increased the power of the Panel relative to that of the Authority, although does not support Modification P129 for the reasons outlined above.

**P129\_ASS\_011 – Innogy**

<b>Respondent:</b>	<i>Terry Ballard</i>
<b>No. of BSC Parties Represented</b>	9
<b>BSC Parties Represented</b>	Innogy plc, Innogy Cogen Limited, Innogy Cogen Trading Limited, Npower Limited, Npower Direct Limited, Npower Northern Limited, Npower Northern

	Supply Limited, Npower Yorkshire Limited, Npower Yorkshire Supply Limited
<b>No. of Non BSC Parties Represented</b>	<i>None</i>
<b>Non BSC Parties represented</b>	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>Role of Respondent</b>	<i>(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state)</i>

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	Yes	If implemented, it could result in reduced bureaucracy within the modification process. This would lead to greater efficiency.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	No	
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	Yes	The suggested classes seem to allow the Parties to the Code to be adequately represented.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	Yes	It would seem that review of the criteria can only be carried out in one of two ways; either by submission of a new modification proposal or the Authority. The BSC Panel who generally review criteria and parameters would seem to have a vested interest and therefore would be excluded in this case.
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	No	Interconnector Users would seem to naturally fall within the 'Trading' constituency.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	Annual elections would be time consuming. The potential annual changing of BSC Panel members could compromise the effectiveness of the Panel.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	Yes	In practice it can be anticipated that the modifications in these instances will be of minor impact. Those of a more contentious nature or where there are impacts on other codes are unlikely to achieve the 'substantial majority' threshold.

Q	Question	Response	Rationale
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	No	The remit of the Panel is clearly defined. The Authority's statutory obligations are wider.  In the event that an impact on other codes, Panel approval could be conditional.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	Yes	See answer to question 8.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	It is unlikely that these issues will achieve the 'substantial majority' threshold therefore in practice the requirement for Authority approval should be retained.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	Yes	Any Party capable of proposing a modification should have the right to appeal a decision by the Panel. Appeal should be to the Authority.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	N/A	Yes
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	The time limit should be ten days after publication of approved Panel minutes.
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale.	No	
15.	Are there any further comments on P129 that you wish to make?	No	

## P129\_ASS\_012 – NGT

<b>Respondent:</b>	Name Clare Talbot
<b>No. of BSC Parties Represented</b>	One
<b>BSC Parties Represented</b>	Please list all BSC Parties responding on behalf of (including the respondent company if relevant). National Grid
<b>No. of Non BSC Parties Represented</b>	None
<b>Non BSC Parties represented</b>	Please list all non BSC Parties responding on behalf of (including the respondent company if relevant). None
<b>Role of Respondent</b>	(Supplier/Generator/ Trader / Consolidator / Exemptable Generator / BSC Agent / Party Agent / other – please state) BSC Party

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	The proposer has suggested that the proposal meets BSC Applicable Objective d) and provides for a timely more efficient decision-making process. However, within the existing structure in the instance of urgent and house-keeping modifications there is already provision for the governance process to be accelerated. The existing process incorporates the consideration of all other relevant governances under the Authority via its wider statutory duties. With the Panel's remit being focused on the consideration against the Applicable Objectives of the BSC only we believe that this change could result in inconsistencies with other codes and licences. Therefore we believe that the modification will not better meet Applicable BSC Objective d).
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	No	
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	We do not believe that re-defining the current Panel electoral process and constituency classes outlined in the modification will better facilitate the Applicable BSC Objectives. We believe that the Panel acts representatively in respect of industry views and no evidence has been provided to demonstrate to the contrary.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	No	See response to question 3 above.

Q	Question	Response	Rationale
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	No	See response to question 3 above.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	We believe that a move to annual elections will add to the workload and administrative burden upon Elexon and remove some of the continuity benefits currently enjoyed by the industry.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	This aspect of the proposal would result in decisions being made without reference to the Authority. In these circumstances there would be no consideration of any of the wider issues currently covered by the Authority that are outside the scope of the BSC. This could lead to inconsistencies between codes and in extreme circumstances would result in licensed operators being unable to discharge their licence obligations.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	Yes	We do not believe that it would be appropriate for the Panel to make decisions only against the background of the BSC Applicable Objectives. The role of the Authority and its wider remit adds to the clarity and consistency of the decision making process. The opportunity to look at the wider context beyond the BSC to the influence of external issues and other governances is an essential element in the decision-making process and can support the requirement for the co-ordination of the change management process. Removing the requirement to consider a broad spectrum of issues increases the risk of decisions being challenged due to inconsistency/conflicts with other governances and licence obligations.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	Whilst the option to make conditional decisions endeavours to acknowledge the impact of external influences outside of the remit of the BSC, we feel that this option creates an environment of uncertainty and an incomplete decision-making process and is wholly unsatisfactory. Currently the Panel make recommendations against the BSC Applicable Objectives with the Authority having a wider remit and hence decisions are reached without the requirement for conditionality. If a modification is reliant on changes to industry Codes we believe that making a decision even conditionally seems inefficient and builds in an additional unnecessary step to the process.

Q	Question	Response	Rationale
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	We believe that all parts of the Code should be subject to Authority approval for any changes. We feel it would be difficult if not impossible to agree a list of inclusive sections of the Code to be restricted in any way.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	No	We do not agree with the proposal to allow the Panel to make implementation decisions. Therefore we do not believe that an appeals process is an appropriate method of addressing the likely inconsistencies between industry codes and licence conflicts that would arise from decisions being made against the background of narrow objectives. However, we note that in the wider context the subject of an appeals mechanism is the focus of the ongoing DTI Consultation on Increasing Transparency in the Code Modification process.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	No	See response to question 11 above.
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	See response to question 11 above.
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale.	Yes	Whilst we would not suggest that the existing non-voting members of the Panel are provided with a vote, we would prefer an alternate route to ensure that the assessment of the non-voting members is included as a valid part of the decision-making process. As indicated above if a proposal is identified to conflict with licence obligations or require significant alternate Code changes we would suggest that the Distribution Network Operator or Transmission Company be provided with a route to require the modification in question to be referred to the Authority for decision. As mentioned above without this route the affected parties would have no option but to appeal a decision that would potentially lead to a licence breach.

Q	Question	Response	Rationale
15.	Are there any further comments on P129 that you wish to make?	No	

### P129\_ASS\_013 – British Gas Trading

<b>Respondent:</b>	Mark Manley
<b>No. of BSC Parties Represented</b>	
<b>BSC Parties Represented</b>	British Gas Trading
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	
<b>Role of Respondent</b>	BSC Party

Q	Question	Response	Rationale
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	<p>BGT do not believe the Proposed Modification will better facilitate the Applicable BSC Objectives. BGT do not concur with the assumption that this proposal will better promote efficiency in the implementation and administration of the balancing and settlement arrangements.</p> <p>Whilst BGT would like to see a more representative BSC Panel and recognise the frustrations surrounding the timescales of the decision making process, BGT do not believe this proposal will address the issue. The more contentious proposals will still be sent to the Authority for decision and time delays will still exist. By nature these proposals will tend to be the 'big ticket' issues that BSC Parties want decisions on quickly to remove uncertainty from the market place.</p> <p>The modifications that will be approved or rejected by the Panel under this proposal will tend to relate to the less contentious and will be simpler modifications i.e. housekeeping modifications. The Authority already provides decisions in respect of these types of modification proposals in a relatively timely manner. On this basis it is difficult to foresee how this proposal will better facilitate the Applicable BSC Objectives.</p>
2.	Do you believe there are any alternative solutions that the Modification Group has not	Yes	P129 is attempting to promote accountability and transparency in the modification decision making process. This could be achieved by

Q	Question	Response	Rationale
	<p>identified and that should be considered? Please give rationale.</p>		<p>developing a more representative Panel but by maintaining the current level of power vested in the Panel. The Panel would continue to make recommendations to the Authority but if the Authority was 'minded to' make a different decision from that of the Panel they would need to provide a more detailed rationale for their decision within the decision letter.</p>
3.	<p>Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.</p>	Yes/No	<p>For Panel meetings to be manageable it would appear sensible to align the number of constituency classes with the current market model of industry appointees to the BSC Panel. However because of the nature of the proposal, which proposes amending the power of the Panel from making recommendations to taking decisions the question of how representative the Panel is of the whole industry a key issue.</p> <p>It is difficult to foresee the BSC Panel ever being truly representative of the BSC community because of the number of BSC signatories. Also the 5 constituencies proposed do not provide for a Renewables constituency. Whilst they can be shoe horned into a constituency their issues will not necessarily align with those of other BSC Parties within their constituency.</p> <p>From an efficiency perspective of managing the meetings BGT agrees that the balance of non-voting members to voting members is appropriate. Also in view of the proposal to invest decision making powers in the BSC Panel it will be essential to have representatives of the Transmission System Operator, the Distribution System Operators and the Authority.</p>
4.	<p>Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.</p>	Yes	<p>The number of BSC Parties and their ownership is significantly different now when comparing the market against the situation at Go-Live. On the basis of there being further merger and acquisition activity, plus parties withdrawing from the BSC and new parties acceding, the criteria needs to be open to review.</p> <p>The review should be undertaken by ELEXON in consultation with the industry with the decision making power vested in the Authority. It would appear perverse if the Panel had the ability to define the constituencies, as there may be some self-interest in the constituencies being</p>

Q	Question	Response	Rationale
			defined in a specific way.
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	No	<p>As referred to in question 3 the issue of practicality against representation needs to be considered.</p> <p>The Interconnector could be viewed as simply demand or generation dependent upon which the interconnector is flowing. Also the way the constituencies have been drawn up they will not be representative because of the numerous segments within the constituencies. For example in the small supplier constituency there will be I &amp; C suppliers and domestic suppliers. These 2 different types of suppliers are unlikely to have similar drivers. Which raises the question of how representative the constituencies will be.</p>
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	Yes	<p>BGT believe the election process should be held once a year because of the significant changes that have been occurring in the market since Go-Live. The industry has undergone significant changes and BGT would argue that the industry should be able to change the Panel members on an annual basis to be more representative of the market place.</p> <p>The increased frequency of the election process does not necessarily mean that the industry has to elect different Panel Members.</p>
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	<p>BGT do not believe the power to make decisions on Modification Proposals should be vested in the BSC Panel.</p> <p>The BSC Panel makes its recommendation in view of the Applicable BSC Objectives whilst the Authority have a number of other factors which they must consider when reaching a decision. When making decisions BGT feel it would be inappropriate if the wider statutory considerations were not part of the formal decision making process. However BGT are unsure of the validity of giving such power to a non-governmental body.</p> <p>The BSC Panel currently only has the vires to consider BSC Modifications and their effect on the BSC. The electricity industry has cross governance arrangements with the BSC, CUSC &amp; Grid Code interlinking. BGT do not feel it is appropriate that the BSC Panel would be able to</p>

Q	Question	Response	Rationale
			<p>make decisions on proposed BSC Modifications. Whilst in the CUSC and Grid Code arenas all proposed changes would still be considered by the Authority.</p> <p>BGT also have concerns that if a substantial majority process is adopted it will mean numbers rather than the validity of arguments could be the primary factor in making decisions. BGT believe that the validity of one of the Panel Members arguments can be ignored because the other 8-voting members either support or dislike a proposal. The basis for decision-making needs to be strength of argument not weight of numbers.</p> <p>BGT also have underlying concerns about how representative the BSC Panel could ever become. To ensure true representation all BSC Parties would need to be represented on the BSC Panel. This assumption is based upon BSC Parties having different aims and objectives to other BSC Parties. The proposed constituencies have very large bandwidths and it is difficult to foresee all BSC Parties within a constituency having the same issues on the radar.</p> <p>BGT note that the Modification Proposal does not propose to change Panel Members obligations in respect of impartiality. However BGT believe if decision making powers were delegated to the BSC Panel then the question of impartiality would become very pertinent. The issue of impartiality is already a difficult issue with the Panel only making recommendations, if the power of the Panel was to increase as proposed by P129 the issue would become significantly more important. BGT believe decision-making in respect of Modification Proposals should remain with the Authority because of their unique independent position.</p>
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives?	Yes	<p>BGT agree that decision-making criteria should not be limited to the Applicable BSC Objective. BGT also believe it would be equally inappropriate for the BSC Panel to be able to make decisions based on Ofgem's wider statutory obligations.</p> <p>Furthermore BGT does not believe that the BSC Panel is the correct body to be considering change that may impact upon licence conditions</p>

Q	Question	Response	Rationale
	Please give rationale.		of System Operator and Distribution Businesses.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	<p>Introducing conditionality will add to the uncertainty already faced by market participants in the market place. Conditional determinations may have a detrimental effect on the efficiency of delivering solutions to approved modifications. Work on approved modifications will need to commence to meet agreed deadlines proposed as part of the decision making process. If a conditional clause is included it may result in development work commencing and costs being incurred that need to be shelved because changes are not approved within the other governance arenas of CUSC &amp; Grid Code.</p> <p>This highlights one of the many difficulties that would result if P129 were approved. It also highlights the potential inefficiencies of the BSC Panel making decisions relating to the BSC and the Authority making decisions on CUSC &amp; Grid Code changes. If one body is responsible for all decisions then those decisions will align across the three industry codes.</p>
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	<p>Whilst BGT do not support this Modification Proposal if P129 was approved then BGT believe it is essential that certain elements within the BSC can only be amended with the approval of the Authority.</p> <p>BSC Panel should not be in a position where they can be both judge and jury.</p>
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	Yes	<p>If the ability to make decisions were delegated to the BSC Panel BGT would expect there to be an appeals mechanism implemented. The appeals process should mirror the process provided for by section P6.7 of the BSC. i.e. any Party should be able to refer a determination to the Authority.</p> <p>BGT does not support the implementation of an Appeals process within the current modification framework. However BGT feels extra assurance would be needed for BSC Parties if decision-making power were delegated from the Authority to the BSC Panel. In view of this additional assurance it raises questions of what value if any this proposal provides. As an appeals mechanism provides the potential for all decisions to be appealed to the Authority.</p>

Q	Question	Response	Rationale
			This is no different from the current model but merely lengthens the process in respect of decision making and creates uncertainty.
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	No	<p>BGT believe that the grounds for appeal should mirror those utilised by the Judicial Review process. In addition any appeals process should consider the bullet points highlighted in the consultation document with an additional reference to due process not being complied with.</p> <p>BGT note with interest the bullet points referenced in the consultation document and particularly those relating to breach of licence conditions. This outlines one of the fundamental flaws in the process whereby a BSC Panel can approve a modification without having the ability to amend licence conditions of the affected licensee. The proposed process thereby introduces a two step process into decision making. The Panel makes a decision and the Authority then has to consider if the licence condition changes should be made. If they do not believe the necessary changes should be made the Transmission Operator or the Distribution System Operators will be in breach of their licence condition and risk losing their licence.</p>
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	Whilst 10 days initially appears sensible BGT would expect a Party to appeal based on the minutes from the meeting and not the headline report. The minutes from the meeting are not approved until the following meeting and this is where the rationale behind the decision will be contained. In reality does this mean that you can appeal a decision for 10 days following the subsequent Panel meeting when the minutes were approved?
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale.	Yes	BGT would like confirmation of whether a BSC Party can appoint a Panel Member for each of their 2 constituencies. If this is the case then this is a significant issue that needs to be consulted upon with BSC Parties.
15.	Are there any further comments on P129 that you wish to make?	Yes	BGT sympathises with the proposer and recognises the issue of getting decisions on certain proposals from the Authority in a timely manner. However BGT does not believe that delegating power from the Authority to the Panel is the appropriate method of addressing

Q	Question	Response	Rationale
			<p>the issue.</p> <p>BGT believe that the root causes of the delay need to be identified and considered. Are the reports incomplete? Would the Authority like additional information to be provided? Once those have been considered and addressed it would remove the need to vest decision-making power in the BSC Panel.</p>

#### **P129\_ASS\_014 – Scottish and Southern**

**This response is sent on behalf of Scottish and Southern Energy, Southern Electric, Keadby Generation Ltd. and SSE Energy Supply Ltd.**

In relation to the 15 questions listed in the Consultation Paper, contained within your note of 11th July 2003 concerning Modification Proposal P129, we have the following comments to make:-

**Q1 Do you believe Proposed Modification P129 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).**

No. On balance we believe that the current arrangements better meet the Applicable BSC Objectives.

We note the comments in Section 1.1 of the Initial Written Assessment, dated 6<sup>th</sup> June 2003, that "if the Panel were to make determinations instead of recommendations, as proposed by P129, then the constitution of the Panel is of primary concern. In light of this, the Proposer has proposed revisions to the Panel election procedure for Panel Members". We believe that the first 'question' posed by the Proposer is should the Panel make determinations, this then leads onto the second 'question' posed by the Proposer is that if the Panel does make determinations then the composition of the Panel needs to be changed. It is our contention that the answer to the first 'question' (of allowing the Panel to make determinations) is that this should not happen and it therefore follows that the second 'question' does not arise; i.e. if the Panel is not making determinations then there is no need to amend the Panel composition by virtue of the introduction of a constituency class arrangement, as outlined in Modification Proposal P129.

Furthermore, as noted in Section 2.2 of the Consultation Document dated 11th July, "the GSMG concluded that they were undecided as to whether or not the Proposal to allow the Panel decision making powers for Modification Proposals would in practice significantly cut down the time it takes for determinations to be made". In the light of this it is hard to agree that this change will improve on the status quo, and therefore better achieve the Applicable BSC Objectives.

Please note our response to any of the following questions should not be construed to lend support whatsoever to this Modification.

**Q2 Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.**

No.

**Q3 Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.**

Yes. Five appears to be a suitable number for Industry Members on the Panel.

However, in respect of the two 'Supplier' and two 'Generator' constituencies it would seem to us appropriate that the threshold (on whether a party is 'large' or 'small') be set at such a level as to ensure that broadly speaking half of all Suppliers/Generators are classified as 'large' and the other half 'small'. To do otherwise would distort the representative nature of the Panel.

**Q4 Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.**

Yes. For the reasons outlined in our answer to Q3 above, we believe that the thresholds (in respect of the two 'Supplier' and two 'Generator' constituencies) should be set at such a level as to ensure that basically half of all Suppliers are classified as 'large' (and the remainder as 'small') as should the threshold for Generators. BSCCo should be able to achieve this relatively easily (by setting the TWh threshold - between 'large' and 'small' - at such a level as to broadly achieve this 50:50 split), advising Parties of which constituency class they reside. Parties would be able to appeal to the Authority if they felt they were demonstrably in the wrong constituency class.

**Q5 Do you believe that Interconnector Users should have their own constituency class? Please give rationale.**

No. Given the limited number of Industry Members on the Panel and the fact that Interconnectors do not represent anything like 20% (i.e. one of the five Industry Panel 'seats') of the market it would be wholly inappropriate for Interconnector Users to have their own constituency class. Furthermore, as all Interconnector Users are either Supplier ('consumption'), Generator ('production'), or Trader, we believe that all Interconnector Users should fit into one of the other constituency classes and would therefore be represented on the Panel. To allow Interconnector Users per se to have their own constituency class would distort the composition of the Panel.

**Q6 Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.**

No. There is a significant risk of discontinuity associated with annual elections as some Panel members may be leaving and new ones joining leading to a loss of experience in the 'process' and Modifications (together with other matters) being considered by the Panel. We believe there is merit in having a continuity of tenure for longer than 12 months and that 24 months represents a suitable period for elections to the Panel.

**Q7 Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.**

No. Whilst there maybe some merit if a Panel determination were to be via a unanimously\* vote, rather than "substantial majority", we believe, on reflection, that there may be a fundamental legal issue regarding the Panel (by virtue of a "substantial majority" or "unanimously" vote) making a determination regarding a Modification Proposal and then directing the Transmission Company to make such a change to the BSC. It is our understanding that the power to direct (a change to the BSC) rests with the Authority and that they would not just 'accept'/'rubber stamp' a determination by the Panel, particularly if they had regard to their wider statutory obligations (which the Panel did not - see Q8).

\*Unanimously in this context being all Panel members at a meeting voting the same; i.e. no dissenting votes and no abstentions.

**Q8 Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.**

We believe it is appropriate that the Panel uses broadly the same criteria, for assessing a Modification Proposal, as the Authority. We are deeply concerned that the Authority received no external comments (from market participants, or other stakeholders) about the materiality/impact etc., that one or more of these other criteria (such as environmental issues or consumer protection objectives) has in respect of the Modification Proposal under consideration. Furthermore, we believe that the Authority should conform to the Cabinet Office and Better Regulation Task Force requirements in this respect, indicating, as a minimum the weighting it attributes to each criteria when making a decision.

**Q9 Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.**

Yes. The reality is that changes in one industry document may impact on another. This appears to be a pragmatic approach for addressing multilateral changes across industry documents.

**Q10 Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.**

Yes. For the reasons outlined above.

**Q11 Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what he process be? Please give rationale.**

Yes. Parties should be able to appeal to the Authority. Furthermore, as indicated by the work of the Better Regulation Task Force, there should also be an independent appeals process, available to Parties, for all decisions made by the Authority.

**Q12 Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.**

Yes. The grounds indicated in the consultation document are appropriate.

**Q13 Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.**

No. Given that there are suggested to be only three grounds for appeal, and that one is if new evidence could be presented that the appealing Party felt had not been sufficiently explored during the Modification Procedures then (for non urgent Modification Proposals) a 20 working day timeframe would be more appropriate to allow Parties sufficient time to lodge an appeal. How does this fit with the timescale for external legal processes for appeal?

**Q14 Does P129 raise any issues that you believe have not been identified so far and that should be progressed as pare of the Assessment Procedure? Please give rationale.**

No.

**Q15 Are there any further comments on P129 that you wish to make?**

Nothing further at this time.

Regards

Garth Graham

Scottish and Southern plc

**P129\_ASS\_015 – ConocoPhillips**

<b>Respondent:</b>	<i>Name Rekha Patel</i>
<b>No. of BSC Parties Represented</b>	2
<b>BSC Parties Represented</b>	<i>Immingham CHP and ConocoPhillips UK Limited</i>
<b>No. of Non BSC Parties Represented</b>	
<b>Non BSC Parties represented</b>	<i>Please list all non BSC Parties responding on behalf of (including the respondent company if relevant).</i>
<b>Role of Respondent</b>	<i>Generator and trader.</i>

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
1.	Do you believe Proposed Modification better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	No	P129 represents an attempt to revert to Pool style constituencies and governance, and does not meet any of the applicable objectives. The appeals issue is also being dealt with separately by DTI, and that process should be allowed to run its course.
2.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Please give rationale.	No	
3.	Do you believe that 5 constituency classes are the optimum number and that the balance is correct for non-voting to voting Panel Members? Please give rationale.	No	We do not support the proposal for voting classes.
4.	Do you believe that the criteria for defining constituency class should be open to review? If so, who do you think should be responsible for this process? Please give rationale.	No	As above. We would add that in the dynamic industry environment, any fixed and formal definitions are unlikely to be responsive to industry change. Further when Ofgem last considered this type of issue against the backdrop of development of the BSC, it was not clear how robust constituency definitions could be developed.

<b>Q</b>	<b>Question</b>	<b>Response</b>	<b>Rationale</b>
5.	Do you believe that Interconnector Users should have their own constituency class? Please give rationale.	No	No given the need to accommodate other interests.
6.	Do you believe that annual, rather than biennial, Panel elections would better facilitate the Applicable BSC Objectives? Please give rationale.	No	It is essential that the Panel is allowed to develop some continuity of personnel, and annual elections are not compatible with this. The efficiency of the modifications process is likely to be undermined.
7.	Do you believe that the Panel should make determinations on Modification Proposals where there is "substantial majority" agreement? Please give rationale.	No	We cannot see how decision-making can be made more efficient if decision-making powers are essentially split between the Panel and the Authority. The change would certainly result in an increase in perceptions of regulatory risk within the market. There are other ways that the decision process can be made more efficient without undermining the ownership of decisions.
8.	Do you believe that it would be inappropriate for the Panel to make determinations on Modification Proposals only against the Applicable BSC Objectives, whilst determinations made by the Authority would be made against its wider statutory obligations, as well as the Applicable BSC Objectives? Please give rationale.	No	It is clearly nonsense to have two accountable parties with different objectives.
9.	Do you believe it is appropriate for the Panel to make conditional determinations? Please give rationale.	No	See answer to 7.
10.	Do you believe it is appropriate for certain parts of the Code to only have changes made to their provisions with Authority approval? Please give rationale.	Yes	All decision-making authority should continue to sit with Ofgem.
11.	Do you believe that a process should be put in place to allow Parties to appeal a decision by the Panel on whether a Modification Proposal is approved or not? If so, what should the process be? Please give rationale.	No	As noted above, we believe all decision-making authority should continue to sit with Ofgem.

Q	Question	Response	Rationale
12.	Do you believe that the grounds for appeal suggested in the consultation document are appropriate? Please give rationale.	No	As noted above, we believe all decision making authority should continue to sit with Ofgem.
13.	Do you believe that the time limit by which an appeal against Panel determinations on Modification Proposals must be lodged, should be 10 days after the Panel meeting at which the determination were made? Please give rationale.	No	As noted above, we believe all decision-making authority should continue to sit with Ofgem.
14.	Does P129 raise any issues that you believe have not been identified so far and that should be progressed as part of the Assessment Procedure? Please give rationale.	Yes	Two comments: 1.The modification is unwieldy and combines several separate issues, which should have been considered in isolation. The proposal would have benefited from having been discussed within the appropriate Standing Modification Group first. 2.The issue of the appropriateness of separate votes for production and consumption accounts should be considered. It is possible for the availability of a dual vote to be abused by party voting.
15.	Are there any further comments on P129 that you wish to make?	No	

### ANNEX 3 TRANSMISSION COMPANY ANALYSIS

Q	Question	Response
1	Please outline any impact of the Proposed Modification (and, if applicable, any Alternative Modification) on the ability of the Transmission Company to discharge its obligations efficiently under the Transmission Licence and on its ability to operate an efficient, economical and co-ordinated transmission system.	In order to deliver the proposed modification, changes would have to be made to the National Grid Transmission Licence (as outlined below). Currently the Authority reaches decisions on the basis of its wider obligations in addition to the BSC applicable objectives encompassing relevant licences and other industry codes. The Panel does not have the ability to consider the wider context in its decision making and therefore we would have concerns about the impact on our Licence. A decision reached by the Panel without reference to these wider objectives creates a risk of a potential conflict with our licence obligations.
2	Please outline the views and rationale of the Transmission Company as to whether the Proposed Modification (and, if applicable, any Alternative Modification) would better facilitate achievement of the Applicable BSC Objectives.	The proposer has suggested that the proposal meets applicable objective d) and provides for a timely more efficient decision-making process. However, within the existing structure in the instance of urgent and house-keeping modifications there is already provision for the governance process to be accelerated. The

		existing process incorporates the consideration of all other relevant governances under the Authority via its wider statutory duties. With the Panel's remit being focused on the consideration against the applicable objectives of the BSC only we believe that this change could result in inconsistencies with other codes and licences.
3	Please outline the impact of the Proposed Modification (and, if applicable, any Alternative Modification) on the computer systems and processes of the Transmission Company, including details of any changes to such systems and processes that would be required as a result of the implementation of the Proposed Modification (and, if applicable, any Alternative Modification)	None identified.
4	Please provide an estimate of the development, capital and operating costs (broken down in reasonable detail) which the Transmission Company anticipates that it would incur in, and as a result of, implementing the Proposed Modification (and, if applicable, any Alternative Modification).	None identified.
5	Please provide details of any consequential changes to Core Industry Documents that would be required as a result of the implementation of the Proposed Modification (and, if applicable, any Alternative Modification).	None identified.
6	Any other comments on the Proposed Modification (and Alternative Modification if applicable).	None.

### Transmission Licence Implications

Additionally we were asked by Elexon to outline as part of our response any impact of P129 upon the Transmission Licence and any implications of such impact. These comments are provided without prejudice to the fact that we do believe that this modification meets the Applicable BSC objectives. Our comments are as follows:

Paragraph 4 of Condition C3 (Balancing and Settlement Code) of the National Grid Transmission Licence specifies the modification procedures that are to be reflected in the BSC. This paragraph would need to be amended to provide for modifications to be referred to the Panel for decision. Where no majority decision had been reached by the Panel, the route for modification reports to be referred to the Authority for decision would need to be maintained.

Under paragraph 5 of Condition C3 the Authority currently directs the licensee (Transmission Company) to make a modification to the Code. The licensee responds by modifying the BSC in accordance with the direction of the Authority. This paragraph would also need to be amended in order to grant the Panel in addition to the Authority the ability to direct the licensee to give effect to a modification.

A definition of "BSC Panel" would also need to be referred to in the definitions under Condition C1 (Interpretation of Section C).

All/Any changes to the Transmission Licence would require a statutory consultation under section 11 of the Electricity Act 1989 and would be subject to the consent of National Grid as licensee.

## ANNEX 4 BSC AGENT IMPACT ASSESSMENTS

No response received.

## ANNEX 5 PARTY IMPACT ASSESSMENTS

Organisation	Comments
<b>Ros Parsons</b> Npower Ltd, Npower Direct Ltd, Npower Yorkshire Ltd, Npower Yorkshire Supply Ltd	No impact
<b>Alistair Trower</b> Barking Power Ltd	<p>What impact, if any, will the Proposed Modification have on your organisation?</p> <p><b>Low operational impact, however this modification favours expedience for future modification proposals, which would bring forward the implementation of modifications that best meet the BSC objectives.</b></p> <p>What implementation timescale, if applicable, would your organisation require to implement the changes associated with the Proposed Modification?</p> <p><b>As soon as practicable.</b></p> <p>Any other comments:</p> <p><b>The initial view that the voting process proposed for the 5 constituency classes seems satisfactory, however it may be beneficial for an example to be issued to all parties with the proposed classification method and equivalent votes for all parties to ensure that the methodology does not inadvertently weight some classes.</b></p> <p><b>The constituency class threshold once set using the previous years data should not be reviewed for simplicity and cost reasons.</b></p> <p><b>The view as to whether Interconnector Users should have their own class is that all BSC party must have representation, however a methodology of what constitutes a class and to which categories other minority BSC parties belong is possible the key for a resolution for this issue.</b></p> <p><b>It is preferred that Panel elections should remain biennially to facilitate continuity, reduced administration and costs.</b></p> <p><b>The views on the principle that the Panel could make determinations on Modification Proposals where there is "substantial majority" agreement are fundamental as the BSC Panel represent all BSC Parties to facilitate the achievement of the applicable BSC objectives.</b></p> <p><b>A timely, concise appeal process for decisions by the Panel on whether a Modification Proposal is approved or not would be beneficial to ensure the Modification Proposal was meeting the BSC objectives for all parties.</b></p>
<b>Dave Morton</b> EDF Energy – Supply	No impact
<b>Rachael Gardener</b> Aquila Networks (late response)	<p>What impact, if any, will the Proposed Modification have on your organisation?</p> <p><b>Indeterminate, because of the nature of proposed change is difficult to assess future potential implications.</b></p> <p>What implementation timescale, if applicable, would your organisation require to implement the changes associated with the Proposed Modification?</p> <p><b>On face value, probably none.</b></p> <p>If this Modification Proposal is not applicable to your organisation, please indicate why (e.g. proposed changes do not apply to Party Agents).</p>

	<b>Most likely not applicable to ourselves as the provider of Party Agency services, but see comments above.</b>
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## **ANNEX 6 TERMS OF REFERENCE**

The GSMG should:

- Consider whether 5 is the optimum number of constituencies to achieve the desired balance within the Panel.
- Assess the criteria for each constituency class and determine whether any adjustments to the criteria should be made.
- Consider whether the provision for the Panel Chairman to appoint an additional industry Panel Member (potentially with the purpose of reflecting the interests of non-signatories) should be retained.
- Consider whether there should be any changes to the current non-voting appointments on the Panel.
- Consider what effect the proposed revised Panel election rules will have on Parties' ability to influence the outcome.
- Assess the appropriateness of annual (as opposed to biennial) elections.
- Understand whether any changes to the constitution of the Panel would impact the manner in which Panel Committees are constituted.
- Assess whether the proposed governance model will impact the Panel's ability to discharge its functions in as timely, efficient and non-discriminatory a manner as possible.
- Consider whether the protection afforded to the interests of Distribution System Operators and the Transmission Company would be diminished, given that the Panel is not obliged to take their Licence (and other statutory) obligations into account when taking decisions (whereas the Authority must currently do so).
- Undertake an assessment of how many instances the Authority disagreed with the Panel recommendations for Modification Proposals.
- Understand the risk of inconsistent treatment of related issues across industry documents if decisions on modifications are being made by different bodies (e.g. Panel for BSC, Authority for CUSC).
- Consider the appropriate appeals mechanism for Panel decisions on modifications.
- Consider whether Panel Members will require increased indemnification if the Panel is to make determinations on modifications.
- Produce an interim report for the August Panel meeting (or earlier if appropriate), on the basis of which the Panel may consider seeking provisional thinking from the Authority.

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**END OF DOCUMENT**