

APPENDIX 2: MODIFICATION PROCESS ISSUES

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| <p>1: AMENDMENT OF LEGAL TEXT IN PENDING MODIFICATIONS FOR WHICH THE MODIFICATION REPORT HAS BEEN SUBMITTED TO THE AUTHORITY</p> |
| <p>Summary of Issue:</p> <p>Text to modify the Code is drafted against the legal baseline version of the Code in existence at the time the Draft Modification Report is prepared. After the Draft Modification Report is agreed by the Panel no further changes can be made to the legal text contained within the report.</p> <p>It is possible that prior to the Authority making a decision on the Pending Modification, changes may be directed by the Authority to the Code that:</p> <ul style="list-style-type: none"> (1) impact the proposed legal drafting but do not impact the assessment of the Modification Proposal against the applicable BSC objectives (e.g. incorrect cross referencing); or (2) change the baseline in such a way as to question the validity of the assessment of the Modification Proposal against the Applicable BSC Objectives. <p>In addition to (1) above, an issue (3) may be found with the legal text of the Pending Modification which needs to be rectified to allow the Modification to work fully, but does not affect the intent of the Pending Modification.</p> <p>The Code provides no mechanism by which the above situations can be addressed, other than by a further corrective Modification Proposal or the Authority rejecting the Modification Proposal.</p> |
| <p>Code Reference (where applicable):</p> |
| <p>ELEXON View:</p> <p>There have been 4 occurrences since Go Live (P34, P36, P71 and P61). Whilst expeditious decision making by the Authority will diminish the likelihood of such an event, the risk exists.</p> <p>Under scenarios (1) and (3) ELEXON could be able to submit revised legal drafting with the prior approval of the Authority and the Panel. A Modification to the Code would be required to introduce this.</p> <p>Alternatively to address scenario (3) ELEXON could be able to recommend to the Panel that a Modification Proposal be raised to address a problem with the legal text which does affect the intent of the Pending Modification. A Modification to the Code would be required to introduce this.</p> <p>Under scenario (2) ELEXON could immediately inform the Authority and the Panel of the conflict. The Authority could then request the Panel that the views against the Applicable BSC Objectives be reconsidered (e.g. reintroduce the Report into the Assessment Procedure). A Modification to the Code would be required to introduce this.</p> <p>It is proposed that any process supporting the changes to legal text under scenario (2) would be conducted in a transparent manner with the notification of such changes to the appropriate bodies, BSC Parties, Modification Groups, Panel, etc (as described in Section F1.1.2). This issue was identified under Rejected Modification P94. The Authority determination suggests that a similar proposal but with more tightly defined criteria under which the Panel could apply to the Authority to amend legal text, might be looked on more favourably. Therefore, a set of well defined criteria would need to be constructed as part of any proposal.</p> |

2: AMENDMENT OF LEGAL TEXT IN APPROVED MODIFICATIONS**Summary of Issue:**

In the implementation of an Approved Modification, ELEXON may discover a problem with the legal text that needs rectifying in order to allow the intent of that Approved Modification to be fully delivered.

The Code (Section F2.1.1 (d)) allows for BSCCo to recommend that the Panel raise a Modification Proposal to rectify a “manifest error” or “minor inconsistency”. If the identified problem falls outside the scope of a “manifest error” (that is ‘self evident’ such as formulaic error, resultant from a change in baseline, or error in a Code expression), the Code provides no mechanism by which this situation can be addressed, other than by a further corrective Modification Proposal to be raised by a BSC Party or energywatch.

Code Reference (where applicable):

Section F 2.1.1

ELEXON View:

There have been 3 occurrences identified of an Approved Modification not fully delivering the intent of the Modification Proposal. One related to P81 (P130 was raised by a BSC Party), one to with P123 (P166 was raised by a BSC Party) and one was associated with P37 (P160 and P163 were raised by BSC Parties). Whilst due care and attention is taken by ELEXON and the Modification Group in the development of legal text to address each Modification Proposal, there will inevitably be further instances of this.

Whilst corrective Modifications might be in the general interest and better facilitate achievement of the Applicable BSC Objectives, they may not be in the specific interest of any one Party’s specific interest and so may not be raised. Furthermore, ELEXON, responsible for implementing the legal text, will be in the best position to detect any problems, therefore would be more efficient and transparent for it to raise the modification directly, rather than encouraging others to do so.

It is proposed that ELEXON could be able to recommend to the Panel that a Modification Proposal be raised to address such errors. A well defined set of criteria would be required to identify the types of error allowed to be resolved using this process. **A Modification to the Code would be required to introduce this.**

3: AMENDMENT OF LEGAL TEXT DUE TO ISSUES IDENTIFIED THROUGH NORMAL OPERATION

Summary of Issue:

In the normal operation of the Code, ELEXON may identify potential changes to the Code. These changes may be required to resolve areas of ambiguity, omissions or errors that do not qualify as minor inconsistencies and thereby do not qualify as a 'Housekeeping Modification'.

Currently, ELEXON identifies operational issues to the ISG and SVG. If these issues do not impact the Code, they can be addressed by raising an appropriate Change Proposal and can be progressed with the approval of the Panel Committee (in accordance with BSCP40: Change Management). If these issues impact the Code then currently, only a BSC Party or energywatch can raise a Modification Proposal to address them. However, if an issue is identified as a consequence of a Trading Dispute, the Trading Disputes Committee (TDC) can recommend to the Panel that a Modification Proposal be raised.

Operational issues may result from:

- day to day management of the operation of the trading arrangements and interaction with BSC Parties or Agents; or
- progression of issues, Change Proposals and Modifications through the normal change management procedures.

Code Reference (where applicable):

Section F 2.1.1

ELEXON View:

There have been a few occurrences since Go Live (P6 process, Credit Cover and Black Start, Credit Cover and new GSP Groups). ELEXON can bring these Code level issues to the attention of the Panel Committees, however the resolution of these issues is reliant on a BSC Party (or energywatch) to raise a Modification Proposal. As further operational issues will be identified, the risk still exists. Therefore, it proposed to allow the ISG and SVG to raise Modification Proposals (as is currently the case with the TDC). Furthermore, the Terms of Reference would be amended to state that unanimous approval of the Committee is required.

Panel Committees could be able to recommend to the Panel that a Modification Proposal be raised to address operational issues with Code. **A Modification to the Code would be required to introduce this.**

4: CONSTRUCTION OF IMPLEMENTATION DATES**Summary of Issue:**

Current practice for the construction of the Implementation Dates contained within Modification Reports is to use one of two forms in the recommendation:

A. For changes agreed to be delivered through a Release

AGREE an Implementation Date (in the event that the Authority determines that the [*Proposed / Alternative*] Modification P[*xxx*] should be made of [*impl date 1*] should an Authority determination be received by or on [*dec date 1*], or [*impl date 2*] should an Authority determination be received after that [*dec date 1*] but before or on [*dec date 2*].

B. For changes agreed to be delivered outside of a Release

AGREE an Implementation Date of [*dd*] Working Days after an Authority decision, in the event that the Authority determines that the [*Proposed / Alternative*] Modification should be made.

Adoption of this formulaic approach is intended to establish a consistent approach that assists respondents, Modification Groups, the Panel, and the Authority.

In terms of changes delivered through a Release (form A above), for a Modification to be directed, the Authority must make a determination by the last date [*dec date 2*]. In cases in which a decision has not been reached by this date, the Authority has rejected the Proposal on the grounds that “the timetable proposed for its implementation has been superseded”. This does not represent good process as it is likely to waste time and effort and possibly precipitate the Modification Proposal (or near variant) being resubmitted to the process.

Code Reference:

Section 2.6.13, 2.7.5, 2.7.7, and Annex F-1

ELEXON view:

There have been 4 occurrences (P4, P80, P87 and P82) since go live and the risk that this will occur with future Modifications.

In order to address this issue, three approaches have been identified:

1. Adding further conditional dates one or more times

Repeating the phrase “or [*impl date i*] should an Authority determination be received after [*dec date d*] but before or on [*dec date d+1*]” ;

This would precipitate the need to include several such additional clauses if all credible possibilities were to be eliminated and would result in a very cumbersome construction. This approach does however give absolute clarity on specific Implementation Dates. However one may reach a point where all known Implementation Dates have been exhausted.

OR

2. Adding a generic back-stop phrase reflecting the use of Releases

“Should an Authority determination be received on or after [*dec date 2*] that the [*Proposed / Alternative*] Modification should be made, it should have an Implementation Date of the release date for relevant BSC Systems release which first occurs not less than [*Y*] months after the date of the Authority’s determination”

This approach highlights the connection to a Release, but for the dates to be totally transparent, future Release dates would need to be published well into the future. This could be accomplished by listing the dates in the recommendation section of the report (or the use of an Annex to all reports).

Furthermore situations could exist where it was not practical or prudent to mandate that a particular area of the BSC systems and processes is worked on within a particular Release (e.g. because the overall volume of change and hence risk is too great). This situation would hopefully occur only infrequently but could be addressed were it accepted that where approved ELEXON and the Panel could subsequently exercise the right to seek a deferral / advancement of the Implementation Date for an Approved Modification to better align to a subsequent or earlier Release.

OR

3. Adding a generic back- stop phrase reflecting the typical duration required to deliver the changes
Adding an additional phrase "or [xx] Working Days after an Authority determination, should it be received after that [*dec date 2*]"

This approach makes the link to a Release opaque. In practice it is likely that, if exercised, a date would be set and thereafter ELEXON would generally attempt to align it to a Release. This would then need to be notified to the Panel. The Panel would then apply to the Authority for approval of the change to the Implementation Date.

In practical terms the duration [xx] would also probably have to be a minimum number of days such that Trading Parties developing their systems would have some certainty of the timescales they would need to be operating to.

It would be more efficient if Approach 2 be adopted within the Assessment and Draft Modification Reports. No Modification Proposal is required to introduce this.

5: AMEND REQUIREMENT TO PROVIDE IMPLEMENTATION DATE AND NO LEGAL TEXT PROVIDED

Summary of Issue:

When the Panel considers a draft Modification report in the Report Phase, the Panel must determine the Implementation Date of the Modification Proposal.

However, in the circumstance that no legal text has been provided and the Authority has indicated that no legal text is required¹, an Implementation Date has no meaning as there is no Modification to the Code to implement.

The Code provides no mechanism by which the Implementation Date should not be included in the final modification report sent to the Authority.

Code Reference:

Section F2.7.3 and F1.1.3

ELEXON view:

There have been 4 occurrences (P90, P111, P115 and P150) since go live and the risk that this will occur with future Modifications.

There is no serious practical consequence of specifying a meaningless date but it would be marginally more efficient and potentially less confusing if the requirement to provide an Implementation Date² for a Modification Proposal that has no legal text and is being recommended for rejection was removed. If no legal text is provided then it would not be meaningful for the Authority to approve the Modification.

A Modification to the Code would be required to introduce this.

¹ This is normally when the Panel has provisionally recommended that the Proposed Modification or Alternative Modification should not be made.

² The Transmission Licence refers to the preparation of a report which sets out “the timetable for implementation of the Modification, including the date with effect from which such Modification (if made) is to take effect”. Further investigation would be required to identify if there was any impact on this clause within the Transmission Licence.

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| 6: | ALTERNATIVE MODIFICATION BETTER THAN PROPOSED MODIFICATION BUT NOT BETTER THAN CURRENT CODE BASELINE |
| Summary of Issue: | |
| <p>During the Assessment Procedure, the Modification Group shall, where appropriate, develop an Alternative Modification, which:</p> <ul style="list-style-type: none"> as compared with the Proposed Modification, would better facilitate achievement of the Applicable BSC Objective(s). <p>Modification Groups have encountered difficulties in whether to recommend that an Alternative Modification be presented to the Panel in the circumstance when it believes that:</p> <ol style="list-style-type: none"> the Proposed Modification would <u>not</u> better facilitate achievement of the Applicable BSC Objective(s) in comparison with the current Code baseline; and the Alternative Modification would better facilitate achievement of the Applicable BSC Objective(s) as compared with than the Proposed Modification, <u>but</u> the Alternative would <u>not</u> better facilitate achievement of the Applicable BSC Objective(s) in comparison with the <u>current Code baseline</u>. <p>The Code does not recognise the situation where a potential Alternative Modification does better facilitate achievement of the Applicable BSC Objective(s) compared to the Proposed Modification but does <u>not</u>, in comparison with the current Code baseline.</p> | |
| Code Reference: | |
| Section F2.6.2, 2.6.4(b) and 2.6.13(b)(ii) | |
| ELEXON view: | |
| <p>There have been a number of occurrences (incl. P74, P78, P75, P82) since go live and there is the risk that this will occur with future Modifications.</p> <p>It would be clearer if the Code could clarify whether the Modification Group should identify to the Panel that an Alternative Modification exists, when it better facilitates achievement of the Applicable BSC Objective(s) compared with the Proposed Modification, but <u>not</u> in comparison to the current Code baseline. This would better facilitate achievement of BSC Objective (d) "efficiency in the implementation and administration of the balancing and settlement arrangements". A Modification to the Code would be required to introduce this.</p> | |

7: TERMINATION OF MODIFICATION PROCEDURE TO AVOID INEFFICIENCY**Summary of Issue:**

Under Section F, a Proposer can withdraw his/her Modification Proposal at any time prior to the first Panel meeting at which is to be considered (F2.1.12).

Once a Modification Proposal has been presented to the Panel, the Panel has very limited powers to stop a Modification Proposal being progressed through the Modification Procedures. The Panel can refuse to accept the submission of a Modification Proposal only when it has the same effect as a Pending Modification or a Rejected Modification (within 2 months of an Authority decision).

There are circumstances, which have arisen in the past, under which this may be counter to Applicable BSC Objective (d), such as:

1. the 'cited' defect no longer exists in the Code e.g. P150 (Appeals process cost allocation)
2. it is self evident through analysis that the Modification Proposal is not required

Progressing a nugatory Modification Proposal would incur unnecessary effort and costs (e.g. Modification Group, BSC Party, BSC Agent, ELEXON and Panel time/effort). In such circumstances, there is currently no mechanism to avoid incurring these unnecessary costs.

Code Reference (where applicable):

Section F2

ELEXON View:

Introducing a mechanism to terminate the Modification Procedure for redundant Modification Proposals would enhance the efficiency of the governance arrangements.

ELEXON recommends the following mechanism:

1. Where it has become apparent that the defect identified by a Modification Proposal does not exist, a Modification Group, after consultation with the Industry, may recommend to the Panel (at its next meeting) that the Modification Procedure should be terminated in respect of that Modification Proposal.
2. The Panel then has the choice to direct that the Modification Procedure should continue or notify the Authority that it recommends that the Modification Procedure be suspended.
3. If the Authority receives a recommendation from the Panel that a the Modification Procedure should be terminated in respect of a Modification Proposal, the Authority may either (1) direct that the Modification Procedure should continue or (2) determine that Modification Proposal has been terminated (at which point it is removed from the Modification Register and consideration of it is suspended indefinitely with immediate effect).

This approach is similar to the procedure under the CUSC.

A Modification to the Code would be required to introduce this.

8: HOUSEKEEPING MODIFICATIONS**Summary of Issue:**

Under Section F2.1.1 (d) (v), BSCCo can recommend that the Panel raise a Modification to the Code “to rectify manifest errors in or to correct minor inconsistencies (or make other minor consequential changes) to the Code”.

Where BSCCo has identified typographical errors, omissions or incorrect cross-references, it has requested that the Panel raise a Modification Proposal to address these. BSCCo maintains a register of all minor inconsistencies it identifies during normal operation of the Code. Periodically, BSCCo will bring a number of these to the Panel’s attention and request that a Housekeeping Modification be raised to address them. In all cases the Panel has agreed to raise a Modification Proposal and the Authority has determined that they be made.

However, BSCCo believe that this process is inefficient as it requires the following steps:

1. Paper to the Panel requesting that the Panel raise a Housekeeping Modification;
2. Modification Proposal and IWA to next Panel meeting requesting that the Panel agree for it to be sent straight to the Report Phase;
3. BSCCo produces the Draft Modification Report, sends it out for a consultation and collates the responses;
4. the Draft Modification Report is considered at next Panel meeting and Panel agree for it to be sent to the Authority with a recommendation that it be made;
5. Final Modification Report is then sent to Authority; and
6. Authority considers the report and determines that the Proposed Modification be made.

This process normally takes 3-4 months, requires 3 Panel papers, 1 consultation and 2 reports.

Code Reference (where applicable):

Section F2.1.1 (d)

ELEXON View:

There have been five Housekeeping Modifications (P46, P101, P126, P151 and P164) since go live and there will be need for future Housekeeping Modifications.

There are two approaches that could be used to address the inefficiencies in the Housekeeping Modification process. These are:

1. BSCCo maintains a register of all ‘housekeeping’ type changes to the Code. The Panel reviews this register periodically, e.g. every 3 months, and agrees which ones should be implemented with next BSC System Release. Approval by the Authority would be given at the Panel meeting at which these changes are considered;
2. BSCCo maintains a register of all ‘housekeeping’ type changes to the Code. BSCCo presents a paper to the Panel requesting that a Housekeeping Modification Proposal be raised. The Panel at that meeting agree for it to be raised and agree that it be sent direct to Report Phase and brought back to the next meeting. This would save 1 month in the process (and 1 Panel paper). This process is the same as described in the above Issue section but omits step 1;

Both approaches would require the definition of the type of changes that would progressed.

BSCCo recommend that approach 1) be adopted. A Modification to the Code would be required to introduce this.