

## ASSESSMENT CONSULTATION for Modification Proposal P206 'Publication of BSC Panel Election Results'

Prepared by: **P206 Modification Group**

**For attention of:** BSC Parties and other interested parties

**Responses due:** **12pm on Friday 13 October 2006**

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

**Proposed Modification P206** seeks to amend the Code such that BSCCo would be required to disclose the following aggregated information in relation to the results of elections for Industry Panel Members: the total number of voting papers submitted, the number of votes received by each candidate (in total and in each round), and the qualifying number of votes required for election in each round. Currently, BSCCo is prohibited by the Code from disclosing any voting information. Details of the 2006 election results would be disclosed retrospectively. The names of voting Parties would not be disclosed.

**Alternative Modification P206** seeks to publish the same information as the Proposed Modification, but without retrospective implementation (i.e. details of the 2006 election results would not be disclosed).

### PURPOSE OF CONSULTATION

This consultation seeks respondents' views regarding P206 and, in particular:

- Whether the Proposed Modification would better facilitate the achievement of the Applicable BSC Objectives<sup>2</sup> when compared to the current Code baseline;
- Whether the Alternative Modification would better facilitate the achievement of the Applicable BSC Objectives when compared to the Proposed Modification and/or the current Code baseline;
- Whether the Proposed Modification and/or the Alternative Modification would affect participation and behaviour in Panel elections (including in relation to the confidentiality of voting);
- Whether there are any alternative solutions that the Modification Group has not identified and that should be considered; and
- Whether there are any substantive issues not considered by the Modification Group which should be brought to the Group's attention for inclusion in its assessment of P206.

**You are invited to provide a response to the questions contained in the attached pro-forma.**

Please send responses, entitled 'P206 Assessment Procedure Consultation', by **12pm on Friday 13 October 2006** to the following e-mail address: [modification.consultations@elexon.co.uk](mailto:modification.consultations@elexon.co.uk).

Any queries on the content of the consultation pro-forma should be addressed to Dean Riddell (020 7380 4366), e-mail address [dean.riddell@elexon.co.uk](mailto:dean.riddell@elexon.co.uk).

This consultation document is also being simultaneously issued for impact assessment by BSCCo and the Transmission Company.

<sup>1</sup> The current version of the Code can be found at <http://www.elexon.co.uk/bscrelateddocs/BSC/default.aspx>.

<sup>2</sup> A copy of the Applicable BSC Objectives is provided in Appendix 1.

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## SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

As far as the Modification Group has been able to assess, the following parties/documents would be impacted by P206.

Please note that this table represents a summary of the initial impact assessment results in Appendix 3.

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

## 1 EXECUTIVE SUMMARY

The key conclusions of the P206 Modification Group ('the Group') to date are outlined below.

The Group:

- **SUPPORTED** the principle of prospectively disclosing aggregated voting numbers in future Panel elections, and did not believe that this would compromise the confidentiality or robustness of elections or impact the role and status of Panel Members;
- **NOTED** that the Freedom of Information Act was not applicable to P206;
- **AGREED** that further evaluation of the election processes of other industry Codes was not required in order to assess whether P206 would better facilitate the achievement of the Applicable BSC Objectives;
- **CONSIDERED** the relevance of previous views of the Authority and industry in the context of the disclosure of voting information, but agreed that these should not fetter its assessment of P206;
- **AGREED** that, in the interests of transparency, all available aggregated voting data should be disclosed (i.e. with the exception of the names and individual votes of voting Parties);
- **AGREED** that voting numbers in ad-hoc elections for replacement Panel Members should also be published;
- **CONSIDERED** the implications of the retrospective element of the Proposed Modification, and developed an Alternative Modification which removed this element;
- **CONSIDERED** whether a compromise solution was required to mitigate any risk to confidentiality, and considered a potential option for an Alternative Modification – whereby voting numbers below a 'De Minimis' threshold would not be disclosed – but did not believe that this was necessary to preserve confidentiality of voting, and therefore did not progress this further;
- **NOTED** BSCCo's legal advice that Applicable BSC Objective (c) was the appropriate Objective for consideration of transparency issues;
- **AGREED** a **MAJORITY** provisional view that the Proposed Modification **WOULD NOT** better facilitate the achievement of Applicable BSC Objective (c), due to its element of retrospectivity;
- **AGREED** a **MAJORITY** provisional view that the Alternative Modification **WOULD** better facilitate the achievement of Applicable BSC Objective (c) by promoting transparency and thereby competition; and
- **AGREED** to seek the views of consultation respondents as to whether the Proposed Modification and/or the Alternative Modification would affect participation and behaviour in Panel elections (including in relation to the confidentiality of voting).

A description of the P206 solution is provided in Section 2. Further information regarding the Group's initial discussions of the areas set out in the P206 Terms of Reference is contained in Section 3.

A summary of the Group's initial views regarding the merits of the Proposed Modification and Alternative Modification can be found in Section 4. A copy of the Group's full Terms of Reference can be found in Appendix 2.

## 2 DESCRIPTION OF MODIFICATION

### 2.1 Modification Proposal

P206 was raised on 3 August 2006 by E.ON UK plc ('the Proposer'). P206 seeks to amend the Balancing and Settlement Code ('the Code'), such that BSCCo would be required to disclose the number of preference votes received in each voting round by candidates standing for election to the BSC Panel, but not the names of the voting Parties concerned. In addition, the Modification Proposal suggests that the qualifying total required by candidates for election in each round and the qualifying total calculation for each round should be published.

This section outlines the solution for the Proposed Modification and Alternative Modification as developed by the Modification Group.

For a full description of the original Modification Proposal as submitted by the Proposer, please refer to the P206 Initial Written Assessment (IWA).

### 2.2 Background

#### 2.2.1 Panel Election Process

##### a) Nomination

The process for the election of the five Industry Panel Members is set out in Section B of the Code, Annex B-2. Each Trading Party may nominate one candidate, and each trading party group (a Trading Party and every Affiliate of that Party) may submit one set of voting papers for each Energy Account held by the voting Trading Party in that trading party group (i.e. two sets - one for the Production Energy Account and one for the Consumption Energy Account). The Panel elections are carried out using a preference voting system.

##### b) Voting Papers

Each submitted voting paper must indicate a first preference among the candidates. A voting paper may, but does not need to, indicate a second or third preference. However, the same candidate may not receive more than one preference in the same voting paper. Voting proceeds in a number of rounds.

Annex B-2, Paragraph 3.2.5, of Section B of the Code currently states that BSCCo will not disclose the preference votes cast by Trading Parties or received by candidates (neither the number of votes nor the names of voting Parties).

##### c) Voting Rounds

###### i) First Round

In the first voting round, the number of first preference votes allocated to each candidate is determined. The qualifying total for election is  $(T/N) + 1$ , where T is the total number of first preference votes in all voting papers and N is the number of Industry Panel Members to be elected. Any candidate who receives equal to or greater than the qualifying total is elected to the Panel.

###### ii) Second Round

In the second voting round, the remaining candidates are those not elected in the first round. The voting papers with first preference votes for candidates elected in the first round are discounted. The number of first and second preference votes allocated to each candidate on the remaining voting papers is determined. The qualifying total is now  $(T'/N') + 1$ , where T' is the number of first and second preference votes in all remaining voting papers and N' is the number of Panel Members remaining to be elected.

**iii) Third Round**

In the third voting round, the remaining candidates are those not elected in the first or second rounds. The voting papers with first or second preference votes for candidates elected in the first or second rounds are discounted. The number of first, second and third preference votes allocated to each candidate on the remaining voting papers is determined. The qualifying total is now  $(T''/N'') + 1$ , where  $T''$  is the number of first, second and third preference votes in all remaining voting papers and  $N''$  is the number of Panel Members remaining to be elected.

**iv) Further Round(s)**

A further round is necessary if any Panel Members remain to be elected after the third round. In this round, all voting papers are counted (i.e. including all those discarded in previous rounds), and the remaining candidates are ranked in order of the number of first preference votes allocated to them. The candidate(s) with the greatest number of such votes is elected. If there is a tie in the number of first preference votes between two or more candidates, the tied candidate(s) with the greatest number of second preference votes is elected. If there is a tie in the number of second preference votes between two or more candidates, BSCCo draws lots to select the candidate(s) to be elected from among those tied.

**2.2.2 Worked Example**

**1<sup>st</sup> Round**

Assume 6 candidates for 5 Industry Panel Member vacancies; candidates A, B, C, D, E and F. Assume 20 voting papers are received, with 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> preference votes assigned as in the table below (Figure 1).

Preference	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
Votes	A	C	B	A	C		D	C	B	E	B	
Votes	A	C	B	B	C	F	D	C	B	E		
Votes	A	C	B	B	C	F	D	C	B	E		
Votes	A	C	D	B	C	F	D	C	B	F	B	A
Votes	A	C		B			D	C	B	F	E	

Figure 1

The qualifying total required by candidates for election for the Panel is then:

$$(20/5) + 1 = 5$$

Where 20 is the total number of 1<sup>st</sup> preference votes in all papers and 5 is the number of Industry Panel Members to be elected.

So any candidate with 5 or more 1<sup>st</sup> preference votes is elected to the Panel. Thus, candidate A and candidate D are elected with 6 and 5 votes respectively.

**2<sup>nd</sup> Round**

Any candidates not elected in the first round proceed to the second round. Any voting papers with 1<sup>st</sup> preference votes for elected candidates are now discounted, as illustrated in the table below (Figure 2). The remaining 1<sup>st</sup> and 2<sup>nd</sup> preference votes are counted.

Preference	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
Votes	A	C	B	A	C		D	C	B	E	B	
Votes	A	C	B	B	C	F	D	C	B	E		
Votes	A	C	B	B	C	F	D	C	B	E		
Votes	A	C	D	B	C	F	D	C	B	F	B	A
Votes	A	C		B			D	C	B	F	E	

Figure 2

The qualifying total is now:

$$(15/3) + 1 = 6$$

Where 15 is the total number of 1<sup>st</sup> and 2<sup>nd</sup> preference votes in all remaining papers and 3 is the number of Industry Panel Members remaining to be elected.

So any candidate with 6 or more 1<sup>st</sup> or 2<sup>nd</sup> preference votes is elected. Thus, candidate B is elected with 6 votes.

**3<sup>rd</sup> Round**

Any candidates not elected in the first or second round proceed to the third round. Any voting papers with 1<sup>st</sup> or 2<sup>nd</sup> preference votes for elected candidates are discounted, as illustrated in the table below (Figure 3). The remaining 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> preference votes are counted.

Preference	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
Votes	A	C	B	A	C		D	C	B	E	B	
Votes	A	C	B	B	C	F	D	C	B	E		
Votes	A	C	B	B	C	F	D	C	B	E		
Votes	A	C	D	B	C	F	D	C	B	F	B	A
Votes	A	C		B			D	C	B	F	E	

Figure 3

The qualifying total is now:

$$(4/2) + 1 = 3$$

Where 4 is the total number of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> preference votes in all remaining papers and 2 is the number of Industry Panel Members remaining to be elected.

So any candidate with 3 or more 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> preference votes is elected. Thus, candidate E is elected with 3 votes.

**Further Round**

Candidates A, D, B and E have been elected; thus one Panel Member remains to be elected from among candidates C and F. Counting all voting papers (i.e. including all those discounted in all preceding rounds), the remaining candidates are ranked in order of the 1<sup>st</sup> preference votes allocated to them. The candidate with the greatest number of such votes is then elected. Candidate F has 2 votes and candidate C has none, so candidate F is elected to the Panel.

### **2.2.3 Replacement of Panel Members**

In the event that a Panel Member ceases to hold office not less than six months before the end of his term of office, a replacement is elected for the remainder of the term, using the process described above. However, only Trading Parties that voted for the resigning Panel Member (with a first, second or third preference vote), or who did not vote for any elected Panel Member still serving, may participate in the election by nominating candidates or voting.

If a Panel Member ceases to hold office less than six months before the end of his term of office, the Trading Party which nominated the resigning Panel Member is entitled to appoint a replacement Panel Member for the remainder of the term.

### **2.2.4 Aim of P206**

The Proposer believes that the publication of the numbers of votes received by candidates in Panel elections would make the Panel election procedure more transparent and open to scrutiny by Parties. The Proposer asserts that the existing ability of Parties to require that the BSC Auditor scrutinise the conduct of elections only allows validation of the process, whereas disclosure of the numbers of votes received by candidates would allow evaluation of the Panel election process, which may lead to more efficient governance arrangements.

## **2.3 Proposed Modification**

The Code would be amended such that BSCCo would be required to disclose the following information regarding the voting in the elections for Industry Panel Members, including any ad-hoc elections for the replacement of Panel Members who resign part-way through their term of office:

- The total number of voting papers received;
- The total number of 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> preference votes received by each candidate over all voting papers (i.e. prior to voting rounds);
- The number of remaining voting papers (T) and remaining Panel vacancies (N) in each round (and hence the qualifying total in each round); and
- The number of relevant preference votes for each candidate in the remaining voting papers in each voting round.

This information would be published at an aggregated level, and the names and votes of individual voting Parties would not be published.

The Proposed Modification would be implemented such that the voting information described above would be retrospectively disclosed for the 2006 Panel elections.

## **2.4 Alternative Modification**

The Alternative Modification developed by the Group is identical to the Proposed Modification, except that it would not be implemented retrospectively – i.e. voting information for the 2006 Panel elections would not be disclosed.

Under the Alternative Modification, the first set of voting information to be published would therefore be either the results of the 2008 Panel election, or any ad-hoc election held to replace a resigning Industry Panel Member between the implementation of P206 and the full 2008 election.

### 3 AREAS RAISED BY THE TERMS OF REFERENCE

This section outlines the initial conclusions of the Modification Group regarding the areas set out in the P206 Terms of Reference.

#### 3.1 Principle of Disclosure of Voting Information

The Group considered the principle of disclosing information from the Panel elections. The Proposer asserted that disclosure of voting numbers would increase the transparency of the election process, which is good corporate governance and would increase the confidence of participants in the BSC arrangements; furthermore, having access to voting numbers would allow alternative election processes to be evaluated more openly and effectively under any future Standing Issue or Modification Proposal.

The Group agreed with the arguments of the Proposer that publication of anonymous voting information would increase the transparency of, and thereby the confidence in, the BSC arrangements. The Proposer queried whether the Freedom of Information Act was a relevant consideration, but noted BSCCo's legal advice that it is not subject to the Freedom of Information Act as it is not a public authority. A Group Member queried whether, since Ofgem is a public authority, Parties could request details of election results from them using the Freedom of Information Act. The Group noted BSCCo's legal advice that the Code contains general provisions which allow the Authority to request data from BSCCo, but that there is a prohibition on giving information under the Freedom of Information Act that could cause a breach of confidence.

The Group noted that the existing election process could be modelled using hypothetical scenarios as shown in Section 2.2, but also noted the view of the Proposer that actual election results were required in order to fully evaluate proposed changes to the Panel election arrangements. The Proposer clarified that the assessment of previous Rejected Modification Proposal P129<sup>3</sup> (which sought to amend the Panel election process to a 'first past the post' constituency-based process) had utilised such hypothetical modelling, but that he believed that the P129 industry consultation responses had demonstrated a suspicion of hypothetical examples which had led in part to the rejection of the proposal. The Group noted that part of the reason P129 was rejected was that Parties felt a constituency process would be unrepresentative; the Proposer stated that this could not be proved or disproved solely by hypothetical modelling of the current process or any proposed election process.

A majority of Group Members agreed that arguments based on actual data tended to be more convincing. However, one member queried whether P206 was necessary in order to achieve this, or whether election results could already be made available to Modification Groups considering such changes on a confidential basis. The Group noted BSCCo's legal advice that this would not be possible, since the Code currently prohibits disclosure of this information to any person. The Proposer also noted that, even if such information could be confidentially provided to Modification Groups, it would not be available to consultation respondents to inform their views. A majority of Group Members therefore believed that P206 was necessary in order to fully evaluate potential future changes to Panel governance. One member disagreed, and believed that the current process could be adequately modelled using hypothetical data. However, this member agreed more generally with the principle that publishing voting information would provide more transparent governance.

The Group therefore supported the principle of disclosing voting information prospectively for future Panel elections. However, concerns were expressed over the retrospective publication of data from the 2006 Panel elections. Further details can be found in Section 3.5.

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<sup>3</sup> Modification Proposal P129 'Changes to Panel Determination Process and Panel Election Procedures'.

### 3.2 Relevant Election Process Precedents

The Group noted that the Connection and Use of System Code (CUSC) contained a preference voting system for User Members of the CUSC Amendments Panel which was very similar to that set out in the BSC. It noted that, like the BSC, the CUSC contained a prohibition on disclosing the names of voting parties or numbers of votes. However, as under the BSC, parties could request independent scrutiny of the election results (by the Authority in the case of the CUSC, rather than the BSC Auditor). The Group agreed that the fact that both the BSC and the CUSC currently prohibited disclosure should not fetter its assessment of P206, if a case could be made that disclosure would better facilitate the achievement of the Applicable BSC Objectives.

The Group discussed the value of evaluating further precedents that may be set by the policies of other industry Codes toward disclosure of election results. It was noted that other Codes, such as the Distribution Connection and Use of System Agreement (DCUSA) or the Unified Network Code (UNC) in the gas market, represented examples of different types of panel election processes such as constituency-based voting. However, the Group determined that comparing such Codes with the BSC would not be a 'like for like' comparison, and would not be directly relevant to its specific consideration of P206 against the Applicable BSC Objectives.

The Group reviewed the hypothetical Worked Example provided by BSCCo (see Section 2.2.2) and noted the preference voting system used in the BSC. The Proposer suggested that the BSC's election process was unusual, and that the principle of transparent governance was undermined by the use of a voting system that lacked precedent. The Proposer also considered that, in the Worked Example, different candidates would be elected if an alternative voting system was used, such as Proportional Representation through Single Transferable Vote (PR-STV) or Cumulative Voting, which the Proposer suggested is widely used in corporate governance. The Proposer argued that P206 would enable Parties to openly assess the merit of using other voting systems in the future.

### 3.3 Previous Views

The Group noted that the solution developed by the Modification Group for P129 had included the publication of voting numbers in Panel elections. However, the Group noted that P129 had sought to introduce a different voting process, and that the principles regarding disclosure of the results of that process were therefore not directly comparable to P206.

The Group noted that the Authority had not commented on the disclosure of voting numbers in its P129 decision letter. It noted that the Authority and the Department of Trade and Industry (DTI), in response to the 2000 consultation on the draft text of the BSC prior to NETA Go-Live, had expressed the view that transparency was adequately catered for in the Panel election rules. However, the Group noted that this statement had been in response to a suggestion that it should be clear which Parties voted for which candidates, and that the context of this view (i.e. the suggested total removal of confidentiality of voting) was therefore different to P206.

The Group agreed that these previous views provided useful background, but noted the period of time which had passed since they had been recorded and that P206 needed to be assessed on its own merits against the existing Code baseline. The Group agreed that the relevant test for P206 was whether it would better facilitate the achievement of the Applicable BSC Objectives compared to the current Code baseline.

### 3.4 Information to be Disclosed

The Group noted that the following voting information was available for disclosure:

- The total number of voting papers received;
- The number of 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> preference votes received by each candidate over all voting papers (i.e. prior to voting rounds);

- The number of remaining voting papers (T) and remaining Panel vacancies (N) in each round, or the qualifying total in each round  $((T/N) + 1)$ ; and
- The number of relevant preference votes for each candidate in the remaining voting papers in each voting round.

The Group noted that disclosure of the total number of voting papers received would allow election turnout by participants to be measured. The Group discussed whether it would be necessary to disclose the number of Trading Parties that participated in elections in order to fully reflect voter turnout, e.g. in the case that a Party or Parties participate but only submit one set of voting papers (rather than the two sets, one per Energy Account, that all Parties are entitled to submit). However, the Group felt that in practice it would be sufficient to disclose only the number of voting papers received, as this would provide an adequate measure of participation. The Group noted that the list of eligible voting Parties (i.e. trading party groups) was published by BSCCo prior to full Panel elections, and that the maximum number of potential voting papers was therefore twice the number of trading party groups. The Group agreed that publication of the actual number of voting papers received would therefore show the election turnout. The Proposer argued that it was vital to know the turnout in order to evaluate the effectiveness of the election process.

The Group felt that all the identified available information should be disclosed as this would allow the voting to be fully evaluated. The Group agreed that publication of a subset of this information would only allow partial evaluation as it would not show the 'whole picture' – i.e. the qualifying total for each voting round was needed in addition to the votes received in order to know which candidates were elected in each round. It agreed that the total numbers of preference votes received by candidates, in addition to the totals for each round, were required in the event that voting proceeded to the final round (where all voting papers are counted) – as well as in order to evaluate the effectiveness of the preference voting system.

### **3.5 Retrospectivity**

The Group considered the issue of the effective retrospectivity of the Proposed Modification. The Group was given legal advice that there was generally a presumption in law against retrospectivity, and that Ofgem has previously used quite stringent criteria in determining the need for retrospective changes, though Ofgem is not bound by any previous criteria it may have given.

The Group noted that, though the Modification Proposal was submitted before the conclusion of the 2006 Panel election and it could thus potentially be argued that it was not strictly speaking seeking retrospective change, BSCCo was able to confirm that between a half and two thirds of the total number of votes submitted for the election were received prior to the submission of the Modification Proposal. Hence it is certain that a number of Parties acted on the basis of rules which at that time they could have a reasonable expectation would not be changed and under the assumption that all aspects of voting would be confidential.

A Group Member queried whether, if it was determined that the voting information of the 2006 elections could be published, the voting information with regard to all previous Panel elections could be published. The Group noted that this could potentially form an option for an Alternative Modification.

A Group Member stated that retrospectivity was the biggest issue in relation to the Proposed Modification, and that granting retrospectivity in this case could set an undesirable precedent with regard to retrospective changes. The Proposer noted the general presumption against retrospective changes, but did not believe the specific retrospectivity of P206 to be problematic since he did not believe that it would have any commercial implications for Parties. The Proposer noted that implementing the change prospectively would address the defect for future elections, but argued that it would not aid the evaluation of any potential future changes to the election process over the two years prior to the next election. However, the other Group Members agreed that, while sympathetic to the Proposer's position, this was not sufficient justification for retrospective implementation. One member noted that the 2006 election timetable had been publicised

well in advance, and considered that P206 could have been raised earlier if publication of these results was desired.

With the exception of the Proposer, the Group therefore agreed that retrospective implementation was not appropriate and agreed to develop a non-retrospective Alternative Modification. However, Group Members clarified that their concerns regarding retrospectivity related to the precedent that this might set for other changes, rather than any specific concern that Parties would have voted differently in the 2006 election had they had known that voting numbers would be published. This was consistent with the Group's view that disclosing voting numbers would not compromise confidentiality or affect voting behaviour. Further detail regarding these views can be found below. However, the Group agreed to include specific consultation questions in these areas.

### **3.6 Confidentiality**

The Group considered whether the confidentiality of Panel elections might be compromised, given the nature of the information they supported disclosing, the limited participation in Panel elections and the degree of predictability associated with the voting of some Parties (e.g. Parties could reasonably be expected to vote for a candidate they had nominated). However, the Group considered that it would not be possible to deduce with any degree of certainty the manner in which a Party had voted, based on Group Members' experience of Panel elections and the aggregated and anonymous nature of the data which would be published. Members did not believe that publishing voting numbers would alter the behaviour of Parties in elections (either the numbers of candidates and voting Parties participating in the election, or the votes cast by Parties). However, the Group agreed to include specific consultation questions in these areas.

The Group discussed whether a compromise between disclosing voting information and maintaining confidentiality might be appropriate, and what form such a compromise could take, e.g. 'De Minimis disclosure' whereby numbers of votes below a given amount are not disclosed. However, the Group did not believe this to be necessary given its view that total disclosure of numbers would not compromise confidentiality. Moreover, the Group believed that it would be practically difficult to agree the appropriate de minimis threshold – for example, different thresholds might be required for each voting round.

### **3.7 Elections for Replacement Panel Members**

The Group discussed whether there were any additional considerations that needed to be taken into account in relation to elections for replacement Panel Members, in the case that a Panel Member resigns more than 6 months before the end of their term of office.

The Group considered whether there would be any greater risk to the confidentiality of these elections due to participation, by nominating candidates or voting, being restricted to Trading Parties that voted for the resigning Panel Member or that did not vote for any elected Panel Member still serving. A Group Member noted that there should be less risk to confidentiality than in normal Panel elections, as it would not be known who participated in the original election (i.e. who elected the resigning Panel Member) so it would be consequentially harder to make any deductions regarding the voting in the replacement election. BSCCo confirmed that, for such ad-hoc elections, the list of eligible voting Parties would not be published – since this would compromise confidentiality by revealing those Parties which had voted for the resigning Panel Member. However it would still be possible to evaluate turnout, at least approximately, as it would be known how many Parties were eligible to vote on the basis of the voting numbers disclosed in relation to the original election.

The Group could not identify any other issues particular to elections of replacement Panel Members that might have implications for the disclosure of voting information for these elections. The Group therefore agreed that voting numbers for these elections should also be published under P206.

### 3.8 Impact on Panel Members

The Group considered whether the disclosure of voting information would have an impact upon the ability of Panel Members to fulfil their duties, for instance if a Panel Member was elected by a relatively large number of votes whether they would be perceived to have more authority than a Panel Member elected by a few votes. The Group noted that it was potentially possible for a Panel Member to be elected on the basis of a single vote, depending on the number of candidates and votes involved.

However, the Group agreed that there should be no effect upon the relative standing of Panel Members, as they would all have been elected using the same system and would have equal standing once elected. The Group noted that as the Panel Members act in the capacity of impartial experts they do not need to obtain numbers of votes in order to gain authority, and do not canvas on the basis of 'manifestos'.

The Group agreed that P206 would therefore have no impact upon the ability of Panel Members to fulfil their duties.

### 3.9 Draft Legal Text

The Group considered that the suggested legal text provided within the Modification Proposal should be redrafted to ensure that it fully and precisely reflects all the information that it is proposed would be disclosed under the Proposed Modification, and to reflect its retrospective implementation. The Group noted that legal drafting would also be required for the Alternative Modification.

Draft legal text will be provided as part of the P206 Assessment Report, which is scheduled to be presented to the Panel on 9 November 2006.

### 3.10 Applicable BSC Objectives

The Group considered which of the Applicable BSC Objectives was most relevant to consideration of P206. The Group received legal advice that Objective (c) was most appropriate because perceptions of transparency and confidence in governance arrangements were linked to competition; Objectives (a) and (b) were not relevant and (d) is accepted to relate only to efficiency savings in the administration of the balancing and settlement arrangements (i.e. central and ELEXON costs).

The Group noted that it is generally quite difficult to frame governance issues in terms of specific Applicable BSC Objectives.

The majority of the Group, including the Proposer, agreed that Applicable Objective (c) was most relevant to P206. One Group Member considered that Objective (d), which was originally given as the Applicable Objective in the justification within the Modification Proposal, was most relevant.

## 4 ASSESSMENT OF MODIFICATION AGAINST APPLICABLE BSC OBJECTIVES

This section outlines the initial views of the Modification Group regarding the merits of P206 against the Applicable BSC Objectives.

### 4.1 Proposed Modification

The initial **MAJORITY** view of the Modification Group was that the Proposed Modification **WOULD NOT** better facilitate the achievement of Applicable BSC Objective (c) when compared to the current Code baseline, for the following reasons:

### Applicable BSC Objective (c)

- The retrospective element of the Proposed Modification would, if implemented, create uncertainty in the BSC governance arrangements, which would undermine the confidence of participants in the arrangements and thus have a negative impact on competition; and
- This negative impact would outweigh any prospective benefits of the Proposed Modification.

One member agreed with the arguments above, but felt that they were more applicable to Objective (d). The other Group Members believed that the Proposed Modification would have a neutral impact on Applicable BSC Objective (d).

The initial **MINORITY** view of the Proposer was that the Proposed Modification **WOULD** better facilitate the achievement of Applicable BSC Objective (c) when compared to the current Code baseline, for the following reasons:

- The Proposed Modification would increase the transparency of the Panel election process, making the governance arrangements more open, which would strengthen the confidence of participants in the arrangements and thus improve competition;
- Parties would be better able to evaluate the Panel election process, and thus to propose changes to improve the election process or governance arrangements, which could result in improvements which would increase confidence in the arrangements, thus promoting competition;
- Parties would be better able to assess the merits of any such proposed changes to the Panel election process or governance arrangements, which could result in improvements which would increase confidence in the arrangements, thus promoting competition; and
- Retrospective implementation of the Proposed Modification would mean that the improved ability of Parties to evaluate the Panel election process, and any consequent benefits, would be achieved relatively promptly.

One Group Member was neutral on the impact of the Proposed Modification on the Applicable BSC Objectives.

The Group agreed that the Proposed Modification would have a neutral impact on Applicable BSC Objectives (a) and (b).

## 4.2 Alternative Modification

### 4.2.1 Alternative Modification Compared With Proposed Modification

The initial **MAJORITY** view of the Modification Group was that the Alternative Modification **WOULD** better facilitate the achievement of Applicable BSC Objective (c) when compared to the Proposed Modification, for the following reasons:

#### Applicable BSC Objective (c)

- The non-retrospective implementation of the Alternative Modification would maintain the confidence of participants in the BSC governance arrangements, and thus have a positive impact on competition compared to the Proposed Modification.

One member agreed with this view, but believed that it was more applicable to Objective (d).

The initial **MINORITY** view of the Proposer was that the Alternative Modification **WOULD NOT** better facilitate the achievement of Applicable BSC Objective (c) when compared to the Proposed Modification, for the following reasons:

### Applicable BSC Objective (c)

- The non-retrospective implementation of the Alternative Modification would mean the improved ability of Parties to evaluate the Panel election process, and any consequent benefits, would be achieved relatively slowly.

One Group Member was neutral as to the merits of the Alternative Modification.

### 4.2.2 Alternative Modification Compared with Existing Code Baseline

The initial **MAJORITY** view of the Modification Group was that the Alternative Modification **WOULD** better facilitate the achievement of Applicable BSC Objective (c) when compared to the current Code baseline, for the following reasons:

#### Applicable BSC Objective (c)

- The Alternative Modification would increase the transparency of the Panel election process, making the governance arrangements more open, which would strengthen the confidence of participants in the arrangements and thus improve competition;
- Parties would be better able to evaluate the Panel election process, and thus to propose changes to improve the election process or governance arrangements, which could result in improvements which would increase confidence in the arrangements, thus promoting competition; and
- Parties would be better able to assess the merits of any such proposed changes to the Panel election process or governance arrangements, which could result in improvements which would increase confidence in the arrangements, thus promoting competition.

One member agreed with the above arguments, but felt that they were more applicable to Objective (d). The other Group Members believed that the Alternative Modification would have a neutral effect on Applicable BSC Objective (d).

The Proposer, whilst believing that the retrospectivity of the Proposed Modification would allow a more timely delivery of the benefits associated with P206, acknowledged that the Alternative Modification would prospectively address the defect identified by the Modification Proposal for future Panel elections – and believed that the Alternative would therefore better facilitate the achievement of Applicable BSC Objective (c) compared with the existing Code baseline.

One Group Member was neutral on the impact of the Alternative Modification on the Applicable BSC Objectives.

The Group agreed that the Alternative Modification would have a neutral impact on Applicable BSC Objectives (a) and (b).

## 5 TERMS USED IN THIS DOCUMENT

Other acronyms and defined terms take the meanings defined in Section X of the Code.

Acronym/Term	Definition
Preference Vote	First, second or third preference among candidates, indicated on a voting paper.
Trading party group	A Trading Party and every Affiliate of that Trading Party.
Industry Panel Member	A Panel Member appointed pursuant to Section B2.2 of the Code.

## 6 DOCUMENT CONTROL

### 6.1 Authorities

Version	Date	Author	Reviewer	Reason for Review
0.1	21/09/06	Dean Riddell	Kathryn Coffin	For technical review
0.2	25/09/06	Dean Riddell	P206 Modification Group	For Modification Group review
1.0	29/09/06	P206 Modification Group		For industry consultation

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## APPENDIX 1: APPLICABLE BSC OBJECTIVES

For reference the Applicable BSC Objectives, as contained in the Transmission Licence, are:

- (a) The efficient discharge by the licensee [i.e. the Transmission Company] of the obligations imposed upon it by this licence [i.e. the Transmission Licence];
- (b) The efficient, economic and co-ordinated operation of the GB transmission system;
- (c) Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;
- (d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

## APPENDIX 2: PROCESS FOLLOWED

Copies of all documents referred to in the table below can be found on the BSC Website at: <http://www.elexon.co.uk/changeimplementation/ModificationProcess/ModificationDocumentation/modProposalView.aspx?propID=225>

Date	Event
03/08/06	Modification Proposal raised by E.ON UK plc
14/09/06	IWA presented to the Panel
18/09/06	First Assessment Procedure Modification Group meeting held
29/09/06	Request for Transmission Company analysis issued
29/09/06	Request for BSCCo impact assessment issued


## ESTIMATED COSTS OF PROGRESSING MODIFICATION PROPOSAL<sup>4</sup>

<b>Meeting Cost</b>	£1,000
<b>Legal/ Expert Cost</b>	Nil
<b>Impact Assessment Cost</b>	Nil
<b>ELEXON Resource</b>	35 man days £6,550

These costs have not changed from those provided in the IWA.

<sup>4</sup> Clarification of the meanings of the cost terms in this appendix can be found on the BSC Website at the following link: [http://www.elexon.co.uk/documents/Change\\_and\\_Implementation/Modifications\\_Process\\_-\\_Related\\_Documents/Clarification\\_of\\_Costs\\_in\\_Modification\\_Procedure\\_Reports.pdf](http://www.elexon.co.uk/documents/Change_and_Implementation/Modifications_Process_-_Related_Documents/Clarification_of_Costs_in_Modification_Procedure_Reports.pdf).

**MODIFICATION GROUP MEMBERSHIP**

<b>Member</b>	<b>Organisation</b>	<b>18/09/06</b>
Kathryn Coffin	ELEXON (Chair)	Y
Dean Riddell	ELEXON (Lead Analyst)	Y
Ben Sheehy	E.ON UK (Proposer)	Y
Bec Thornton	National Grid	Y
Steven Eyre	British Energy	Y
Andrew Colley	Scottish and Southern	Y
Dave Wilkerson	Centrica	Y
James Nixon	SAIC (Scottish Power)	

<b>Attendee</b>	<b>Organisation</b>	<b>18/09/06</b>
Melanie Henry	ELEXON (Lawyer)	Y
Laone Roscorla	ELEXON (Technical Support)	Y
Yvonne Kenny	Ofgem	Y
Samantha McEwen	Ofgem	Y
Charles Ruffell	RWE Npower	Y

## P206 Terms of Reference

**Modification Proposal P206 will be considered by a new Modification Group, the 'P206 Modification Group' (formed from members of the Governance Standing Modification Group), in accordance with the following Terms of Reference.**

### P206 – Publication of Panel Election Results

#### Assessment Procedure

- 1.1 The Modification Group will carry out an Assessment Procedure in respect of Modification Proposal P206 pursuant to section F2.6 of the Balancing and Settlement Code.
- 1.2 The Modification Group will produce an Assessment Report for consideration at the BSC Panel Meeting on 9 November 2006.
- 1.3 The Modification Group shall consider and/or include in the Assessment Report as appropriate:
  - **Principle of Disclosure of Voting Information** - the principle of whether information regarding the number of preference votes received by candidates should be published, and any implications of the Freedom of Information Act.
  - **Relevant Election Process Precedents** - any precedents regarding confidentiality or disclosure of preference votes set by the election procedures of similar bodies.
  - **Previous Views** - any views previously expressed by Ofgem and/or industry (e.g. during assessment of Rejected Modification Proposal P129 'Changes to Panel Determination Process and Panel Election Procedures' or as part of the original drafting of the Code) regarding the disclosure of voting.
  - **Information to be Disclosed** - the precise voting information that should be published, e.g. the number of preference votes received by each candidate in each voting round or the total number of votes received by elected candidates. The Modification Proposal suggests that, in addition to the number of preference votes received by each candidate in each voting round, BSCCo should also publish the qualifying total required by candidates for election in each round and the quota calculation (i.e. the qualifying total calculation) for each round.
  - **Retrospectivity** - implications of the element of retrospectivity in the Modification Proposal resulting from the proposal that, if approved, the amendment should be implemented from the submission date (i.e. 3 August 2006), in order that the 2006 election results would be disclosed (voting papers for the 2006 Panel election were issued on 17 July 2006 and voting closed on 9 August). This should include any legal implications of Parties and candidates participating in Panel elections using a process that is then retrospectively changed.
  - **Confidentiality** - how much voting information can be disclosed before the confidentiality of voting may become compromised. With a known number of candidates and a finite number of voting Parties (some of whose voting intentions can be reasonably anticipated, e.g. if a Party has nominated a candidate) it should be considered whether it may be possible in some circumstances to deduce who has voted for who if the numbers of votes received by candidates are disclosed.
  - **Elections for Replacement Panel Members** - any particular implications for elections held to replace members who resign more than six months before the end of their term of office (e.g. as these would involve fewer candidates and votes, any risk to confidentiality may be increased).

- **Draft Legal Text** - the most appropriate legal drafting, in light of the areas set out above and the legal drafting suggested in the Modification Proposal.
  
- **Areas Raised by Panel Members at Meeting on 14 September 2006:**
  - Ensure areas of assessment fall within the scope of the specific issue or defect raised by the Modification Proposal, e.g. wider Panel governance arrangements to be considered as background only.
  - Consider whether disclosure of voting numbers would affect participation in elections by candidates and/or voting Parties.
  - Consider whether disclosure of voting numbers would help Panel Members fulfil their duties.
  - Consider which Applicable BSC Objective(s) are most relevant to the Assessment of P206 (including legal advice if necessary).
  - Consider the appropriateness of potential compromises between disclosure and the principle of confidentiality, e.g. 'fewer than X number of votes not disclosed'.
  - Consider whether actual voting numbers are necessary to evaluate effectiveness of Panel election process, or whether this can be done by modelling hypothetical scenarios.

### **APPENDIX 3: RESULTS OF INITIAL ASSESSMENT**

#### **a) Impact on BSC Systems and Processes**

No impact anticipated.

#### **b) Impact on BSC Agent Contractual Arrangements**

No impact anticipated.

#### **c) Impact on BSC Parties and Party Agents**

No impact anticipated.

#### **d) Impact on Transmission Company**

No impact anticipated.

**e) Impact on BSCCo**

Area of Business	Impact of Proposed/Alternative Modification
Panel elections audit service	Very minor impact to take into account P206.
Panel support	Minor governance, legal and communication impacts.

**e) Impact on Code**

Code Section	Impact of Proposed/Alternative Modification
Section B	Annex B-2: Election of Industry Panel Members, would be amended to detail the requirement for BSCCo to publish the numbers of votes received by candidates.

**f) Impact on Code Subsidiary Documents**

No impact anticipated.

**g) Impact on Core Industry Documents/System Operator-Transmission Owner Code**

No impact anticipated.

**h) Impact on Other Configurable Items**

No impact anticipated.

**i) Impact on BSCCo Memorandum and Articles of Association**

No impact anticipated.

**j) Impact on Governance and Regulatory Framework**

No impact anticipated.