

Stage 03: Attachment A: Detailed Assessment for P262

P262: Code Governance Review: Significant Code Reviews, Self-governance and Code Administration Code of Practice

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

Contents

1	Terms of Reference	2
2	Amendments to the Proposed Modification solution	2
3	Modification Group's Initial Discussions	3
4	Group's initial discussion on potential alternatives 1 and 2 4	
5	Further Group discussion following the Assessment Consultation	6
6	Finalising the legal text	10
7	Timetable and Responsibilities	14

About this document:

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

1 Terms of Reference

P262 Terms of Reference

The P262 Modification Group should consider the following items:

1	The effect of the Modification on the Applicable BSC Objectives.
2	Is there any Alternative Modification which would better facilitate the achievement of the Applicable BSC Objectives in relation to the identified issue or defect.
3	The most appropriate implementation approach for the Modification.
4	The most appropriate legal drafting to deliver the solution.

2 Amendments to the Proposed Modification solution

The Proposer, in discussion with the Modification Group, made a number of amendments to the Proposed solution following the submission of the Modification Proposal form. They are as follows:

Modifications undergoing SCR Suitability Assessment do not stop their progress until an Authority direction

The final Transmission Licence drafting allows the Modifications Procedures to continue while the Authority is deliberating on a SCR Suitability Assessment, or in the case that the Authority do not respond. Therefore the Proposer has updated the solution so that, while a Modification Proposal is undergoing a SCR Suitability Assessment, the Modifications Procedures continue unless the Authority directs that the Modification Proposal is Subsumed. This removes the need for putting the Modification Proposal on hold for a period of time during the SCR Suitability Assessment.

Only the Authority can initiate an SCR Suitability Assessment

The Proposer has also updated another element of the SCR section of the solution. Only the Authority may direct that an SCR Suitability Assessment is undertaken. In previous solutions the Panel also had the ability to request that an SCR Suitability Assessment be undertaken. The Proposer believes it is more appropriate that the Authority should be the only one that has the ability to trigger a SCR Suitability Assessment, since they will ultimately declare if a Modification Proposal is SCR exempt.

It also removes concerns that a SCR Suitability Assessment could be suggested by a Modification Group to the Panel as a filibustering tactic.

Adoption of SCR Modifications which are withdrawn

The Proposer has amended the Proposed solution so that SCR Modification Proposals can be adopted (using the current BSC adoption rules) if withdrawn by the Licensee. The Modification Group believed this would be beneficial as valid alternatives may come out of the SCR Modification Proposal Assessment Procedure. Parties should have the ability to take these alternatives forward in the most cost effective way. It is more cost effective to adopt a withdrawn SCR Modification Proposal rather than raising a new Modification Proposal.

Treatment of SCR exempt Alternatives.

The Modification Group noted that it was unclear whether the alternatives for a SCR exempt Proposed Modification would also be SCR exempt. The Group agreed, and the Group accepted, that the default position should be that if the Proposed Modification is exempt, all alternatives shall also be considered SCR exempt.

Proposer requested suspension (potential addition 1 addition 1)

The Modification Group agreed, and the Proposer accepted, that it may be beneficial to allow the Proposer to delay work on a Modification Proposal that is linked to a SCR, but raised before a SCR Phase (and therefore cannot be subsumed). Progression of the Modification Proposal in this circumstance could potentially lead to duplication of work with that being completed under the SCR. This solution was consulted upon as potential addition 1. See below for more Group discussion on potential addition 1.

Subsumed Modifications – Request for Urgency

Following a consultation respondent suggesting a potential alternative the Group developed, and the Proposer accepted, an addition to the Proposed Modification where the Proposer of a SCR Subsumed Modification can request that their Modification be considered Urgent at any time. See below for more Group discussion on this addition.

3 Modification Group's Initial Discussions

Significant Code Reviews

Exemption process should not be onerous

The Group were concerned that the SCR exemption process could be overly onerous and bureaucratic for something that should be simple. ELEXON clarified that they envisaged Ofgem providing SCR exemptions at the Panel where the Modification Proposal was presented. If the Ofgem representative was unable to attend then the SCR exemption could be provided in writing (either before or after the Panel).

Should Proposers raise Modifications in order to be subsumed into an SCR?

One member questioned whether a Proposer should raise a Modification Proposal with the express intent of having it Subsumed into a SCR and therefore become part of the SCR debate. The Ofgem representative noted that the Transmission Licence prevented this – Parties were not allowed to raise Modification Proposals with the express intention of being included in an SCR. This did not prevent Parties raising Modification Proposals in good faith that were subsequently Subsumed into a SCR. If a Party had an issue they wanted to have discussed as part of SCR then they should contact Ofgem directly.

Does the Panel always need to conduct an SCR Suitability Assessment?

One member questioned whether the Panel always needed to conduct a SCR Suitability Assessment. In situations where the Modification Proposal was self evidently linked to an SCR surely the Panel did not need to conduct a SCR Suitability Assessment. ELEXON clarified that the Transmission Licence required the Panel to conduct a SCR Suitability Assessment for all Modification Proposals that were not declared SCR exempt by the

Authority. However, the SCR Suitability Assessment would not be onerous and be virtually no additional work for Panel or ELEXON.

What happens to Subsumed Modification Proposals after the completion of SCR Phase?

One member requested clarification for what happens to Subsumed Modification Proposals at the end of SCR Phase. They noted that this should be more fully defined in the solutions. ELEXON has defined the process in Section 3 of the main document.

Self-governance

ELEXON presented the Proposed solution for Self-governance Modification Proposals. The Group noted the solution and had no further comments.

Code Administration Code of Practice

Should ELEXON get Panel approval to raise changes to the Code Administration Code of Practice?

This discussion led to the development of 'potential addition 2' which became the Alternative Modification. The Group's discussion can be found below.

What about other Code Administration Code of Practice changes?

One member asked whether P262 would seek to enact all of the potential Transmission Licence and Code Administration Code of Practice changes. For example, changes to the way the BSC Panel Chairman is appointed. ELEXON noted that P262 would put in place the core requirements to implement the Code Governance Review Transmission Licence updates. There may be other changes that would be progressed in the future and these would be considered in time. However, P262 would ensure the BSC was consistent with the updated Transmission Licence.

4 Group's initial discussion on potential alternatives 1 and 2

At the first meeting the Group developed two potential alternative solutions on which it consulted. Potential addition 1 was incorporated into the Proposed solution. Potential addition 2 became the Alternative solution. Below is the Group's initial views on these potential alternatives.

Potential addition 1 – suspending the progress of Modifications raised before a SCR Phase

Potential addition 1 is as follows:

- For Modification Proposals raised before the start of the SCR Phase the Proposer can request to the Panel that progression is suspended on their proposal whilst the SCR Phase is ongoing. The Proposer would need to provide rationale as to why this suspension was justified.
- The Proposer can make this request at any time up until the final Modification Group recommendation in the Assessment Procedure
- ELEXON would present this request to Panel.

- The Panel would then make a decision about suspending progression until the completion of SCR Phase. This decision is a 'one way ticket' – once suspended the Modification Proposal will not be progressed until the completion of SCR Phase.
- The Authority would have no veto on extending the Assessment Procedure in this case.
- The Proposer can withdraw their Modification Proposal while it is suspended.

Group's discussion

The Group thought that it may be beneficial to delay work on a Modification Proposal that is linked to a SCR, but raised before a SCR Phase (and therefore cannot be subsumed). Progression of the Modification Proposal in this circumstance could potentially lead to duplication of work with that being completed under the SCR. This is consistent with the underlying rationale for Subsuming Modification Proposals raised during the SCR Phase.

It was also thought that Proposers may wish to suspend work on their Modification pending an outcome of the SCR, so they could amend their proposal based on the SCR findings. This would ensure a Proposer can submit the best possible solution, in their opinion, to the Authority.

The Group unanimously agreed potential addition 1 would be a sensible improvement to the Proposed Modification.

Potential addition 2 – BSC requirement for Panel approval of any ELEXON suggested changes to the Code Administration Code of Practice

Potential addition 2 would place a requirement in the BSC for ELEXON to gain the explicit agreement from the Panel for all ELEXON suggested CACoP changes.

Group's discussion

The Group noted the ELEXON commitment under the Proposed Modification to take, as a working practice, all ELEXON suggested changes to the CACoP to the Panel for approval. However, the majority of the Group considered that there would be merit including this explicit requirement in the BSC as it would be clearer and more transparent. It would also clarify the situation where, if it were just a working practice (rather than a BSC requirement), the Panel did not agree to the ELEXON proposed change to the CaCoP. The Group noted that with the working practice approach ELEXON could still submit the CaCoP change in that situation whereas if it was an explicit BSC requirement they could not. It would also be in line with the BSC Modification Procedures, where ELEXON cannot raise Modification Proposals on its own and must request Panel to do so.

A member was concerned that without Panel oversight ELEXON could potentially raise changes to the CACoP which were beneficial to ELEXON or disadvantageous to the BSC as a whole. Another member was concerned that changes to the CACoP could be used as a backdoor to change the BSC. If the principles of the CACoP were to change then the BSC may need to change. On that basis it was appropriate that checks and balances were in place.

A member of the Group noted that any concern should consider that it was clear in the CACoP, Ofgem Code Governance Review consultations and the BSC that the BSC takes precedence over the CACoP.

ELEXON commented that their concern was not with the principle, but placing the requirement in the right place. In ELEXON's opinion the BSC was not the right place for including change process details for the Code Administration Code of Practice (a document which was not a Code Subsidiary Document) and the CACoP change process should be

contained within the CACoP. A Group member commented that the suggested alternative would have no impact on the CaCoP change process itself; rather it only addresses what ELEXON can and cannot do which is something that, correctly, in the view of the Group member, resides in the BSC.

It was also suggested that placing the obligation in the BSC may be inconsistent with the Transmission Licence. The Group requested that ELEXON's legal advisor clarify whether including the requirement in the BSC was consistent with the Transmission Licence during the Assessment Consultation (see page 8 to 9).

5 Further Group discussion following the Assessment Consultation

Group's views on consultation responses regarding the Proposed Modification

ELEXON noted that the majority of consultation responses reported similar views on the Proposed Modification to the Group. All respondents agreed that P262 would better facilitate Applicable BSC Objective (a), and a number of respondents also cited (d) as the introduction of Self-Governance would increase the efficiency of progressing Modifications with no material impact.

However, one respondent had disagreed with the Group's provisional view that P262 was better than the current arrangements. The respondent had noted that P262 was better under (a) but that the drawbacks under (c) and (d) outweighed the benefits under (a). The respondent was also concerned that the Assessment Consultation had characterised P262 as a Modification that industry had to support.

One attendee agreed with the respondent's views. They commented that although P262 clearly better facilitated (a) it was not relevant to consider this objective. ELEXON questioned whether the attendee meant that the Panel should consider all the Applicable BSC Objectives and come to a balanced overall view. The attendee elaborated:

"Section 173 to 176 of the Energy Act 2004 sets out statutory merits based appeals process to the Competition Commission against Ofgem energy code modification decisions. Parliament did not want this to be an automatic right of appeal for all materially affected parties and a filter mechanism was established in secondary legislation to exclude appeals in certain circumstances. The relevant statutory instrument thus prevents appeals being considered where Ofgem does not consent to "a majority recommendation made by the Panel in the Modification Report". It is implicit that this requires the Panel to establish its own independent and impartial view and make a recommendation based on the merits of the proposal.

On the face of it is hard to argue that P262 does not better facilitate Applicable BSC Objective (a), but this is simply because it meets the requirements of licence changes agreed between Ofgem and National Grid. Other parties did not have the formal right to object or appeal these licence changes but redress might still be possible through an appeal to the Competition Commission of the BSC modifications designed to implement these licence changes.

If the Panel were to consider Applicable BSC Objective (a) in reaching its recommendation on P262 its decision would not be an unfettered judgement on the merits of the proposal. Only by limiting its consideration to Applicable BSC Objectives (b),



Applicable BSC Objective (a)

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]

P262
Detailed Assessment

12 November 2010

Version 2.0

Page 6 of 15

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(c) and (d) will the potential statutory rights of appeal of Ofgem modification decisions by materially affected parties be protected.”

ELEXON commented that the Panel should consider each Modification Proposal against the same criteria – all the Applicable BSC Objectives – and come to a balanced overall view.

The attendee noted that they agreed with the respondent who viewed P262 as having drawbacks under (c) and (d). They commented that the Code Governance Review was the biggest change to electricity governance since the New Electricity Trading Arrangements (NETA) were introduced in 2001. It fundamentally alters the relationship between Ofgem and industry and has been carried out in such a way that only National Grid, as Licensee, could object to the Transmission Licence changes.

The attendee commented that their main concern related to the SCR process and its impact on competition (Applicable BSC Objective (c)) and efficiency (Applicable BSC Objective (d)). If used correctly this could be a very beneficial process. However, the SCR process as introduced into the Transmission Licence did not have the appropriate checks and balances. It could potentially be used to pursue an Ofgem agenda or be run in an open-ended and inefficient manner. It could increase regulatory risk and uncertainty and could curtail the ability for the industry to suggest changes to the BSC and other codes. It might also dissuade participants from raising changes that differ from the SCR Modification Proposal.

One member questioned what would happen if P262 was not implemented. ELEXON explained that the Licensee has an obligation to ensure the BSC was consistent with the Transmission Licence and would therefore have to raise another Modification Proposal.

The attendee commented that the original high level summary for P262 might have led Assessment Consultation respondents to believe they have little choice but to support P262. ELEXON said that they did not believe that this was the case and emphasised that it was important for those considering P262 to weigh up each Applicable BSC Objective, and come to an overall view. One Group member noted their disappointment and suggested the Group had failed in the Assessment Consultation in fully explaining P262. It was certainly not the case that the Group, industry respondents or Panel had to support P262. It was important for those considering P262 to weigh up each objective, and come to an overall view. ELEXON agreed to use amended wording in the P262 Assessment Report to make this clear.

One member was concerned that the SCR process may give the appearance of fettering a Modification Group’s discretion. Group members may feel that they cannot object to a SCR Modification Proposal as much work has been completed during the SCR process and Ofgem would have concluded that the SCR Modification Proposal in question should be raised (by virtue of issuing a direction to that effect). It needed to be clear that the discretion of Modification Group members and Panel members was not fettered when considering SCR Modification Proposal. One member noted that it would be possible for a SCR Modification Proposal to be found deficient only once a Modification Group began working up the detail (which may not occur during the SCR process). In these cases the Group should have the ability to recommend rejection and develop an alternative (if they felt one could be developed to address the defect that better meets the Applicable Objectives). The Group agreed that the P262 legal text should be updated to clarify that the views of the Modification Group and Panel would not be fettered by an SCR Modification Proposal, Authority SCR conclusions document or direction to the Licensee.

One member noted Modification Groups should consider success criteria when assessing Modification Proposals. This would be particularly important for SCR Modification Proposals

where the subject matters were substantive and significant effort would have been expended on progression. It was therefore important to identify and subsequently measure the benefits of any SCR Modification Proposal. ELEXON agreed it would be very useful for Modification Groups to provide success criteria as part of the Assessment Procedure and noted it was reviewing its processes to introduce such measures.

Potential addition 1

The Group noted unanimous support for potential addition 1 in the consultation responses. The Group agreed with one respondent's comment that potential addition 1 may encourage small Parties to raise and participate in the Modification Procedures, who may not have the resources to be involved in the SCR process; and may better facilitate Applicable BSC Objective (c).

The Proposer's representative commented that they would incorporate potential addition 1 into the Proposed solution.

Potential addition 2

The Group noted the majority support for potential addition 2. The majority of respondents believed it would improve the solution under (d) as it would introduce appropriate checks and balances on ELEXON to ensure all ELEXON raised CACoP changes were in the best interest of the BSC. One respondent also noted that it would align the CACoP change process with the BSC change process where ELEXON needs Panel endorsement to raise Modification Proposals.

A minority of respondents believed potential addition 2 would not be better than the Proposed solution. Respondents noted concern that the Alternative could potentially conflict with the CACoP Principles, and that the CACoP change process should be dealt within the CACoP rather than the BSC. One respondent noted that their support was contingent on ELEXON's legal advice on potential addition 2.

ELEXON's legal advice on potential addition 2

ELEXON investigated whether potential addition 2 would be inconsistent with the Transmission Licence. It concluded that it may be and therefore recommended to the Group that potential addition 2 be incorporated into the Alternative solution rather than the Proposed solution.

ELEXON noted the follow potential inconsistencies between potential addition 2 and the Licence:

1. The Licence does not place an obligation on Code Administrators to obtain approval to raise amendments to the CACoP. The effect of potential addition 2 would be to fetter ELEXON's ability to propose change to the CACoP;
2. It gives the Panel a power of veto over ELEXON's ability to raise amendments to the CACoP. Therefore, by implication, potential addition 2 gives the Panel an indirect role in the change management approval process of the CACoP;
3. If the Authority had intended that Panel should have a role (direct or indirect) in the change management approval process of the CACoP it is reasonably arguable that the Licence would have made provision for this role explicitly;
4. It is arguably inconsistent with the functions of Panel under the BSC for the Panel to have a role (albeit indirect) in the change management process of a document in respect of which it has no governance function; and

5. Potential addition 2 of questionable value as, once the Panel has approved that ELEXON raises a proposed change to the CACoP is raised, the Panel will not have any control over the development of that proposed amendment by the Code Administrators.

The Group noted ELEXON's legal advice as part of its deliberations (see pages 5 to 6 for further details). One member commented that the potential inconsistency would be clarified by making potential addition 2 the Alternative Modification. Whichever Modification the Authority preferred would be the correct option.

The Proposer's representative noted ELEXON's advice and the Group's discussion and commented that they would not be incorporating potential addition 2 into the Proposed solution, even though it was included in the Proposed solution under the corresponding CUSC Amendment Proposal. The Group agreed potential addition 2 should form the basis of the Alternative Modification.

Any other alternatives?

The Group noted one respondent had suggested an alternative whereby SCR Subsumed Modification Proposals would automatically re-enter the Modification Procedures after 12 months. The Group believed this alternative would be inconsistent with the amended Transmission Licence as SCR Subsumed Modification Proposals cannot progress further through the Modification Procedures unless directed by the Authority.

However, the Group developed a similar solution which would be consistent with the Transmission Licence. Under the Group's solution the Proposer of a SCR Subsumed Modification can request that their Modification be considered Urgent at any time. This would allow the Panel on behalf of the Proposer to highlight to Ofgem (using the current criteria for urgency) where and why a SCR Subsumed Modification Proposal should be progressed. As with any Urgent Modification the Panel would make a recommendation on urgency (based on the current criteria for urgency) to Ofgem who would make a final decision. A Modification Proposal declared urgent (by Ofgem) would then re-enter the Modification Procedures.

The Group unanimously supported this solution. The Proposer's representative also agreed with the solution and so included it in the Proposed Modification.

Implementation approach

The Group noted unanimous agreement from respondents on the implementation approach.

Other comments

One respondent questioned whether the Self-Governance appeals process should start on the date when the Panel decisions were published, rather than on the date the Panel decision occurred. The respondent was concerned that it seemed wrong to commence a time-limited appeal process at a point when affected BSC Parties may not have been informed that the time period has commenced.

ELEXON noted that the Proposed solution had been worded in this way as the Transmission Licence could be interpreted as starting on the Panel decision date, rather than the date the decision was published.

The Group agreed with the respondent's comment, but were mindful of placing a provision in the BSC which was potentially inconsistent with the Transmission Licence. The Group

considered its options. It could place a requirement on ELEXON to publish the Self-Governance Modification Report on the day of the Panel decision. This would allow the decision and the Panel's detailed discussion to be published on the start day of the appeals timescale. However, Group members were concerned that this would not be always achievable. A Group member also questioned whether an appellant needed the full detail of the Panel discussion to mount an appeal. The Group agreed that the full discussion was necessary for an appellant in order that they could fully understand the Panel's views against the Applicable BSC Objectives. However, this information was not needed immediately for a Party to start the appeals process as the Party would have their own initial view on whether they would be appealing a decision or not.

The Group considered a compromise whereby the Modification Secretary would publish a summary of the decisions on the day of the Panel determination. This would allow Parties to start preparing their appeal. Then ELEXON would publish the Self-Governance Modification Report within 3 days of the Panel decision. The Group and Proposer agreed this would be consistent with the Transmission Licence, allow Parties the full 15 Working Days to consider their appeal and give Parties the full detail of the Panel discussions within a reasonable time period.

6 Finalising the legal text

The Group met to discuss the legal text on 6 October 2010. Ofgem had provided legal text comments which we detail below. The Group discussed these comments and as a number of them were a matter of legal interpretation, the Group agreed ELEXON's lawyer and Ofgem's lawyer would agree a way forward.

SCR

Reference	Ofgem Comment	ELEXON legal response
5.1.3	This clause is caveated with "provided that the events described...occur within 28 days after the Authority publishes its Significant Code Review Conclusions". However, one of those events is that pursuant to Authority direction, NG raises a SCR Mod Proposal. SLC C3 does not require this to happen within 28 days. The Authority should issue either direction or statement that there will be no direction within 28 days. If a direction is issued, the Authority can specify the timetable to raise the SCR mod in that direction. This does not mean that the SCR mod must be raised within 28 days of the SCR conclusions.	We note that, notwithstanding the definition of a Significant Code Review Phase in the Licence, it is Ofgem's view that the relevant requirement is that Ofgem issues a direction within 28 days of the publication of a SCR Conclusions document. We have accordingly reflected Ofgem's view in the Modification drafting.
5.1.3	This clause states that pursuant to Authority direction, NG raises a SCR Mod Proposal in accordance with paragraph 2.1.2 – however 2.1.2 does not say that NG must raise an SCR Mod Proposal. Please clarify where in the text this is required of NG.	Please see F5.3.1(a).
5.2.3	We consider that this clause should also	We have included these

Reference	Ofgem Comment	ELEXON legal response
	include a further requirement: that the SCR Suitability Assessment Report includes an assessment of the applicability of the exceptions set out in SLC C3(4A)(a) and (b).	additions in F5.2.2.
5.2.4 / 5.2.5	We consider this clause conflicts with 5.2.5. As currently provided in 5.2.4, the Authority is required to notify its determination of whether it considers a proposal falls within an SCR. However the Authority is not required to do this. As rightly provided in 5.2.5, a proposal raised during an SCR phase, proceeds unless the Authority notifies that it should not because it falls within scope of the SCR. Therefore we consider 5.2.4 is not required and should be deleted. If not, we consider the words "the Authority shall notify the Panel" should be replaced with the words "the Authority may notify the Panel".	We have updated "shall" to "may".

Self Governance

Reference	Ofgem Comment	ELEXON legal response
6.1.4(a)	We query which requirement of SLC C3 this provision is implementing? It seems it is SLC C3(13A)(c)- however here the Authority can notify before the Panel determination date that its decision is required – meaning that it is not self-governance proposal and Authority approval is required. Therefore, we consider 6.1.4(a) requires redrafting to this effect.	We have redrafted 6.1.4 accordingly
6.1.4(b)	The Authority is required to notify the Panel that its decision is required – meaning that it is not self-governance proposal – before the panel determination date. However, the Authority cannot be certain of what this date will be, except that it cannot be earlier than 7 days from submitting consultation responses to the Authority. Is it possible to get some certainty i.e. the self governance statement will contain the Panel's determination date, or if it does not a clause whereby the panel will notify the Authority of that date as soon as practicable?	We had included a provision for the Self-Governance Statement to include a possible Panel decision date.
6.3.3	We query whether the words "subject	We have updated as

Reference	Ofgem Comment	ELEXON legal response
	always to paragraph 6.4,” should be placed more appropriately at the beginning of 6.3.3?	suggested

Self Governance Appeals

Reference	Ofgem Comment	ELEXON legal response
6.4.1	We consider that the panel determination on a self governance mod cannot be “binding on all Parties” as such as it is a decision directed to the Transmission Company who must comply with it rather than the all Parties complying with the determination. Therefore we consider these words should be deleted.	We have updated F6.4.1 to remove the words “final and binding on all Parties”
6.4.1 / 6.4.2	<p>References to paragraph 6.3.1 conflict with reference to 15 business days after the relevant “Self-Governance Modification Report” is was notified to parties as 6.3.1 refers to the determination by the Panel. The Self-Governance Modification Report is prepared within 3 days under 6.3.2.</p> <p>We note that under SLC C3, a party can appeal within 15 days following panel determination. This means from the actual decision under 6.3.1. However, we think there is a further concern that if a party does not have the Self-Governance Modification Report until 3 days following the determination, they may not be afforded full opportunity i.e. the full 15 days, to consider their case, in light of all the information relating to the basis of the Panel’s decision in the report?</p>	The Modification Group discussed this issue and we have agreed with Ofgem that no changes to the legal text are required.
6.4.3(c)	The words “and quash the Panel’s determination pursuant to paragraph 6.3.1” should be deleted because the Authority may uphold the appeal and then confirm the Panel’s determination or quash it and then 6.4.4 and 6.5.5 cover what the Authority may do.	We do not consider that Ofgem’s stated concern is correct. The natural consequence of a decision by the Authority to uphold an appeal is that the relevant Panel determination is quashed. The Authority may then determine the matter itself or direct the Panel to reconsider its determination and make a further determination. Based on the fact that Ofgem’s lawyer is not available

Reference	Ofgem Comment	ELEXON legal response
		before Friday we have suggested that Ofgem provide further comment as part of the Report Phase Consultation.
6.4.5(b)	We consider that the words “pursuant to paragraph 6.3.1” should be deleted as the Panel may need to consult further/carry our further assessment?	We have amended this provision to correct a cross – reference however we believe that Section F6.4.9 deals adequately with Ofgem’s stated concern.
6.4.7	We do not think this clause is required as if the Authority takes the decision itself under 6.4.5(a) then the report is treated as containing recommendation of the Panel under paragraph 2.7.7 and usual procedures apply. We consider this clause should be deleted and, for the avoidance of doubt, 6.4.5(a) should be extended to say something to the effect that the usual procedures apply – referencing the appropriate paragraphs of the procedures.	We have amended this provision in line with Ofgem’s suggestion. However we consider that the original wording was correct.

Definitions



Reference	Ofgem Comment	ELEXON legal response
Omitted definitions	The modification rules contain references to “SCR Exempt Modification Proposal”, “Self-Governance Modification Proposal” and “SCR Suitability Assessment Report”. This is a defined term but definition is not in the definitions section. Please consider if these are required.	ELEXON – we have added these additional terms
“Self-Governance Modification Report”	Is the reference to 6.3.1 correct – should it be 6.3.2?	ELEXON – we have corrected the cross reference
“Proposed Self-Governance Modification”	Is the reference to 6.3.2 correct?	ELEXON – we have corrected the cross reference

7 Timetable and Responsibilities

Timetable

Assessment Activity	Date
Modification Group 1	23 August 2010
Draft Consultation Document	24 August – 31 August 2010
Assessment Procedure Consultation	01 September – 22 September 2010
Modification Group 2	28 September 2010
Draft Assessment Report	29 September – 07 October 2010
Submit Assessment Report to Panel	08 October 2010
Present Assessment Report to Panel	14 October 2010

Attendance list

Member	Organisation	23/08/10	28/09/10	06/10/10 (legal text comments)
Adam Lattimore	ELEXON (Chairman)	✓	✓	
Andrew Wright	ELEXON (Lead Analyst)	✓	✓	
Steven Lam	Proposer's Representative (National Grid)	✓	✓	
Chris Stewart	Centrica	✓	✓	X
Steven Eyre	EDF Energy	✓	✓	
Man Kwong Liu	Accenture	✓	✓	X
Esther Sutton	E.ON	✓	X	
Garth Graham	SSE	✓	✓	X
Robin Healey	npower	✓	✓	X
Lisa Waters	Waters Wye Associates	✓	X	X
Attendee	Organisation			
David Ahmad	ELEXON (Lawyer)	✓	✓	
Clare Cameron	Ofgem	✓	X	X
Catherine Wheeler	Ofgem	X	✓	
Peter Bolitho	E.ON	X	✓	X

Estimated progression costs as reported in the IWA

The following table highlights the estimated ELEXON cost of progressing this Modification.

Estimated central assessment costs	
ELEXON resource	40 man days, equating to £9,600
Meeting costs	£1,000
Total	£10,600

P262
Detailed Assessment

12 November 2010

Version 2.0

Page 14 of 15

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The ELEXON resource cost is an estimation of how much time and effort it will take to progress a Modification through the Assessment and Report phases. This includes time supporting industry groups, drafting documentation and producing legal text.

Below is estimate of cost incurred by the industry in assessing this Modification:

Estimate of total industry assessment costs					
Modification Group support	Meetings	Est # att	Est effort	Est rate	total
	2	5	1.5	605	£9,075
Consultation response support	Est #con	Est # resp	Est effort	Est rate	total
	2	6	2.5	605	£18,150
Total					£27,225

Meeting costs reflect an estimate of how many Modification group meetings will be held and the industry effort of supporting these meetings. The calculation is based upon an average number of members (5) each putting in 1.5 man days effort per meeting. This effort is multiplied by a standard rate of £605 per day. The result is:

$$2 \text{ working group meetings} \times 5 \text{ attendees} \times 1.5 \text{ WDs effort} \times £605 = \textbf{£9,075}$$

Consultation costs represent an approximation of industry time and effort in responding to consultations. The calculation is based upon an estimate of how many responses we will receive and assumes each response will take 2.5 man days of effort, again multiplied by a standard rate of £605 per day. The result is:

$$6 \text{ responses} \times 2.5 \text{ WDs effort} \times £605 \times 2 \text{ consultations} = \textbf{£18,150}$$

Updated Assessment Procedure and Report Phase costs based on actual attendance and responses

Estimate of total industry assessment costs					
Modification Group support	#mtgs	Total atten.	Est effort	Est rate	total
	3	18	1.5	605	£16,335
Consultation response support	#con	Total resp	Est effort	Est rate	total
	2	7	2.5	605	£21,175
Total					£37,510

The meeting cost is the total number of attendances (in this case 18) multiplied by each member putting in 1.5 man days effort per attendance with this effort is multiplied by a standard rate of £605 per day. The result is:

$$18 \text{ attendances} \times 1.5 \text{ WDs effort} \times £605 = \textbf{£16,335}$$