

Stage 01: Initial Written Assessment

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

P262: Code Governance Review: SCR, Self Governance and Code Administrators CoP

The Ofgem Code Governance Review has recently amended the Transmission Licence to introduce a Significant Code Review Process, the ability for the BSC Panel to make decisions on self governance Modifications and provisions for a Code Administrators Code of Practice.

P262 seeks to introduce the necessary procedures and requirements into the BSC to enable the delivery of the new Transmission Licence obligations.



ELEXON recommends
A **2 month Assessment Procedure**



High Impact:
BSC Panel, Parties progressing or partaking in the Modifications process, BSCCo

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About this document:

This document is an Initial Written Assessment (IWA), which ELEXON will present to the Panel on 12 August 2010. The Panel will consider the recommendations and agree how to progress P262.

Further information is available in the P262 Modification Proposal which is an appendix to this document.



Any questions?

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1 Why Change?

Code Governance Review

The industry codes contain the contractual arrangements for participating in the Electricity and Gas markets. In November 2007 Ofgem launched the Code Governance Review. The aim of the review was to reduce the complexity and fragmentation, and to increase the transparency and accessibility, of these arrangements. In July 2010 Ofgem directed that the licence modifications be made to implement the Code Governance Review Final Proposals. They also noted that the industry codes would need to be updated by 31 December 2010. In order to comply with the modified Transmission Licence the BSC will need to be amended to reflect the new processes and policies coming into effect.

The supporting BSC changes fall into 5 distinct areas:

- Significant Code Reviews (SCRs)
- Self Governance
- Code Administration Code of Practice (CoP), assisting Parties, ensuring consistency with other codes
- Send Back Process
- Environmental Assessment

We have split the relevant Transmission Licence changes into 2 Modification Proposals. This Modification Proposal covers:

- Significant Code Reviews
- Self Governance
- Code Administration Code of Practice, assisting Parties, ensuring consistency with other codes

Significant Code Reviews

The SCR process has been introduced to facilitate the progression of significant industry changes in the most efficient manner. Ofgem has the sole right to raise SCRs, but will consult on the scope of the review before commencing the SCR.

Once commenced, the SCR will utilise a number of industry workshops to develop an SCR conclusion. The SCR conclusion may result in an Authority direction that:

- Requires National Grid as the licensee to raise a Modification(s) to the BSC; or
- States no changes to the BSC are needed

The period between the SCR commencing and SCR closing is known as the 'SCR Phase'.

Further details on the SCR process can be found in the final licence modifications.

Whilst specific details of the SCR process are outside the scope of the BSC, changes to the BSC are required to accommodate this new process.

Self Governance

The amendments to the Transmission Licence provide for a self governance route for those Modifications the Panel deem unlikely to have a material effect on:

- Existing or future electricity customers;
- Competition in generation or supply;
- The operation of the transmission system;

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- Security of supply;
- Governance of the BSC

and if the Panel believe the Modification is unlikely to discriminate against different classes of BSC Parties.

The self governance route allows the Panel to make a determination on a Modification rather than a recommendation to the Authority, who in turn make the final determination.

Code Administration Code of Practice

The Code Governance Review has created a Code of Practice for all Code Administrators to adhere to. The idea of the Code of Practice is to help spread consistency across the industry codes by providing guidelines on minimum standards and practices.

Applicable BSC Objectives

The Proposer believes that P262 will better facilitate the achievement of **Applicable BSC Objectives (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].

In order to efficiently discharge the Transmission Licence the licensee must ensure that the BSC is consistent with the Licence. Hence P262 will better facilitate Applicable Objective (a) by aligning the BSC with the Transmission Licence.

2 Solution – Significant Code Reviews

It is proposed that provisions for a Significant Code Review process are introduced into the BSC to reflect the Transmission Licence drafting.

When do SCR Provisions apply?

The SCR Provisions will apply from the start date of the SCR Phase, as directed by the Authority. They will end either:

- When the licensee raises a Modification Proposal as directed by the Authority as a result of the SCR conclusions;
- 28 days after the Authority has published its SCR conclusions; or
- If the Authority issue a statement that no directions will be made to the BSC.

What about Modifications raised prior to the SCR Phase?

Modifications raised before the commencement of the SCR Phase shall progress through the standard BSC Modification Process as normal, and the SCR provisions shall not apply.

Modification Groups and the Panel may take into account the SCR work that is ongoing when forming their recommendations, as they currently do with other wider industry issues.

When an SCR Phase commences ELEXON will have discussions with those Proposers that have Modifications already in the process, providing advice on any likely impact. Proposers may wish to withdraw their Modifications, but they do not have to.

For the avoidance of doubt, if a Modification Proposal raised before the commencement of a SCR Phase is issued to the Authority for determination, but is subsequently sent back into the Modification process during an SCR Phase (see related Modification Proposal P263 'Code Governance Review: Send Back Process and Environmental Assessment'), that Modification will not be subject to the SCR provisions.

Raising a Modification during an SCR Phase

- The Modification Proposal form (contained in BSCP40) will be amended to include a section for the Proposer to justify why the Modification Proposal should be exempt from the SCR provisions. The form will ask for rationale of why a Proposal is exempt, as if a Proposer wishes to include a change in an SCR they should contact Ofgem directly. ELEXON can help Parties by facilitating any discussions with Ofgem.
- If a Modification Proposal is raised during an SCR phase ELEXON will, prior to the BSC Panel meeting:
 - Discuss with the Proposer and the Authority whether or not they believe the Modification falls under the Scope of the SCR; and
 - Capture the views and rationale of Proposer, Authority and ELEXON in the Initial Written Assessment (IWA) report that is presented to the Panel.

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Exempt Modification Proposals

- At any point, from being raised up until the Panel's final recommendation, the Authority may declare a Modification Proposal exempt from the SCR process. If this happens:
 - The Authority will inform the BSC Panel that the Modification Proposal is exempt either at the Panel meeting, or in writing, detailing the rationale; and
 - The Modification Proposal will enter the normal BSC Modification Procedures, following the timetable as detailed in the IWA or a suitable timetable as agreed by the Panel and the Authority.

SCR Suitability Assessment

- At any point, from being raised up until the Panel's Final Recommendation, the Authority or Panel (subject to majority Panel decision) may undertake a "SCR Suitability Assessment" on a Modification Proposal.
- Once a SCR Suitability Assessment is undertaken on a Modification Proposal, it may not proceed through the Modification Procedures without Authority consent.
- Modification Proposals that have been declared exempt by the Authority may still undergo a SCR Suitability Assessment. If so, they are no longer considered exempt unless subsequently declared so by the Authority at the end of the SCR Suitability Assessment.
- As part of an SCR Suitability Assessment the BSC Panel shall form a recommendation to the Authority as to whether or not the Modification Proposal is suitable for inclusion in an ongoing SCR. The Panel may issue an industry consultation to assist their recommendation.
- The results of the SCR Suitability Assessment are then issued to the Authority for determination. This will include the Modification Proposal, Panel discussions and any relevant representations. The Modification Proposal shall not progress in the Modification Procedures until the Authority has made a determination.
- If the Authority has not made a determination with regards to a SCR Suitability Assessment within 15 Working Days of receipt of the SCR suitability Assessment, then the Modification Proposal will enter the normal BSC Modification Procedures, following the timetable as detailed in the IWA or a suitable timetable as agreed by the Panel and Authority.
- If a Modification Proposal is unsuitable for the SCR it will be declared exempt by the Authority and will enter the normal BSC Modification Procedures, following the timetable as detailed in the IWA or a suitable timetable as agreed by the Panel and Authority.
- If a Modification Proposal is suitable for the SCR it will be declared "Subsumed" by the Authority.

Subsumed Modification Proposals

- At any point, from being raised up until the Panel's Final Recommendation, the Authority may declare a Modification Proposal "Subsumed" (once it has completed a SCR Suitability Assessment). BSCCo will inform Participants within 1 Working Day of the decision to subsume a Modification Proposal.
- If a Modification Proposal is declared Subsumed then:

- It shall not proceed through the Modification Process without consent of the Authority;
- When the SCR Phase, for the SCR that subsumed the Modification Proposal, has ended then the Modification Proposal will enter the normal BSC Modification Procedures and will progress to a suitable timetable as agreed by the Panel and Authority.
- For the avoidance of doubt, the Proposer has the right to withdraw their Subsumed Modification Proposal at any time during the SCR Phase, for the SCR that subsumed the Modification Proposal.
- Following the completion of the SCR Phase, if the Proposer of a Subsumed Modification Proposal is unable to progress their Modification Proposal as Proposer (for example, the organisation that raised the Modification Proposal is not contactable), then the Panel is able to initiate the withdrawal process.

Modification Groups and Alternative Modifications

- Only the Proposer of a Modification Proposal may request that the Panel undertake a SCR Suitability Assessment on the Modification Proposal.
- The Authority and Panel (by at least majority vote) shall only undertake a SCR Suitability Assessment and/or subsume the Proposed Modification. Where a Proposed Modification has an Alternative Modification, the Alternative Modification shall progress to the same timetable as the Proposed Modification.
- An Alternative Modification shall not cause a Proposed Modification to undergo a SCR Assessment and/or be Subsumed:
 - If a Proposed Modification requires an SCR Suitability Assessment then any Alternative Modifications shall also be included in that SCR Suitability Assessment; or
 - If an Alternative Modification is linked to an SCR, but the Proposed Modification is not linked to the SCR, and therefore does not require an SCR Suitability Assessment, then neither the Proposed nor the Alternative Modification shall undergo an SCR Suitability Assessment.

What about National Grid raising a Modification Proposal off the back of a SCR?

- If the Authority directs the Licensee to raise a Modification Proposal as a result of the SCR conclusions then:
 - The Panel cannot refuse to accept such a Modification Proposal on the basis that it has substantially the same effect as a Pending Modification Proposal or a Rejected Modification Proposal;
 - The Licensee cannot withdraw the Modification from the process without prior consent from the Authority;
 - If the Licensee withdraws a Modification Proposal (with the consent of the Authority) that Modification Proposal cannot be adopted by another Party;
 - The Modification Proposal shall not be amalgamated with any other Modification Proposal without prior consent of the Authority; and
 - The voting rights of the BSC Panel members and Modification Groups are not fettered in any way when making recommendations or decisions on the Modification Proposal.

3 Solution – Self Governance

It is proposed that provisions for a Self Governance process is introduced into the BSC to reflect the Transmission Licence drafting.

Raising a Modification

- The Modification Proposal form will be amended to include a Self Governance section, which Proposers must complete. This will indicate if the Proposer believes their Modification is suitable for the Self Governance route. The form will also require (where applicable) Proposers to justify why they believe the Modification Proposal is suitable for the self governance route by comparing against the criteria set in the licence drafting.
- As part of the raising of the Modification Proposal ELEXON will:
 - Discuss with the Proposer and the Authority any issues on self governance and assist the Proposer in completing the form; and
 - Capture the views and rationale of the Proposer, the Authority and ELEXON in the initial Written Assessment (IWA) report that is presented to the Panel for their consideration.

Decision on Self Governance

- At any point, from being raised up until the Panel's Final Recommendation, the Panel may decide that a Modification Proposal should proceed under the Self Governance route. When this happens a 'Self Governance Statement' will be issued to the Authority within 1 Working Day of the Panel decision.
- The Self Governance Statement will include the Proposal form, the Panel's rationale and discussions as to why the change is Self Governance.
- If the Panel submit a Self Governance Statement they must consult with industry on the suitability of the proposal for Self Governance. The responses to the consultation must be issued to the Authority at least 5 days before the Panel make a final decision on the Modification Proposal.
 - If a Modification Proposal is in the Assessment Procedure then the Self Governance consultation will form part of the standard Assessment Procedure consultation. The consultation responses will be reviewed by the Panel when they consider the Assessment Report and issued to the Authority following the Panel meeting.
 - If a Modification Proposal is in the Report Phase then the Self Governance consultation will form part of the standard Report Phase consultation. Once received, the consultation responses will be issued to the Authority at least 7 days prior to the Panel meeting where a final decision is made.
- If the Authority determine that a Modification Proposal may proceed down the Self Governance route, no Self Governance Statement or consultation is required.

It should be noted if a decision to proceed as Self Governance is taken after the Report Phase consultation, by either the Panel or the Authority, a consultation will be required to elicit industry opinions on the suitability of Self Governance and/or revised Implementation Dates.

Withdrawing the Self Governance Statement

- At any time after issuing the self governance statement up until the Panel's final recommendation, the Panel may withdraw the Self Governance Statement. The

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consequence of withdrawing the self governance statement is that the Panel wave the right to make a final decision and instead make a final recommendation to the Authority.

- The rationale for withdrawing the Self Governance Statement will be captured in the Final Modification Report.

The Authority veto the Self Governance Statement

- At any time after issuing the Self Governance Statement up until the Panel's final recommendation the Authority can veto the ability for Self Governance.
- To do this the Authority must write to the Panel with rationale as to why they believe the Self Governance criteria has not been met.

Appeals process

- On the Working Day that the Panel make a decision on the approval of a Self Governance Modification Proposal BSCCo will issue a notification to Participants. Participants have 15 Working Days in which to raise an appeal.
- To raise an appeal a Participant must write to the Authority and the Modification Secretary outlining their appeal. Within 1 Working Day BSCCo will notify Participants that an appeal has been raised and that the implementation of the Modification Proposal is now on hold.
- The implementation of a Modification Proposal will not proceed until a direction is received from the Authority.
- The Authority has 5 options when progressing an appeal. in all cases BSCCo will notify participants within 1 Working Day:
 - The Authority does not uphold the appeal, in which case the Modification Proposal progresses as directed by the Panel.

If the appeal is upheld:

- The Authority agrees with the Panel decision and directs the Modification Proposal progresses as directed by the Panel.
- The Authority quashes the Panel's decision (and directs the Modification Proposal is approved or rejected depending on the Panel's previous decision).
- The Authority direct the Panel to revisit their decision, and to remake their decision under the Self Governance route.
- The Authority direct the Panel to revisit their decision and to remake a recommendation under the normal Modification Proposal route (i.e. not Self Governance route).

If the Authority upholds an appeal then the final decision of the Panel becomes a final recommendation and will be issued to the Authority in a Final Modification Report, except where the Authority direct the Panel to revisit their decision, and to remake their decision under the Self Governance route.

4 Solution – Code Administration Code of Practice

It is proposed that provisions for a Code Administration Code of Practice is introduced into the BSC to reflect the Transmission Licence drafting.

Introducing the Code of Practice

The following requirements would be introduced into the BSC:

- BSCCo shall act consistently with the relevant principles of the Code Administration Code of Practice;
- The BSC Modification Procedures shall be consistent with the relevant principles of the Code Administration Code of Practice;
- BSCCo, in conjunction with other code administrators, shall maintain, publish, review and amend from time to time the Code Administration Code of Practice. Any amendments to the Code of Practice shall first be approved by the Authority. As a working practice, BSCCo shall discuss any potential changes to the Code Administration Code of Practice with the BSC Panel;
- BSCCo shall assist Parties and consumer representatives with the following:
 - i. drafting modification proposals;
 - ii. understanding the operation of the BSC;
 - iii. understanding the Modifications Procedures, including how Parties can get involved and be represented during the processes (including but not limited to panel and/or workgroup meetings); and
 - iv. accessing information relating to Modification Proposals;
- BSCCo shall check that the BSC is consistent with other Codes and Core Industry Documents and shall notify the Licensee and the Panel where it identifies such inconsistencies
- Introduce the following definitions in Section X-1:
 - i. Code Administration Code of Practice:
the Code Administration Code of Practice approved by the Authority and:
 - a) developed and maintained by the code administrators in existence from time to time; and
 - b) amended subject to the Authority's approval from time to time; and
 - c) re-published from time to time.
 - ii. 'Modification Group' becomes 'Workgroup': this term has been changed in the Licence. It would be updated in Annex X-1 and throughout the BSC.

The Code of Practice Change Process

The Code of Practice contains a high level process of the steps that must be completed in order to amend the Code of Practice. Part of this process allows Code Administrators and Participants to raise potential changes, the approval of which will sit with Ofgem.

Some industry members have stated that they do not believe it to be good transparent, governance that the Code Administrators could raise changes to the Code of Practice potentially watering down the stand requirements.

Whilst the detail of the process of how to change the CoP does and should remain outside of the BSC, ELEXON has committed to raising this concern at the next Code Administrators CoP meeting with the intention of making the CoP change process more robust. ELEXON has also committed to taking all suggested amendments to the Panel for endorsement prior to issuing them to other Code Administrators and the Authority for approval.

5 Proposed Progression

Timetable

We recommend P262 is issued to a 2 months Assessment Procedure in line with the timetable detailed below. We also recommend forming the P262 Modification Group from members of the Governance Standing Modification Group (GSMG).

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

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	Whether there is 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.

Estimated Progression Costs

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

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.

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

Estimate of total industry assessment costs					
Modification Group support	Est #mtgs	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:

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

6 Likely Impacts

Impact on BSC Systems and process

None identified

Impact on BSC Agent/service provider contractual arrangements

None identified

Impact on BSC Parties and Party Agents

Those participants raising modifications will need to be aware of the new process

Impact on Transmission Company

If raising a Modification due to a SCR conclusion, the Transmission Company will have to be aware of the regulations surrounding such a change.

Impact on ELEXON

Area of ELEXON's business	Potential impact
Change Management	<p>ELEXON will be required to updated all processes relating to the Modification Process. And to give assistance to parties wishing to use the process.</p> <p>As a Code Administrator ELEXON will have to adhere to the principles of the CoP</p>

Impact on Code

Code section	Potential impact
Section B, C, F and H	To allow for the new processes as defined above
Section X Annex X-1	For the inclusion of new definitions

Impact on Code Subsidiary Documents

CSD	Potential impact
BSCP40	Updates to the Modification Proposal form.

Impact on Core Industry Documents and other documents

Document	Potential impact
Connection and Use of System Code	The CUSC is introducing similar provisions
Uniform Network Code	The UNC is introducing similar provisions

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7 Recommendations



On the basis of the Initial Written Assessment, ELEXON invites the Panel to:

- DETERMINE that Modification Proposal P262 progresses to the Assessment Procedure;
- AGREE the Assessment Procedure timetable such that an Assessment Report should be completed and submitted to the Panel at its meeting on 14 October 2010;
- DETERMINE that the P262 Modification Group should be formed from members of the Governance Standing Modification Group; and
- AGREE the Modification Group's Terms of Reference.

Insert heading here

ELEXON recommends that P262 should undergo a 2 months Assessment Procedure.

8 Further Information

More information is included in:

Attachment **A** – P262 Modification Proposal form

Attachment **B** – Draft legal text

More detail about the Code Governance Review can be found at the following link:

[Ofgem Code Governance Review](#)

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