

## Stage 03: Assessment Consultation

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

# P247: Proposer 'ownership' of Modification Proposals

P247 would allow the Proposer to vary the solution of the Proposed Modification during the Assessment Procedure.

The Proposer would also be able to withdraw their Modification Proposal at any time before the Modification Group makes its final recommendation to the Panel.

In addition, the Proposer would be able to address the Panel to explain why they did (or did not) vary the Proposed Modification and answer questions.

The P247 Modification Group has also identified two potential alternative solutions on which it would like your views.



Modification Group initially recommends  
**Approval of the P247 Proposed Modification**



Medium Impact:  
All participants who are able to raise Modification Proposals and/or who are involved in the Modification Process



Low Impact:  
ELEXON as administrator of the Modification Process

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## About this document:

The purpose of this Assessment Consultation is to obtain views or further evidence from BSC Parties and other interested parties on matters discussed in this document. The P247 Modification Group will then discuss the consultation responses before making its recommendations to the Panel on 11 March 2010.

There are 4 documents for this Assessment Consultation:

- This is the **main document**. It outlines the solution, impacts, costs, benefits and implementation approach for the change. It includes the Group's initial recommendation on whether the change should be approved.
- **Attachment A** provides further supporting details of how the Group's discussions have led it to its initial views.
- **Attachment B** contains the Group's legal text for the P247 Proposed Modification.
- **Attachment C** contains the Assessment Consultation questions and response form.



### Any questions?

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## Why Change?

Under the current Modification Process, when a Proposal is raised a Modification Group is charged by the Panel with assessing and developing the Proposed Modification solution. The Proposer does not have 'ownership' of the Modification and has no more influence on the development of the solution than any other Modification Group member. This can mean that aspects of the Proposed Modification solution on which the proposal form is 'silent' are developed by the Group in a way which the Proposer did not originally intend.

In addition, the Modification Group can only develop the Proposed Modification in a way that is consistent with the exact wording of the solution in the Modification Proposal form. This can restrict development of the Proposed Modification. Small refinements to the solution, which differs from the proposal form wording, may have to be progressed as an Alternative Modification even if the Proposer supports it. This can be inefficient.

There is also no ability to withdraw a Modification Proposal. This can result in wasted effort by the Modification Group, the Panel, the Authority, industry and ELEXON if the Modification Proposal proves to not have a business case.

## Proposed Modification

The Proposed Modification solution has 3 elements:

1. **Proposer Ownership** - the Proposer keeps ownership of the Proposed Modification during the Definition and Assessment Procedures. The Proposer would be allowed to refine the Proposed Modification solution up until the Modification Group makes its final recommendation to the Panel, not after. The Modification Group would advise the Proposer where it believed the solution should be refined or amended, but the Proposer would have the right to disagree and veto the Group's suggested changes. The Modification Group would (as now) have the ability to collectively develop an Alternative Modification if the Group's views diverged from the Proposer's. Any refinement made by the Proposer must continue to address the original issue or defect outlined in the Modification Proposal form;
2. **Withdrawal** - introduce the ability for the Proposer to withdraw their Modification any time before the Modification Group makes its final recommendation to the Panel. Other Parties would have 5 Working Days starting at 12pm on the next Working Day following ELEXON's notification to 'pick up' (adopt) the Modification Proposal; and
3. **Address the Panel** - give the Proposer the right to address the Panel to explain their variations to the Proposed Modification solution, their reasons for the variations and where their decisions were contrary to the Modification Group's advice.

## Potential alternative solutions

The Group has also developed two potential alternative solutions. These are identical to the Proposed Modification aside from the Proposer's the right to address the Panel.

**Alternative A** – The Proposer and a Modification Group member appointed by the Modification Group Chairman would have a right to attend the Panel in order to answer any questions the Panel has following ELEXON's presentation of the Assessment Report. The appointed Modification Group member must represent all counterviews expressed within the Modification Group.

**Alternative B** – Under Alternative B the Proposer's right to address Panel has been removed from the solution. This is because under the current process the Proposer already has the ability to attend Panel and request to speak if they so choose.

The Group would welcome your views on the two potential alternative solutions.

## Impacts & Costs

P247 would directly impact Proposers of BSC Modification Proposals, Modification Groups, ELEXON and the BSC Panel. The P247 Modification Group would welcome any views you have on the costs and impacts.

## Implementation

The Group recommends that P247 is implemented:

- 5 Working Days after an Authority decision.

The Group also agreed that the new P247 process should only apply to Modification Proposals raised on or after the P247 Implementation Date. Modification Proposals raised prior to the implementation of P247 would continue to be progressed in line with the current Modification Process.

## The Case for Change

The majority of the Group believed the Proposed Modification would be better than the current arrangements. Arguing against **Applicable BSC Objectives (c) and (d)** as they believed it would:

- make the Modification process clearer and more user friendly. Encouraging more engagement and participation by Parties;
- give Proposers confidence that their intended solution would be presented to the Authority for decision. This might encourage more Parties to raise Modification Proposals – especially small Parties who may otherwise feel disenfranchised from the process.
- allow the Proposer to incorporate solution refinements under the Proposed Modification, without finding themselves unintentionally restricted by the original wording of their Modification Proposal. This would remove the need for an Alternative Modification to be progressed for a refinement which the Proposer supports.
- allow a Proposer to withdraw a Modification which it no longer supports. This would increase the efficiency of the BSC arrangements and reduce wasted effort.

A minority of the Group believed the Proposed Modification would not be better than the current arrangements. Arguing against **Applicable BSC Objectives (a), (c) and (d)** they believed P247 would:

- introduce discrimination into the BSC. Allowing the Proposer to address the Panel to argue their case without giving the same status to any countervailing is discriminatory. These members clarified that, were it not for this aspect of the solution, they would be more likely to support P247. This led the Group to consider the two potential alternative solutions described above, which some members believed might mitigate this issue.

## Recommendations

The P247 Group's provisional majority recommendation is that P247 Proposed Modification should be approved.

The Group invites you to comment on this view as part of the consultation



### What's wrong with the current process?

Under the current Modification Process, when a Proposal is raised a Modification Group is charged by the Panel with assessing and developing the Proposed Modification solution. The Proposer does not have 'ownership' of the Proposed Modification and has no more influence on the development of the solution than any other Modification Group member. The Modification Group develops any aspects of the Proposed Modification solution on which the proposal form is 'silent' by majority decision. These developments may be in a way which the Proposer did not originally intend. P247 argues that Proposers therefore have to balance wording a proposal too loosely (running the risk the solution may be developed in a way the Proposer did not intend) or too tightly (constraining the solution).

In addition, the Modification Group can only develop the Proposed Modification in a way that is consistent with the solution as detailed in the Modification Proposal form. This can restrict development of the Proposed Modification. Small refinements to the solution, which differs from the proposal form wording, may have to be progressed as an Alternative Modification even if the Proposer supports it. This can be inefficient.

There is also no ability to withdraw a Modification Proposal after it is first present to the Panel. This can result in wasted effort by the Modification Group, the Panel, the Authority, industry and ELEXON if the Modification Proposal proves to not have a business case.

### What do other codes do?

P247 notes that other codes such as the Connection and Use of System Code (CUSC) and the Uniform Network Code (UNC) allow the Proposer to maintain ownership of their original change during its assessment, and to withdraw it at any point before it is submitted to the Authority.

Ofgem's Code Administrator Working Group (CAWG) has concluded that 'Proposer ownership' is an example of best practice in code administration, and this principle is therefore included in the draft Code Administrator Code of Practice developed by ELEXON, National Grid and the Joint Office for the BSC, CUSC and UNC.

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#### Proposer's Quote:

"Current BSC Modification procedures can frustrate the development and efficient prosecution of otherwise viable Modification Proposals."

### Proposed solution

The Proposed solution can be broken down into 3 key parts:

#### Proposer ownership

The Proposer would retain ownership of the Proposed Modification throughout the Definition and Assessment Procedures.

This will allow the Proposer to vary the Proposed Modification solution however they wish, as long as it continues to meet the original defect or issue as set out in the Modification Proposal form.

ELEXON would capture any amendments to the Proposed Modification solution in the Definition Report and/or Assessment Report as appropriate. No updates to the Modification Proposal form itself would be required.

The ability for the Proposer to vary the Proposed Modification solution would cease at the point just before the Modification Group makes its final recommendation against the Applicable BSC Objectives. At that stage, the Modification Group Chair would ask the Proposer if there are any further changes. Once the Proposer had agreed that there were no more changes, the Modification Group would make its final recommendation.

For Urgent Modifications, Proposers will be able to vary the Proposed Modification solution where the urgent progression timetable involves a Modification Group (and insofar as is possible under the urgent progression timetable set by the Authority).

#### Modification Groups and Alternative solutions

The Group would retain its existing ability to collectively develop an Alternative Modification where its views diverged from the Proposer's. As now, any Alternative must continue to address the original issue or defect identified in the Modification Proposal form, and is only progressed if the majority of the Group believes it better facilitates the Applicable BSC Objectives than the Proposed solution (even if the Group does not believe that it is better than the existing baseline).

With the proposers new ability to amend the solution, there is a risk that the solution might significantly change at a late stage in the assessment process. In these circumstances, the Modification Group may need to request additional time from the Panel to complete the Assessment Report (and potentially to reconsult with industry). This request would be made by the Modification Group Chair (as currently happens). The Group notes this risk, but considers that it is similar to the risk under the current process that a Modification Group can develop an Alternative Modification at a late stage.

The Modification Group would continue to collectively develop Implementation Dates, and sign off reports as being the record of all members' views. ELEXON would continue to act as 'critical friend' in chairing/facilitating meetings, and producing/presenting reports. The Group would still review legal text although, for the Proposed Modification solution, it would be reviewing for the robustness/clarity with which the text delivers the solution rather than the solution itself. The Panel would retain its ability to make minor, non-material changes to legal text in the Report Phase. The Panel would still set the Terms of Reference and the progression timetable for any Modification Group.

#### Proposers Representatives

As with the current process, the Proposer would be required to nominate a Representative and a Representative's Alternate, who would represent them on the Modification Group. As now, these can be anyone of the Proposer's choosing and do not have to be from the

same organisation as the Proposer (e.g. small Parties could use a consultancy to represent them at meetings).

There is an option for the Proposer to nominate ELEXON as their Representative. In this case the Modification Process will run as it does currently, with the Modification Group owning the Modification Proposal and making decisions by majority. This ensures that Proposers who may not have the resource to attend Modification Group meetings (or who are unable to find another participant willing to act on their behalf) are not disenfranchised from being able to raise Modification Proposals.

If the Proposer's Representative or Representative's Alternate does not attend a meeting then decisions on the Proposed Modification will be conducted as under the current arrangements – by majority Modification Group decision.

If the Modification Group believes that the Proposer's Representative is frustrating the process, then the Modification Group Chair would report this to the Panel. The Panel could then choose to initiate the withdrawal process for the Modification Proposal (see below for the Withdrawal process). Examples of frustrating the process could include:

- Regularly not attending Modification Group meetings (such that the Group is required to make solution development decisions by majority decision) then vetoing the Group's developments requiring additional work; or
- Making repeated changes to the solution, which require multiple extensions to the assessment or multiple consultations.

## **Withdrawals and adoption process**

The Proposer would be able to withdraw their Modification Proposal at any time from raising the Modification to just before the Modification Group makes its final recommendation against the Applicable BSC Objectives. At that stage, the Modification Group Chair would ask the Proposer if they wanted to withdraw the Modification Proposal. Once the Proposer had agreed that the Modification Proposal would not be withdrawn, the Modification Group would make its final recommendation.

In order to withdraw the Modification Proposal, the Proposer would notify ELEXON. In practice, this would be via an email to ELEXON's Modifications email address ([modifications@elexon.co.uk](mailto:modifications@elexon.co.uk)).

For Modification Proposals which go straight to the Report Phase, the Proposer would be able to withdraw their Modification Proposal up to the point that it formally enters the Report Phase.

## **Adopting Proposals**

If a Modification is withdrawn there would be a window in which any other participant, that is able to raise Modification Proposals, could nominate themselves to take over as the new Proposer of the Modification Proposal. This provides a check that Modifications would not be frivolously or vexatiously withdrawn where they still have industry support.

The adopting Proposer would have the same rights to vary the Proposed Modification solution and to withdraw the Modification Proposal as the original Proposer. The Group would have the same ability to develop an Alternative.

The Party that originally withdrew the Modification Proposal and any Affiliate of that Party would not be able to adopt the Modification Proposal again at a later stage of its progression, if a subsequent replacement Proposer decided to withdraw it.



When a Modification is being withdrawn, ELEXON would notify the industry. Parties would then have 5 Working Days starting at 12pm on the next Working Day to adopt the Modification Proposal.

If more than one participant wanted to adopt a withdrawn Modification then it is the first to contact ELEXON ('first-past-the-post') which would become the new Proposer. This allows Proposals which still have some support to resume their progression quicker than having to wait to the end of the 'adoption window' and removes the need for a process to decide between potential adopters.

If no-one comes forward to adopt a Modification Proposal, then the whole proposal (i.e. both the Proposed Modification and any Alternative Modification) would be formally withdrawn and its progression through the Modification Process would cease.

For Urgent Modifications, although a Proposer will be able to withdraw the Modification before it goes to Report, there will not be an opportunity for another Party to take over as Proposer.

## Proposer addresses Panel

The Proposer would have a right to address the Panel when ELEXON present the Assessment Report to the Panel. This would be in order to explain:

- any amendments they had made to the original Proposed Modification solution; and
- why they deviated from the Group's view (where this had occurred).

### Assessment Consultation question

Would P247 Proposed Modification help to achieve the Applicable BSC Objectives compared to the current arrangements? (see [Section 7](#) for the Group's views)

The Group invites you to give your views using the response form in Attachment C.

Draft legal text is provided for the Proposed Modification as Attachment B.

### Assessment Consultation question

Do you agree that the legal text delivers the intention of P247 Proposed Modification?

The Group invites you to give your views using the response form in Attachment C.



## 4 Potential alternative solutions

### Two potential alternative solutions

The Group has identified two potential alternative solutions. The sections on Proposer ownership and withdrawal are identical to the Proposed Modification. However, the alternatives differ over the Proposer's right to address Panel.

#### **Alternative A – Proposer and Modification Group member attend Panel to answer questions for Assessment Report**

The Proposer and a Modification Group member appointed by the Modification Group Chairman have a right to attend Panel in order to answer any questions the Panel has following ELEXON's presentation of the Assessment Report. The appointed Modification Group member must represent the Modification Group's counterview where this is different to the Proposer's.

#### **Alternative B – Remove Proposer right to attend Panel as this can already be achieved under the current arrangements**

Under Alternative B the Proposer's right to address Panel has been removed from the solution. This is because the Proposer already has the ability to attend Panel and may request to speak if they so choose.

The Group would be interested to know your views on the potential alternative solutions. The Group will prepare draft legal text if it agrees an Alternative Modification. This will be presented to the Panel as part of the Assessment Report, and consulted upon during the Report Phase Consultation (alongside the Proposed Modification draft legal text).

#### **Assessment Consultation question**

What are your views of the potential alternative solutions? Please let us know:

- if you prefer Alternative A or Alternative B
- whether you prefer the potential alternative solutions over the Proposed Modification
- Whether you believe it is appropriate for different Modification Group members to attend the Panel to give contrasting answers, given that ELEXON already presents all views to the Panel on behalf of the whole Group and respondents
- whether there are other alternative solutions which the Group should consider

The Group invites you to give your views using the response form in Attachment C.

## 5 Impacts & Costs

The Group is undertaking a combined impact assessment and consultation, in order to establish the exact impact and any associated costs. The Group would welcome any views you have on the costs and impacts of P247. At this stage, the Group believes that P247 will or may impact:

- Section F of the BSC, which sets out the Modification Process and the rights and obligations of all participants in that process;
- Those participants who are able to raise Modification Proposals (BSC Parties, the National Consumer Council, any third-party bodies designated by the Authority, and the Panel in limited circumstances);
- Those participants who are involved in the Modification Process (e.g. Modification Groups and the Panel);
- The standard Modification Group Terms of Reference, which are approved by the Panel and form the starting point for each individual Group's Terms of Reference;
- ELEXON's working practices as the administrator of the Modification Process; and
- ELEXON's guidance documents for Parties on the Modification Process.

### Assessment Consultation question

What are the impacts and costs of the Proposed Modification on your organisation?

The Group invites you to give your views using the response form in Attachment C.

### Assessment Consultation question

What are the impacts and costs of the two potential alternative solutions on your organisation?

The Group invites you to give your views using the response form in Attachment C.

## 6 Implementation

**The Group recommends that P247 is implemented:**

- **5 Working Days after an Authority decision.**

The Group also agreed that the new P247 Modification process rules would only apply to Modification Proposals that were raised on or after the P247 Implementation Date. Modification Proposals raised prior to the P247 implementation would be progressed in line with the current rules Modification process rules.

The Group believed it was important for a Modification Proposal to be progressed consistently through its lifecycle using the same set of BSC arrangements. A change to the BSC which applied to changes currently in the process would require the Modification Groups to reassess their discussion on the basis of the new arrangements.

### Assessment Consultation question

Do you support the implementation option preferred by the Modification Group?  
Please let us know:

- whether you support the Group's view that P247 Proposed Modification should only apply to Modification Proposals raised on or after the P247 Implementation Date; and
- whether you agree with proposed implementation timescales.

The Group invites you to give your views using the response form in Attachment C.

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### Proposed Modification

The majority of the Group believed the Proposed Modification would be better than the current arrangements. The majority of the Group cited arguments against Applicable BSC Objectives (c) and (d).

The reasons were as follows:

#### Applicable BSC Objective (c):

- P247 would make the Modifications processes clearer and more user friendly. This would encourage maximum engagement and participation by Parties, including classes of user who may hold a minority view or do not often engage in the process;
- Proposer ownership of Modification Proposals would give all Parties confidence that their original solution could be presented to the Authority for decision. This would encourage all classes of Party to raise Modification Proposals.

#### Applicable BSC Objective (d):

- Introducing the ability for a Proposer to further develop and refine their initial proposal with the assistance of the Modification Group and ELEXON would allow the Proposer to correct any minor errors or oversights in the original wording. This would remove the need for another Modification Proposal being raised to fix the original's error.
- Introducing the withdrawals process would allow the Proposer to withdraw Modifications which had no business case. This would increase the efficiency of the BSC arrangements by reducing wasted effort for the Panel, the Authority, ELEXON, the Modification Group and industry.

A minority of the Group believed the Proposed Modification would not be better than the current arrangements. The minority of the Group cited an argument against **Applicable BSC Objectives (a), (c) and (d)**:

- P247 would introduce discrimination into the BSC by allowing the Proposer to address the Panel. This would not better facilitate Applicable BSC Objectives (a), (c) and (d).

## 8 Further Information

More information is available in

Attachment **A**: Detailed Assessment.

This information includes:

- Terms of Reference;
- Full Modification Group discussions;
- Modification Group Membership and assessment process and timetable followed for P247.

Attachment **B**: P247 Proposed Modification legal text

Attachment **C**: Assessment Consultation questions and response form

### Recommendation

Modification Group's initial recommendation is to approve the P247 Proposed Modification

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