

Stage 04: Final Modification Report

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

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P252: Removal of Trading Parties' ability to submit two votes at elections of BSC Panel industry members

This proposal seeks to remove the ability of Trading Parties/Trading Party groups to cast two voting papers in the BSC Panel elections (one per Energy Account) and instead allow them one voting paper per Trading Party/Trading Party group.



Initially, the Panel recommends
Rejection of the Proposed Modification



High Impact:
The BSC Panel and participants in Panel elections



Low Impact:
ELEXON

P252
Final Mod Report

17 May 2010

Version 1.0

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Any questions?

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About this document:

This document is a Final Modification Report, which was sent to the Authority on 14 May 2010, on behalf of the Panel. The Authority will consider the Panel's recommendations, and decide whether or not this change should be made.

Attachment A contains the draft legal text (which is unchanged from the versions in the Assessment Report)

You can find the full industry responses (to both this Report Phase consultation and the Modification Group's earlier Assessment Procedure Consultation) on our website [here](#).

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Why Change?

Under the current Panel election voting process, **Trading Parties/Trading Party groups** are entitled to submit two voting papers. It is argued that not all Parties are aware that they can submit two voting papers and that simplifying the Panel elections process would increase participation. The Proposer also argues that the current system can lead to organised tactical voting.

Solution

P252 would amend Annex B2 so each Trading Party may submit only one voting paper in the BSC Panel elections.

Impacts & Costs

P252 would impact those Parties voting in the BSC Panel election. No costs have been identified.

Implementation

If Proposed Modification P252 is to be implemented the Group recommends that it is implemented:

- On 24 June 2010 if an Authority decision is received on or before the 16 June 2010; or
- 5 Working Days following an Authority decision

The Case for Change

The **majority** of the Panel believes that P252 **does not** better facilitate any of the applicable Objectives and agrees with the Modification Group's conclusion that either:

- There is no defect, and as such P252 does not address any issue and is neutral against the objectives; and/or
- Removing the ability for a Trading Party group to cast 2 voting papers would result in the representatives of one Energy Account having to conform to the wishes/will of the other. Hence the proposed modification disenfranchises the respective part of that Trading Party and does not reflect the overall wishes of the electorate, which is counter to promoting effective competition.

The minority of the Panel believes that P252 would better facilitate the Applicable BSC Objectives. They argue that simplifying the process would promote competition and increase participation in the process.

Recommendations

The recommendation of the Group is to **reject** P252.

Current Issue

Under the current Panel election voting process, **Trading Parties** are entitled to submit one voting paper for each Energy Account that they hold, Production and/or Consumption. Since each Trading Party will always have a Production and Consumption account it means that they will always have two voting papers.

Like Trading Parties, **Trading Party groups** are also entitled to submit one voting paper for each Energy Account that they hold. A Trading Party group is a group comprised of a Trading Party and every Affiliate of that Trading Party. Only one Trading Party in a Trading party group may submit voting papers.

There is an argument that not all Trading Parties/Trading Party groups are aware of this element of the Panel election process. This is supported by the figures for the 2008 elections which showed 59 voting papers received from 31 Trading Parties. It is clear that not all Trading Parties used both their voting papers (although the rationale for this behaviour cannot be inferred).

The proposer argues that regardless of the reason of why Trading Parties do not use both voting papers, the existence of the ability to cast two voting papers creates a number of issues:

- The current process does not reflect the principle of one party, one vote. The existence of Production and Consumption Accounts does not reflect a relevant distinction in the election of BSC Panel Members in respect of either the objectives of the Panel or its duties and powers. There is therefore no need for Trading Parties to have two voting papers; and
- There is anecdotal evidence that the ability of Trading Parties to cast two voting papers has in the past lead to tactical voting with a view to maximising the number of seats secured for a particular interest or constituency. Thus aligned Trading Parties could vote their production accounts one way, and consumption accounts another

The Proposer believes this Modification would improve overall BSC governance by improving the accuracy with which industry Panel membership reflects the views of the electorate, making the process more accessible and transparent, and establishing better democratic accountability through 'one party, one vote'.

Related change

The issue raised by P252 was first identified under **P251** 'Revision of the election process for BSC industry panel members'. P251 is a Pending Modification Proposal which also addresses the election of BSC Panel industry members. P251 is however targeted at a different aspect of the elections process, and does not address the number of voting papers that can be submitted cast by a Trading Party. The concern raised by P252 is therefore out of scope of P251.



Voting paper

Each voting Trading Party submitting a voting paper may indicate a first, second and third preference among the candidates. A voting paper need not indicate a second, or a third, preference, but the same candidate may not receive more than one preference vote in any single voting paper.

P252 seeks to amend the Panel election process so that each Trading Party/Trading Party group only receives one voting paper. Currently:

- Section B of the BSC states:
Trading Parties may appoint up to five persons as Panel Members by election in accordance with Annex B-2
- Annex B-2 states:
3.1.2 Subject to paragraph 3.1.3, each Trading Party may submit one voting paper for each Energy Account which is held by that Trading Party.
3.1.3 Only one Trading Party (the “voting” Trading Party) in a **trading party group** may submit voting papers.

P252 would amend Annex B2 3.1.2 to state:

- Subject to paragraph 3.1.3 each Trading Party may submit one voting paper.

Potential Alternative solutions?

The P252 Group considered two potential Alternative solutions. One alternative was to disaggregate Trading Party groups into the constituent Trading Parties so that each Trading Party received a voting paper. It could be further contemplated that all BSC Parties should be able to vote. However, such a proposal would mean that larger integrated Parties would receive significantly more voting papers than independent Parties. None of the Group Members believed this would be better than the applicable objectives as it would be detrimental to competition and efficiency. Therefore this Alternative was not put forward.

The second potential alternative was to allow Trading Parties one voting paper for each active Energy Account, i.e. a Supplier only party would submit one voting paper for their active consumption account, a generation only party would submit one voting paper for their active production account and those parties who have both generation and supplier aspects to their business would receive two voting papers: one for their supply side and one for their generation side.

However, the Group did not believe that such a policy could be effectively ‘policed’ and it would be detrimental to efficiency due to additional work would be introduced to:

- agree the range of timescales to judge if an energy account is ‘active’ or not;
- monitor each Party’s account status to work out whether a Party is entitled to cast 1 or 2 voting papers prior to the Panel election

Also we believe it is very likely that larger parties would have both energy accounts active throughout the year (i.e. large parties would all be entitled to cast 2 voting papers), whereas smaller parties who might trade less frequently which lead to one energy account being inactive for a period of time (i.e. small parties would only be entitled to cast 1 voting paper). We do not believe such consequence would not meet the aims of the Modification; therefore this Alternative was not put forward.



Trading or BSC Party?

A Trading Party is a Party who holds Energy Accounts.

A BSC Party is a Party means a person who is for the time being bound by The Code by virtue of being a Party to the Framework Agreement.

4 Impacts & Costs

Costs

ELEXON Cost		ELEXON Service Provider cost	Total Cost
Man days	Cost		
3	£720	Zero	£720

Impacts

Impact on BSC Systems and process	
BSC System/Process	Potential impact
BSC Systems	None

Impact on BSC Agent/service provider contractual arrangements	
BSC Agent/service provider contract	Potential impact
BSC Agent/service providers	None

Impact on BSC Parties and Party Agents	
All Trading Parties (generators, Suppliers, non-physical traders, Interconnector Error Administrators and Interconnector Users) are eligible to vote in Panel elections and will be equally impacted by this Modification Proposal.	

Impact on Transmission Company	
None. The Transmission Company is not eligible to vote for Industry Panel Members, as it appoints its own member of the Panel.	

Impact on ELEXON	
Area of ELEXON's business	Potential impact
Panel administration	ELEXON would need to adopt the approved solution for future Panel elections following the approval of the Proposed Modification.

Impact on Code	
Code section	Potential impact
Section B	Annex B-2 will be impacted as a result of updating the election process.

Impact on Code Subsidiary Documents	
None	

Other Impacts	
None	

5 Implementation

If approved, the Panel recommends that P252 is implemented:

- On 24 June 2010 if an Authority decision is received on or before the 16 June 2010; or
- 5 Working Days following an Authority decision

Modification Group Discussions

Whilst considering the case for change the P252 Modification Group discussed the following areas.

Rationale of 2 voting papers per Party

The P252 Group discussed why the current voting system existed. Those members that had been involved with the governance work streams at NETA Go-Live believed that the intention had been to create a system whereby:

- Suppliers (i.e. those with consumption accounts) receive one voting paper to elect a representative to the Panel to address Supplier issues
- Generators (i.e. those with production accounts) receive one voting paper to elect a representative to the Panel to address Generator issues
- Those parties who have both generation and supplier aspects to their business would receive two voting papers; one for their supply side and one for their generation side

However, all Trading Parties have both consumption and production accounts regardless of whether they are Generators, Suppliers or both. Therefore in practice all Parties receive two voting papers.

How reflective is the elections process?

The Proposer of P252 believes that under the current arrangements' some Parties are not aware that they can cast 2 voting papers in the election. It is argued that simplifying the process would increase Participation in the elections and make the outcome more reflective of the votes cast.

The P252 Group discussed this principle and questioned if removing 2 voting papers would indeed make the voting more reflective, as it simply halved the number of votes cast. The Group Members also argued that Participants with both Generation and Supply sides to their business should still have the ability to vote twice, to elect 2 Panel members 1 with expertise in Generation and 1 with Supply expertise, as outlined in the rationale section above. Removing this ability would make the elections process less reflective of Parties views.

Engagement in the process

The Group were curious as to why Parties did not use both of their voting papers as part of the elections process. A question was asked as part of the Assessment Consultation, but in order to bolster responses the Group requested ELEXON raise the question at the Cross Codes Electricity Forum where a number of smaller participants were due to attend.

The feedback received from participants at the [Cross-Codes Electricity Forum](#) was that changing how parties vote or how these votes are counted would make very little difference to their participation in the election process. It was universally believed that the fundamental issue was lack of education on the process and a feeling of disfranchisement from the Panel. It was suggested that more publicity about the elections, or the candidates that stand, would engage smaller parties better than tweaking the election process. It was also noted that small participants have limited resources and have to prioritise work. As such apathy could be more of an issue than education as there are more pressing concerns to deal with than the Panel elections. The forum did comment that having a

simpler process would seem intuitive and would also be in line with moves to simplify other areas of bureaucracy.

The Group noted the feedback from the forum. The Group Members believed that the views from the forum supported their view that P252 would not resolve the issue of increasing participation in the elections process. A member also noted that even if you simplify the process you cannot guarantee increased participation.

Organised Tactical Voting

Under the current system, a Trading Party could submit either one or two voting papers. If they submitted two voting papers it would be possible to vote for different candidates on each voting paper. A question was raised as to whether or not this was tactical voting. The Group agreed that such behaviour could be called tactical voting, but that this was completely fair and acceptable within the current system.

A member noted that tactical voting wasn't an issue, but Parties colluding together to block vote might be. For example, 12 Trading Parties getting together and agreeing how to use their 24 voting papers. It was questioned if such a scenario was really feasible, and if it were feasible, is it really an issue as Parties can vote as they please. The Proposer's representative commented that whilst some might view block voting as acceptable, it is harder for smaller participants to create an organised block of votes than it is for the larger integrated Parties. They believed that P252 would not eliminate the potential for block voting, but it would simplify the structure of the election process to reduce the ability to block vote. The other Group members did not believe reducing two voting papers to one would make any difference to the manner in which people voted.

The Group concluded that tactical voting was a red herring and not an issue. Parties can choose how they wish to vote and for whom, all of which is legal within the system.

Responses to consultation

The Group noted that the responses received from 7 Parties to the Assessment Consultation contained no new arguments or considerations that the Group had not previously discussed. The majority of respondents agreed with the majority of the Group that P252:

- Was not better than the current arrangements;
- Would not result in a more reflective elections process; and
- The issue of tactical voting was a 'red herring'

The respondents who were in favour of P252 were the proposers of the Modification. Full response can be found on the [P252](#) page of the ELEXON website.

Applicable BSC Objectives

The majority of the Group do not believe that P252 better facilitates the Applicable BSC Objectives. Those members either believe that:

- There is no defect, and as such P252 does not address any issue and is neutral against the objectives; or
- Removing the ability for Trading Party group to cast 2 voting papers would result in the representatives of one Energy Account having to conform to the wishes/will of the other. Hence the proposed modification disenfranchises the respective part of that Trading Party and does not reflect the overall wishes of the electorate, which is counter to promoting effective competition.

The minority of the Group believe that P252 would better facilitate the Applicable BSC objectives. They argue that simplifying the process would promote competition and increase participation on the process.

The Group's views against the applicable objectives are captured below.

Applicable Objectives (a) and (b)

The Group **unanimously** believe P252 is **neutral** when compared to Applicable Objective (a) and (b).

Applicable Objective (c)

The **majority** of the Group believe that P252 would be **detrimental** to Applicable Objective (c) as removing the opportunity for Parties, with both Generation and Supply elements to their business, from submitting two voting papers (one for each of these elements) introduces discrimination. Also it would result in the representatives of one Energy Account having to conform to the wishes/will of the other. Hence the proposed modification would disenfranchise the respective part of that Trading Party and does not reflect the overall wishes of the electorate, which is counter to promoting effective competition.

The **minority** of the Group believe that P252 would **better** facilitate Applicable Objective (c) as simplifying the elections process makes it is easier to understand for all Parties, potentially increasing participation.

Applicable Objective (d)

The **majority** of the Group believe that P252 would be **neutral** when compared to Applicable Objective (d) as the same process to send and collect votes would be in place, just with fewer voting papers to count.

The **minority** of the Group believe that P252 would **better** facilitate Applicable Objective (d) as there would be a slight improvement in efficiency.

Panel's consideration of Assessment Report

The Panel considered the [P252 Assessment Report](#) of at its meeting on 8 April 2010.

The majority of the Panel do not believe that the change would be better than the baseline, merely different. They believe that P252 Proposed Modification should be rejected, because:

- the proposed modification disenfranchises parts of Trading Party groups by requiring representatives of one Energy Account having to conform to the wishes/will of the other. This would not give a result that reflects the overall wishes of the electorate, which is counter to promoting effective competition. The Panel therefore agreed with the Modification Group's conclusion that P252 Modification would lead to a skewed Panel and is **detrimental** to **Objective (c)**; and
- They also agreed that reducing the number of voting papers to be counted would bring such a marginal improvement in efficiency as to be **neutral** compared to Objective (d)

Having considered, and taking into due account the contents of the P252 Assessment Report, the Panel concluded that the Proposed Modification does not better facilitate any of the BSC Applicable Objectives; and noted both the Modification Group and industry struggled to see the issue this Modification is trying to address.

A Panel member was in favour of P252 Proposed Modification being made. They believe that P252 better reflects 'one Party, one vote' principle in elections process and the Proposed solution makes it easier to understand for all Parties, potentially encouraging participation. They also believed that P252 would bring slight improvement in efficiency since there would be less voting papers to count.

The Panel's initial recommendation was therefore that P252 Proposed Modification should be rejected.

The Panel noted the discussion of this Modification in the cross codes forum where small participants fed back that changing the process would make no difference to participation, as Panel elections were just not a top priority.

8 Report Phase Consultation Responses

Aside from the Panel's initial recommendation to reject the Proposed P252 Modification, all Report Phase Consultation respondents supported the Panel's initial recommendations. No respondents had any comments on the legal text, which is therefore unchanged from the versions provided in the Assessment Report.

The responses are summarised in the table below. You can find the full responses on our website [here](#).

Report Phase Consultation responses			
Question	Yes	No	Neutral
Should the Proposed Modification be rejected?	7	1	0
Do you agree with an Implementation Date of 5 Working Days?	7	1	0
Does the legal text deliver the intention of the Proposed?	8	0	0
Do you have any other comments?	5	3	0

Majority of respondents believe the P252 Proposed is not better than the current arrangements

The minority of the respondents (1 of 8) disagreed with the Panel's initial recommendation to reject the Proposed Modification, whilst the majority of respondents (7 of 8) agreed. They agreed with the view of the majority of the Panel and their comments can be summarised as:

- Under current arrangements all parties have the same ability and opportunity to cast two votes, it therefore follows that all voting parties have equal voting rights and capabilities. As there is no reason, that we are aware of, as to why other parties cannot or should not cast their votes as they see fit, we can see no discrimination and hence no need to change the current voting arrangements.
- Allowing only one voting paper for all would continue to treat all Trading Party groups the same in having the same number of voting papers available to them, but would limit flexibility for all, especially those who wish to vote differently on their Production and Consumption accounts
- There is no evidence to suggest that there is explicit organised tactical block voting in the election process. Individual participants are simply incentivised to vote in a manner which best suits their desired preferences for appointed Panel Members.
- The election process lacks a trade-weighting basis to the voting and so does not advantage any class of participant. The industry should perhaps go into the question of how to encourage more active, more numerous, candidate participation.

One respondent do not agree with the Panel's majority view that the Proposed Modification should be rejected for the following reasons:

- The rationale for Parties to have two votes does not reflect the original intention to create a system whereby Suppliers received one voting paper and Generators a single voting paper to elect a representative to the Panel. All Trading Parties have both Consumption and Production accounts regardless of the role of the Party. As

the original intention at NETA Go-Live to introduce a 'one party, one vote' system did not occur the current panel voting process can be viewed as a defect (or an unintended effect) in the BSC.

- They have reservations with regard to the Panel's belief that participants with two active accounts will split their votes resulting in a less representative outcome (as the votes would in effect cancel each other out). On the other hand if allowing one-sided players to vote as if they were active on both sides of the market could lead to distortion of election results.
- To increase greater participation from all parties, which would benefit the BSC, we advocate the modification be made as: many smaller parties are not aware they have two votes; and 'one party, one vote' is a simple and easily understood approach to fair and democratic elections.

Should the Implementation Date be 5 Working Days?

The majority of the respondents supported the Panel's initial recommendation that the Implementation Date should be 5 Working Days if an Authority decision hasn't been received before 16 June 2010.

One respondent commented that they preferred 10 Working Days over 5 Working Days because they note that the CUSC allows for ten Business Days between Authority decision and implementation. They are mindful, especially at times of holidays (such as the summer holidays which start, in Scotland, in June) that if approved around the holiday period that a Code change might be approved and implemented whilst many parties are absent from work. It would allow Parties to be fully ready for the change despite not knowing when a decision would come.

Other comments

Five respondents also expressed their views in terms of the publicity of the election, interaction with Modification P251, and considerations of the potential alternative:

- ELEXON should better publicise the election process to encourage greater engagement from smaller Parties.
- Whilst recognising that P251 is a separate Modification, one respondent believe that P252 (when combined with P251) will lead to a far less reflective election process. The interaction with P251 (with its "+1" concept) would, in their view, be fatally flawed if the total number of votes cast were just 31.
- One respondent believe there might be merit in changing the system as the Group raised in the potential Alternative to allow one paper per active Energy Account, reflecting the apparent intention at NETA go-live of a system whereby Suppliers receive one vote, Generators receive one vote, and those with both aspects to their business two votes. Group members involved with NETA design confirmed that this was the original intention and this was only not put forward as a Mod Group alternative as it was thought difficult to put into practice; perhaps this deserves more consideration.



Recommendation

The Panel by **majority** recommends **rejecting P252 Proposed Modification**.

Panel's consideration of Report Phase Consultation responses

The Panel noted that no new arguments had been raised, and that the **majority** of the respondents supported Panel's initial recommendation, which was to reject P252 Proposed Modification.

A Panel member commented on the term 'tactical' voting and considered it as a feature of the voting process, rather than a defect, as voters may cast their votes as they wish. They also agreed with the Proposer's argument that if a Trading Party with only one side of the business is permitted to vote for Panel industry members twice, this might be considered as a 'pollution' of votes.

A Panel member reiterated their view that the original design of the Panel election '1 Party 1 vote' and was somehow translated to '1 vote for each energy account'. They also commented if Modification **P251** (which proposes to transfer the surplus votes proportionally to the remaining candidates) was approved, a voter can easily have influence on 4 seats (with 2 1st preferences deciding the 2 seats and by transferring the surplus votes according to the 2nd or 3rd preferences may impact another 2 seats). They believed that P251 would potentially move the election process away from the intention of the BSC Panel election, however, P252 would help to bring the election closer to the intention.

A Panel member observed that a British Academy report (**Choosing an electoral system**) on Electoral Systems had concluded that there is no deterministic relationship between the type of system and particular election turnout.

A Panel member commented that changing the existing election process does not seem to encourage engagement and would therefore recommend a Standing Issue Group to take into account what sort of Panel was required in future.

ELEXON supported this suggestion and would invite industry members to form a Standing Issue Group to consider how to encourage participation in future Panel election and assess any potential changes to Panel election process, once an Authority decision has been received on this Modification.

Applicable BSC Objectives

The Panel reaffirmed their initial views against the Applicable Objectives as outlined in section 7 above. The Panel by **majority** believed that the Proposed Modification **does not** better facilitate the Applicable BSC Objectives.

A Panel member believed P252 Proposed Modification would increase confidence in the arrangements and hence is marginally better for competition when compared to the baseline. Thus there would be a **marginal benefit** on **Objective (c)**.

They also considered that there would be a very minor increase in efficiency under P252 and the benefit is so small they felt **neutral** on **Objective (d)**.

Recommendations

The Panel by majority recommends to the Authority:

- that Proposed Modification P252 should not be made;
- an Implementation Date for the Proposed Modification or Alternative Modification of:
 - On 24 June 2010 if an Authority decision is received on or before 16 June 2010; or
 - 5 Working Days following an Authority decision; and

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- the proposed text for modifying the Code as set out in this Modification Report.

10 Further Information

More information is available in:

Attachment **A**: Legal Text Proposed

All P252 documentation can be found on the [P252 page of the ELEXON Website](#).