

Stage 04: Draft Modification Report

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, and/or withdraw their Modification Proposal, at any time before the Modification Group makes its final recommendation to the Panel.

In addition, the Proposer would have the right to address the Panel to explain why they had (or had not) varied the Proposed Modification solution and to answer any questions.

The Alternative Modification is identical to the Proposed Modification except that it does not give the Proposer a right to address the Panel. The majority of the Group believes it would be discriminatory to give this right to the Proposer.



Initially, the Panel recommends
Approval of the P247 Alternative Modification



Initially, the Panel recommends
Rejection 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

167/04

P247
Draft Modification Report

1 April 2010

Version 0.4

Page 1 of 17

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Any questions?

Contact:
Andrew Wright



andrew.wright@elxon
.co.uk



020 7380 4217

Contents

1	Summary	3
2	Why Change?	5
3	Proposed Modification Solution	6
4	Alternative Modification Solution	9
5	Impacts & Costs	10
6	Implementation	12
7	The Case for Change	13
8	Panel's Initial Discussions	14
9	Report Phase Consultation Responses	15
10	Recommendations	17
11	Further Information	17
	Attachment A: Assessment Report	17
	Attachment B: Detailed Assessment	17
	Attachment C: Legal Text for P247 Proposed Modification	17
	Attachment D: Legal Text for P247 Alternative Modification	17

About this document:

This document is a Draft Modification Report, which ELEXON will present to the Panel on 8 April 2010. The Panel will consider the recommendations, and agree a final view on whether or not this change should be made.

This report has 4 attachments:

- Attachments A and B are the Modification Group's Assessment Report; and
- Attachments C and D contain 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](#).

167/04

P247
Draft Modification Report

1 April 2010

Version 0.4

Page 2 of 17

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Why Change?

Currently, when a Modification Proposal is raised the Panel establishes a Modification Group to assess and develop 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 the Group develops aspects of the Proposed Modification solution on which the proposal form is 'silent' 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 after the first Panel meeting at which it is considered. This can result in wasted effort if the Modification Proposal subsequently proves to not have a business case.

The Proposer has also identified that different Code Panels appear to have different working practices. Some Panels are more open to comment from the floor than the BSC Panel. The Proposer believes that being more open to floor comments improved debate in other Panels. They want to see a similar working practice in the BSC Panel.

Proposed Modification

The Proposed Modification solution has 3 elements:

1. **Proposer Ownership** - the Proposer keeps ownership of the Proposed Modification solution 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, but 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 must continue to address the original issue or defect outlined in the Modification Proposal form;
2. **Withdrawal** - the Proposer could withdraw their Modification any time before the Modification Group makes its final recommendation to the Panel, but not after. Other Parties would have a 5 Working Day window to adopt the Modification Proposal; and
3. **Addressing the Panel** - the Proposer would have a right to address the Panel during the presentation of the Group's Report 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.

Alternative Modification

The Alternative Modification is identical to the Proposed Modification, except that it does not give the Proposer a right to address the Panel during consideration of the Modification Group's report.

The Group developed the Alternative Modification because the majority believed that the Proposed Modification could potentially introduce discrimination.

Impacts & Costs

P247 would directly impact Proposers of BSC Modification Proposals, Modification Groups, ELEXON and the BSC Panel. ELEXON's costs to implement would be 5 man days or £1,200.

Consultation respondents noted between slight and no impacts to implement P247, and reported low costs. Some respondents highlighted concerns that P247 could increase costs due to Proposers making late variations to the Proposed Modification which could require further assessment.

Implementation

The Panel recommends that P247 is implemented:

- 10 Working Days after an Authority decision.

The Panel agrees 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 Panel unanimously believes that the Alternative Modification is better than the current arrangements and the Proposed Modification. The Panel cited **Applicable BSC Objectives (c) and (d)** for the Alternative Modifications as they believed they would:

- make the Modification process clearer and more user friendly, thereby 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. This would promote competition;
- 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; and
- 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.

The Panel unanimously believes that the Proposed Modification would not be better than the current arrangements. Arguing against **Applicable BSC Objectives (c) and (d)** they believe the Proposed Modification 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.

Recommendations

The Panel's unanimous recommendation is that P247 Alternative Modification should be approved.

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 presented 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.

Why does the Proposer want the right to address the Panel?

The Proposer has identified that different Code Panels appear to have different working practices. Some Panels are more open to comment from the floor than the BSC Panel. The Proposer strongly believes that being more open to floor comments improves debate in other Panels. They want to see a similar working practice in the BSC Panel. Hence the Proposer has included a right to address the Panel in their Proposed Modification.

3 Proposed Modification 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. This is consistent with the current process, where the original Modification Proposal form is not updated following the Group's development of the Proposed Modification and any Alternative Modification.

The Proposer's ability 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.

With the Proposer's new ability to amend the solution, there is a risk that the solution might significantly change at a late stage in the Assessment Procedure. 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.

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).

For Modification Proposals which go straight to the Report Phase, the Proposer would not be able to vary the solution of their Modification Proposal once it formally enters the Report Phase.

The Panel would retain its existing ability to amalgamate two or more Modification Proposals whose subject-matter is very similar or which are logically dependent on each other. As now, the Proposers would decide which of them would be the Proposer for the amalgamated change (with the Panel appointing one of them if they cannot decide). That Proposer would then 'own' the amalgamated change, and would be able to vary the solution or withdraw the change in the same way as any other Proposer.

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).

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 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 solution decisions by majority (i.e. the Proposer could not vary the solution). This ensures that Proposers who may not have the resource to attend Modification Group meetings in person or by teleconference (or who are unable to find another participant willing to act on their behalf) are not disenfranchised from being able to raise Modification Proposals. ELEXON would impartially feed the Proposer's views into the Group's discussions, as we do under the current arrangements for anyone unable to attend a meeting who has comments. ELEXON would not act as an advocate for the change and would remain impartial and independent (and non-voting). The Proposer would still have the right to withdraw their Modification Proposal.

If the Proposer's Representative or Representative's Alternate is someone other than ELEXON, and they do not attend a meeting, then decisions on the Proposed Modification will be conducted as under the current arrangements – by majority Modification Group decision at the meeting. However, the Proposer would still have the right to vary their solution if they disagreed with the Group's decision.

To reduce the risk that the Proposer might continually not attend meetings and 'veto' any decisions made by the Group in their absence, P247 introduces the ability for the Panel to initiate withdrawal for a Modification Proposal if it believes that the Proposer is deliberately frustrating the process.

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 writing. In practice, this would be via an email to ELEXON's Modifications email address (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 presents the Assessment Report to the Panel. This would be in order to explain:

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

Alternative Modification

The Alternative Modification is identical to the Proposed Modification on the areas of Proposer ownership and the withdrawals and adoption process. The Alternative Modification differs from the Proposed Modification in that it does not give the Proposer a right to address Panel during Panel's consideration of the Assessment Report.

The Group has developed the Alternative Modification because the majority of members believe that:

- the Proposed Modification could potentially introduce discrimination; and
- Proposers and Modification Group members can already attend the Panel meeting and can speak to the Panel if the Chairman grants them the opportunity.

The Proposer's representative has requested that the Panel considers amending its working practices in order that it is more open to attendees speaking from the floor (be they Proposers, Modification Group members or anyone else).

5 Impacts & Costs

Implementation Costs

ELEXON Cost		ELEXON Service Provider cost	Total Cost
Man day	Cost		
5 man days	£1,200	£0	£1,200

Indicative industry costs

Proposed Modification and Alternative Modification

Respondents reported low costs to implement the Proposed Modification.

Impacts

Impact on BSC Systems and process

Proposed Modification and Alternative Modification

None

Impact on BSC Agent contractual arrangements

Proposed Modification and Alternative Modification

None

Impact on BSC Parties and Party Agents

Proposed Modification and Alternative Modification

Respondents noted between slight and no impact.

One respondent commented that there could be an increase in costs from late variations to the Proposed Modification, or due to more Modification Proposals being raised.

Impact on Transmission Company

Proposed Modification and Alternative Modification

None

Impact on ELEXON

Area of ELEXON's business

Proposed Modification and Alternative Modification

Change Delivery

- 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, would need to be amended to take account of P247;
- ELEXON's working practices as the administrator of the Modification Process would need to be amended to take account of P247; and
- ELEXON's guidance documents for Parties on the Modification Process would need to be updated.

167/04

P247

Draft Modification Report

1 April 2010

Version 0.4

Page 10 of 17

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Impact on Code	
Code section	Proposed Modification and Alternative Modification
F	Section F of the BSC, which sets out the Modification Process and the rights and obligations of all participants in that process, would need to be updated.

Impact on Code Subsidiary Documents	
Proposed Modification and Alternative Modification	
None	

Impact on Core Industry Documents and other documents	
Proposed Modification and Alternative Modification	
None	

Impact on other Configurable Items	
Proposed Modification and Alternative Modification	
None	

Other Impacts		
Item impacted	Proposed Modification	Alternative Modification
BSC Panel	<p>The Panel's working practices would need to change in order to take account of:</p> <ul style="list-style-type: none"> • The potential for variations to the Proposed Modification solution; • The withdrawal process – including the Panel's ability to initiate the withdrawal process where the Proposer is frustrating the process; and • The Proposer's right to speak at the Assessment Report stage. 	<p>As Proposed Modification, except that there would be no required change to the Panel's working practices. However, the Proposer and Group members support the introduction of greater informality in Panel proceedings, such that the Panel invites comments from the floor.</p>

The Panel recommends that P247 is implemented:

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

Why 10 Working Days?

The Group had originally suggested an Implementation Date 5 Working Days after an Authority decision. However, one of the Assessment Consultation respondents noted that:

“the CUSC allows for a ten day period between an Authority decision and implementation. We are mindful, especially in this half term week, that if approved around the holiday period that a code change might be approved and implemented whilst many parties are absent from work. For that reason we believe if Elexon are to go down the CUSC route of determining implementation X days after an Authority decision that X is set at ten, rather than, as is proposed with P247, five days.”

The Group agreed that 10 Working Days would allow more time for potential Proposers of Modification Proposals to consider whether they still wished to raise a proposal under the revised process, and amended the Implementation Date accordingly.

P247 only applies to Modification Proposals raised after the P247 Implementation Date

The Group and the Panel agreed that the new P247 Modification process rules would only apply to Modification Proposals 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.

One Assessment Consultation respondent requested the Group consider implementing P247 for all open Modification Proposals. The Group considered this request but on reflection believe it was important for a Modification Proposal to be progressed consistently through its lifecycle using the same set of rules. A change to the BSC which applied to changes currently in the process would mean that the Proposer could effectively ‘unwind’ any decisions which had already been made by Modification Groups, resulting in extra work.

The Group and Assessment Consultation respondents' views against the Applicable BSC Objectives are detailed below. To see the Panel's views against the Applicable BSC Objectives see Section 8. Section 9 summarises the views of the Report Phase Consultation respondents. You can find full responses on our website [here](#).

Proposed Modification vs. current arrangements

The **majority** of the Group and a minority of the Assessment Consultation respondents believed the Proposed Modification **would be** better than the current **arrangements**. They 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; and
- 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 errors or oversights in the original wording. This would remove the need for raising another Modification Proposal to fix the original's error; and
- 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 and the **majority** of the Assessment Consultation respondents believed the Proposed Modification **would not** be better than the current arrangements.

They cited the following arguments:

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).

Applicable BSC Objective (d):

- The Proposed Modification introduces the potential for significant variations late in the Assessment Procedure which would require additional Modification Group work – this would be inefficient and time consuming.

Alternative Modification vs. current arrangements

All Group members and a majority of Assessment Consultation respondents believed that the Alternative Modification **would be** better than the current arrangements. They cited the same arguments as the Proposed Modification (see above). The Proposer's representative noted that their support was on the basis that ELEXON would highlight the

Proposer's concerns to the Panel, and working practice would alter to become more open to accepting comments from the floor.

Alternative Modification vs. the Proposed Modification

All Group members and a majority of Assessment Consultation respondents believed that the Alternative Modification **would be** better than the Proposed Modification. They believed the Alternative Modification was better because:

Applicable BSC Objective (c):

- The Alternative Modification would not introduce potential discrimination into Panel proceedings.

8 Panel's Initial Discussions

Panel's consideration of Assessment Report

Would there be any extra work once a withdrawal occurred?

One member questioned what extra work would be required after a Proposer withdrew their Modification Proposal. ELEXON explained that a withdrawal would be noted in the Modification Business section of the next Panel meeting and an email would be issued. The Panel member agreed that this was exactly what should happen and no more work was required.

ELEXON as the Proposer's representative

One Panel member asked whether small Parties who were not able to find a Proposer's representative other than ELEXON would lose control of their Modification. ELEXON explained that the Modification Group viewed ELEXON as the Proposer's representative of last resort. This would allow those who cannot find a different Proposer's representative to still be able to raise a Modification Proposal. However, Proposers who appointed ELEXON as the Proposer's representative would not have control of the solution. The Modification Group believed that ELEXON should not compromise its impartiality or its independence by advocating Modifications. Where ELEXON was the Proposer's representative it would impartially feed the Proposer's views into the Group, as it would do under the current arrangements for anyone who has views but cannot attend the meeting.

However, the Proposer could still withdraw their Modification Proposal or appoint another Proposer's representative. If they appointed anyone else (including external consultants) as the Proposer's representative then they would have control.

Comments from the floor

The Panel Chairman acknowledged that the Proposer's comments on floor comments were directed at him. He noted that his approach in the past is to generally not entertain floor comments as they devalue the Modification Group process. However, there had been useful floor contributions in the past and he noted the Proposer's belief that comments from the floor had improved debate at other Panels. ELEXON explained that the Proposer saw such comments as being there to correct factual errors or highlight any subtle nuances that might have been missed.

Panel's initial views against the Applicable BSC Objectives

The Panel **unanimously** believed that the Alternative Modification **would be** better than the current arrangements and the Proposed Modification. The Panel cited Applicable BSC Objectives (c) and (d) for the Alternative Modifications.

Applicable BSC Objective (c):

- The Alternative Modification would make the Modification process clearer and more user friendly, thereby encouraging more engagement and participation by Parties; and
- The Alternative Modification would 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. This would promote competition.

Applicable BSC Objective (d):

- The Alternative Modification 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; and
- The Alternative Modification 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.

The Panel **unanimously** believed that the Proposed Modification **would not** be better than the current arrangements. Arguing against **Applicable BSC Objective (c)** they believed the Proposed Modification 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.

9 Report Phase Consultation Responses

The majority of Report Phase Consultation respondents supported the Panels initial recommendations. The responses are summarised in the table.

You can find full responses on our website [here](#).

Report Phase Consultation responses		
Question	Yes	No
Should the Proposed Modification be rejected?	5	1
Should the Alternative Modification be approved?	5	1
Is the Alternative better than the Proposed?	5	1
Do you agree with an Implementation Date of 10 Working Days?	6	0
Does the legal text deliver the intention of the Proposed?	5	1
Does the legal text deliver the intention of the Alternative?	5	1
Do you have any other comments?	2	4

167/04

P247
Draft Modification Report

1 April 2010

Version 0.4

Page 15 of 17

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Should the Proposed be rejected?

Five of the six respondents agreed with the Panel's initial recommendation to reject the Proposed Modification. Those in agreement cited similar arguments to the Panel and the Modification Group.

One of the six respondents (the Proposer) preferred the Proposed Modification when compared to the current arrangements and the Alternative Modification. They noted arguments which had previously been discussed by the Modification Group. These were that:

- The burden of proof lies with the Proposer;
- Allowing the Proposer to speak would prevent misrepresentation of their motives; and
- The Chairman could curtail over-enthusiastic Proposers if necessary.

The Panel and the Group had both commented that giving the Proposer a right to speak at Panel was potentially discriminatory. Hence the Panel's initial recommendation is to reject the Proposed Modification.

Should the Alternative be approved?

Five of the six respondents agreed with the Panel's initial recommendation to approve the Alternative Modification. They cited similar arguments to the Panel and the Modification Group.

One of the six respondents disagreed with the Panel's initial recommendation. They believed the Alternative Modification would be detrimental to Applicable BSC Objective (d) as Proposers could alter the solution of the Proposed Modification late in the process. This could either extend the Assessment timetable, or leave only one chance for industry to comment in the Report Phase Consultation. And this would occur once the solution was fixed giving no time for further tweaks.

The respondent also disagreed with the Group's view that the risk of a late change was similar to the risk of a Group raising a late Alternative Modification under the current process. They considered that a Modification Group would not deliberately raise a late Alternative Modification, whereas a Proposer could.

The Group had identified that P247 would introduce the possibility for such action by Proposers. However, this was more than balanced out by the greater engagement, participation and efficiency brought by P247. The Group noted that in practice, if there was a late solution change, it was likely that a Modification Group would need to undertake further consultation in the Assessment Procedure before being able to make a recommendation (and would therefore apply to the Panel for a timetable extension if need be). The Group had also introduced an additional safeguard into the P247 solution, allowing the Panel to commence the withdrawal process for a Modification if the Panel believes that the Proposer is deliberately frustrating the process.

Does the legal text deliver the intention of the Proposed and Alternative?

One respondent questioned whether 2.1.1.2B(b) should be changed from "12.00" to "12.00 noon" to prevent confusion between midnight and midday. This comment was raised during the Assessment Consultation. The Group agreed with ELEXON's legal advice that using 24 hour clock notation (such as "12.00") was standard in the BSC. Hence no clarification was required.

167/04

P247
Draft Modification Report

1 April 2010

Version 0.4

Page 16 of 17

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No other respondents had any comments on the draft text. The legal text is therefore unchanged from the versions previously provided in the Assessment Report.

Further comments

One respondent suggested that the Proposer's desire for future Proposers to be able to address Panel seems reasonable. It would allow the Proposer to correct factual errors or highlight subtle nuances. However, it was distinct from giving the Proposer a right to address the Panel.

Another respondent did not believe it was appropriate for ELEXON to act as the Proposer's representative, as it should remain independent and would lack subject knowledge.

The Group believed that allowing ELEXON to be the Proposer's representative would allow Proposers who could not find another suitable representative to still be able to raise Modification Proposals. And where ELEXON was the Proposer's representative, it would continue to act in an independent, impartial way and would not advocate for the change. The Modification Groups would function as they currently do, with ELEXON feeding the Proposer's views into the debate. The Proposer would not own their solution (the Group would), but would be able to appoint another representative and take ownership if they wanted.

The respondent also commented that any ability to address the Panel should be tempered to avoid discrimination where a counterview is not heard and a distorted view is given.

10 Recommendations

ELEXON invites the Panel to:

- NOTE the P247 draft Modification Report and the Report Phase consultation responses;
- CONFIRM the recommendation to the Authority contained in the P247 draft Modification Report that Proposed Modification P247 should not be made;
- CONFIRM the recommendation to the Authority contained in the P247 draft Modification Report that Alternative Modification P247 should be made;
- APPROVE an Implementation Date for the Proposed Modification or Alternative Modification of 10 Working Days after an Authority decision;
- APPROVE the legal text for modifying the Code for Proposed Modification P247;
- APPROVE the legal text for modifying the Code for Alternative Modification P247; and
- APPROVE the P247 Modification Report or INSTRUCT the Modification Secretary to make such changes to the report as may be specified by the Panel.



Recommendation

The Panel unanimously recommends **approving the Alternative Modification**.

11 Further Information

More information is available in:

Attachment **A**: Assessment Report

Attachment **B**: Detailed Assessment

Attachment **C**: Legal Text for P247 Proposed Modification

Attachment **D**: Legal Text for P247 Alternative Modification

All P247 documentation (including the full industry consultation responses) can be found on the [P247 page of the ELEXON Website](#).

167/04

P247
Draft Modification Report

1 April 2010

Version 0.4

Page 17 of 17

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