ELEXON

Stage 04: Final Modification Report

What stage is this document in the process?

01 Initial Written Assessment

02 Definition Procedure

03 Assessment Procedure

04 Report Phase

P251: Revision of the election process for BSC Panel Industry Members

The Proposer wishes to improve the current Panel election process, which involves non-transferable preference votes. Arguably, the current process may incentivise tactical voting and can lead to results which are not reflective of voters' choices.

Modification P251 seeks to improve the procedure for electing the Industry Members of the BSC Panel, through adopting a standard Single Transferable Voting system.

Initially, the Panel recommends

Rejection of both the Proposed Modification and Alternative Modification

High Impact:
The BSC Panel and participants in Panel elections

Low Impact:
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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.

This report has 2 attachments:

Attachments A contains additional information including detailed analysis of 2008 election and various worked example to demonstrate the mechanism of current election process and proposed STV system;

Attachments B1 and B2 contain the draft legal text (We have made three very minor changes to the P251 legal text in both the Proposed and Alternative following the April Panel meeting. None of these changes have any substantive impact on the text and are purely further refinement.)

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**.

Any questions?

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1 Summary

Why Change?

The Proposer of Modification P251 believes that the voting system currently used for the election of Industry Panel Members has various shortcomings, and could be improved.

The Issue

The P251 Modification Group acknowledged three areas of concerns under the current system:

- The calculation currently used to determine the 'quota' of votes required for a candidate to be elected means that all places cannot be filled in the first, second, or third round of voting, and fourth (or 'further') round is always required. Any tie in first and second preference votes in that further round will be decided by chance, ignoring third preference votes cast;
- Voting forms are discarded through each round rather than all preferences being taken into account. This means that votes are wasted and it can lead to a minority of voting papers determining the majority of seats; and
- The complexity of the system potentially limits parties' participation

Proposed solution

The proposed solution is to adopt the standard **Single Transferable Voting** (STV) system (recommended by the Electoral Reform Society (ERS)), which is a preferential voting system designed to minimise 'wasted' votes and provide proportional representation.

Alternative solution

The alternative solution adopts the same mechanism as the proposed STV solution, but uses another value for the quota: **Q= (T/(N+1))+0.01**. The alternative gives a slightly higher threshold of votes that a candidate must reach in order to win a seat, so reducing the risk that more candidates being elected than the number of positions available.

Impacts & Costs

P251 would impact those Parties voting in the BSC Panel election.

Implementation

If either Proposed Modification P251 or the Alternative Modification is approved, the Group recommends it is implemented

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

The Case for Change

The **majority** of the Panel believes that neither P251 nor the Alternative Modification better facilitates any of the Applicable Objectives. The Panel also believes the Alternative Modification is not better than the Proposed Modification.

Recommendations

The recommendation of the Group is to **reject** both the Proposed and the Alternative Modifications.

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2 Why Change?

The BSC Panel exercises judgement on proposed amendments to the Code and makes direct recommendations to the Authority. The Proposer notes that it is thus highly influential, and its decisions can affect BSC Parties profoundly. As such, and in line with overall good governance principles, the election of candidates to the Panel should be an objective and transparent process. With the prospect of a greater degree of self-governance possible in the future, Parties must be confident that governance arrangements, including the election of members to the Panel itself, are robust.

Current Panel Election Process

a) Nomination

The process for the election of the five Industry Panel Members is set out in Annex B-2 of the Code. Each **Trading Party** may nominate one candidate, and each trading party group (a Trading Party and every Affiliate of that Party) may submit one set of voting papers for each Energy Account held by the voting Trading Party in that trading party group (i.e. two sets - one for the Production Energy Account and one for the Consumption Energy Account). The Panel elections are carried out using a preference voting system.

Trading Parties

The following roles fall within the participation capacity of Trading Party:

- Suppliers
- Generators
- Interconnector Users
- Interconnector Error Administrators
- Non-Physical Traders

b) Voting Papers

Each submitted voting paper must indicate a first preference among the candidates. A voting paper may, but does not need to, indicate a second or third preference. However, the same candidate may not receive more than one preference in the same voting paper. Voting proceeds in a number of rounds.

Annex B-2, Paragraph 3.2.5, of Section B of the Code currently states that ELEXON will not disclose the preference votes cast by individual Trading Parties. Proposed Modification P251 does not seek to remove this limitation.

c) Voting Rounds

i) First Round

In the first voting round, the number of first preference votes allocated to each candidate is determined. The **qualifying total** for this round of the election is **(T/N) + 1**, where T is the total number of first preference votes in all voting papers and N is the number of Industry Panel Members to be elected. Any candidate who receives equal to or greater than the qualifying total is elected to the Panel.

ii) Second Round

In the second voting round, the remaining candidates are those not elected in the first round. The voting papers with first preference votes for candidates elected in the first round are discounted. The total number of first and second preference votes allocated to each other candidate on the remaining voting papers is determined. The **qualifying total** for this round of the election is now **(T'/N') + 1**, where T' is the number of first and second preference votes in all remaining voting papers and N' is the number of Panel Members remaining to be elected. Any candidate who receives equal to or greater than the qualifying total is elected to the Panel.

iii) Third Round

In the third voting round, the remaining candidates are those not elected in the first or second rounds. The voting papers with first or second preference votes for candidates elected in the first or second rounds are discounted. The total number of first, second and third preference votes allocated to each other candidate on the remaining voting papers is determined. The **qualifying total** for this round of the election is now **(T''/N'') + 1**, where T'' is the number of first, second and third preference votes in all remaining voting

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papers and N" is the number of Panel Members remaining to be elected. Any candidate who receives equal to or greater than the qualifying total is elected to the Panel.

iv) Further Round(s)

A further round is necessary if any Panel Members remain to be elected after the third round which will always be the case under the current quota calculation. In this round, all voting papers are counted (i.e. including all those discarded in previous rounds), and the remaining candidates are ranked in order of the number of first preference votes allocated to them. The candidate(s) with the greatest number of such votes is elected. If there is a tie in the number of first preference votes between two or more candidates, the tied candidate(s) with the greatest number of second preference votes is elected. If there is a tie in the number of second preference votes between two or more candidates, ELEXON draws lots to select the candidate(s) to be elected from among those tied.

A worked example has been included in Attachment A of this document.

d) Replacement of Panel Members

In the event that a Panel Member ceases to hold office not less than six months before the end of their term of office, a replacement is elected for the remainder of the term using the process described above. However, only Trading Parties that voted for the resigning Panel Member (with a first, second or third preference vote), or who did not vote for (and who are not an Affiliate of a Trading Party who voted for) any elected Panel Member still serving, may participate in the election by nominating candidates or voting. As in the full election process, each of these eligible Trading Parties may nominate one candidate and only one Trading Party may submit voting papers per eligible trading party group.

If a Panel Member ceases to hold office less than six months before the end of his term of office, the Trading Party which nominated the resigning Panel Member is entitled to appoint a replacement Panel Member for the remainder of the term. If the Trading Party does not appoint a replacement, the position remains vacant until the next full election.

Panel Members

More information about the BSC Panel Members can be found here.

Defects

Modification **P206** led to publication on the ELEXON website of certain aggregated voting data,[1] without divulging the votes of individual Trading Parties. The Proposer of Modification P251 considers that, while such transparency was a step forward, the voting system currently used for the election of Industry Panel Members could itself be improved. They suggest that the method now in place, constituting a multi-winner system involving **non-transferable** preferential votes and a different 'quota' calculation to that recommended by the Electoral Reform Society can lead to an unsatisfactory outcome for voting Parties.

Currently Trading Parties elect the Industry Panel Members (no more than five in accordance with **B Section 1.1.2(b)**), via three standard voting rounds and a further voting round if required. The Proposer has provided analysis of the 2008 Panel election results, which is included in the Attachment A to this document.

It is the view of the Proposer that, crucially, the BSC arrangements result in various shortcomings. For instance, a further round is always going to be required for all five Industry members to be elected, as the calculation used sets a high quota that makes it impossible for all the places remaining to be filled in former rounds; potentially all five might have to be decided by the further round. However:

[1] The total number of voting papers received and not discarded, the total number of first, second and third preference votes for each candidate across all voting papers, the total number of remaining voting papers in each voting round, the number of remaining Panel Member vacancies in each voting round, the qualifying total in each round, and the total number of qualifying preference votes allocated to the remaining candidates in all remaining voting papers in each round (Annex B-2 1.3).

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- A further round can result in place(s) being decided by chance, even when it is clear that candidate(s) have more support than other(s), as where candidates have matching numbers of first and second preference votes, third preferences are ignored; instead lots are drawn by ELEXON. Even if one of these candidates has a clear majority of third preference and thus total votes, it will be down to chance whether they are elected or not;
- This also means that third preference votes for these candidates, and all preference votes for unsuccessful candidates, will have been cast in vain;
- Candidates with a majority of second/third preference votes can be elected instead of candidates with a majority of first/second. However candidates with only one 1st preference can be elected instead of candidates with 2nd preference support from many more voters;
- A minority of papers can select the majority of positions; and
- The process is likely to encourage tactical voting. Under the current process, voters have to consider whether the exclusion of papers from rounds 2 and/or 3 should influence their votes.

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3 Proposed Solution

How will P251 resolve the issues?

The Proposer seeks to improve the procedure for electing the Industry Members of the BSC Panel, through adopting a standard **Single Transferable Voting** (STV) system, which is a preferential voting system designed to minimise "wasted" votes and provide proportional representation. The Proposer believes that STV achieves this by transferring votes that would otherwise be wasted on sure losers or winners to other eligible candidates.

How does STV system work?

Each voter gets one vote, which can transfer from their first preference to their second preference and so on, as necessary. Candidates do not need a majority of votes to be elected, just a 'quota' (i.e. a defined share of the votes) determined by the size of the electorate and number of positions to be filled. P251 proposes to use the quota recommended by the ERS (**Q= T/(N+1)**) where T is the total number of valid votes cast and N is the number of Industry Panel Members to be elected. Any candidate who receives equal to or greater than the qualifying total is elected to the Panel.

If a voting Party's preferred candidate has no chance of being elected or has enough votes already, their vote is transferred to another candidate in accordance with their preferences. STV thus ensures that very few votes are wasted. A worked example has been included in Attachment A.

What happens if there is a tie?

In the event of a tied vote, usual practice is to break the tie according to which of the candidates scored most first preferences, then second preferences (if tied on first preferences), third preferences (if tied on first and second preferences) and so on until the tie is broken.

Benefits of adopting STV

The Proposer believes that this Modification Proposal is a straightforward governance improvement: the election process itself shapes wider BSC governance and a clearer more robust election process is important.

The Proposer believes that the adoption of a standard Single Transferable Voting system would have the following benefits:

- A standard system should be more accessible for Parties and encourage participation in elections (and potentially in the Modification Process);
- Tactical voting would not be encouraged in the way that it may be by the present system; and
- Results would better reflect the votes cast, also encouraging participation and engagement.

Single Transferable Voting system

Also known as proportional representation through the single transferable vote (PR-STV).

Click here for 'How to conduct an election by the STV'.

Click here for an STV worked example.

eSTV is a program to facilitate the counting of an STV election. You can download the software here.

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Alternative Solution (Adopt STV with a different value of quota)

The alternative adopts the same mechanism as the proposed STV solution, but uses another value for the quota: **Q= (T/(N+1))+ 0.01**. This differs from the one recommended by the ERS by the additional '+0.01' (since all the votes are transferred to 2 decimal places). The alternative gives a slightly higher threshold of votes that a candidate must normally reach in order to win a seat, which is the number of valid votes divided by the number of seats plus one, with '0.01' being added to the outcome of this calculation to ensure no more candidates can be elected than the number of the vacancies.

Why additional '+0.01'?

If we consider the scenario indicated in the table below, 60 votes, 6 candidates and 5 seats to be filled, it is possible that all candidates receive 1/6 of the total votes (Q=60/(5+1)). In this case, all six candidates receive an equal numbers of votes (10 votes). This is equal to the Q value derived using the Proposed solution. Therefore, six candidates all qualify to be elected to the five available seats. The Group therefore believe a slight 'tip over' (+x) is required to resolve the deadlock.

The Group considered the following possible values of such '+x':

The **first suggestion** is to add a very small fraction in the quota calculation. This keeps the hurdle relatively low, while avoiding the scenario outlined above. The Group considered that this might be all that is needed given that fractions of votes are transferred in proportion to preferences expressed under an STV methodology.

The **second suggestion** is to adopt the Droop Quota, which adds an additional 1 (i.e. x=1) in the quota calculation. This will give a higher hurdle than the other solutions, but again, avoids the scenario outline above.

Number of votes	Q=T/(N+1)	Q'= (T/(N+1))+0.01	Q"= (T/(N+1))+1
60	10.00	10.01	11.00
70	11.67	11.68	12.67
80	13.33	13.34	14.33
90	15.00	15.01	16.00

The Group is in favour of the **first suggestion**, since it reduces the chance that more candidates meeting the quota than there are seats to fill, but also keeps the hurdle as low as possible.

The Group considered that this alternative solution shared the advantages and disadvantages of the Proposed solution with the additional benefit of reducing the chance of a situation where in certain, very limited, circumstances the number of candidates meeting the quota exceeds the number of available seats.

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Potential Alternative solutions?

Potential alternative A: reduced election mechanism - FPP

A suggested potential alternative was to adopt the simplified election mechanism of the First Past the Post (FPP) methodology. Instead of voting up to 3 preferences, electors just vote for a single preference, and the top 5 (for 5 vacancies) will be elected.

The Group believed the FPP would simplify the current election process and potentially remove the tactical voting issue. However, there is a problem with a straight FPP system, for example, what if everyone votes for one candidate? Also the Group believed the 'block voting' is easier to operate on this system compared to the baseline. Because the FPP system, with high transparency, does not discard voting papers, potentially allow voters to operate organised voting. The Group therefore concluded that the FPP is difficult to utilise in practice, thus is not better than the proposed solution.

Potential alternative B: compulsory 3 preferences on each vote

Another suggestion was utilising the STV election process, but making all the 3 preferences compulsory to reduce potential for tactical voting. The Group felt that some trading parties might just want to vote for a particular candidate, and knowing that their voting papers will be classified invalid, they might choose not to vote. Hence, this potential alternative will not encourage participation in the panel election. The Group also questioned how you can mandate Parties to vote for 3 different candidates and what penalties you would enforce on those who did not vote.

The Group concluded that voters should have options to express their votes, and there should be no compulsion on them to make a 2nd and 3rd preference if this is not their intention. Hence, this alternative solution is worse than the proposed solution. Impacts & Costs

Costs

ELEXON Cost (one-off implementation cost)		ELEXON Service Provider cost	**Total Cost**
Man days	Cost		
5 Man days	£1.2K	0	**£1.2K**

Indicative industry costs
None

Impacts

Impact on BSC Systems and process	
BSC System/Process	Potential impact
BSC Systems	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 impacted by this Modification Proposal.

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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 either the Proposed or the Alternative 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

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5 Implementation

The Group noted the preliminary work carried out by ELEXON before the Panel Election, for example drafting educational paperwork to enable participants to understand the election process prior to 21st June biennially. ELEXON agreed to draft guidelines including the pending proposed and alternative solutions in advance.

If either Proposed Modification P251 or the Alternative Modification is approved, the Panel recommends it is implemented:

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

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Modification Group Discussions

Whilst considering the case for change the P251 Modification Group discussed the following areas.

Proportional Representation

A Group member questioned what was meant by the minority of papers selecting the majority of positions. The proposer explained that the way in which voting forms are discarded under the current process (without preferences being transferred) could give outcomes where a minority of votes determine the majority of seats. A candidate may be elected where they have fewer overall votes (when considering 2nd and 3rd preferences) but a larger number of first preferences, i.e. a few papers can have a disproportionate impact on the result. P251 would ensure that votes are not wasted and as such candidates would be elected with a greater emphasis on the total number of votes they had received rather than just the total number of 1st preference votes they had received, i.e. elected on a proportional basis.

A Group member queried if the intention of the election process was indeed to give greater weight to the 1st preference vote. They noted it seemed in keeping with the comments made by a Panel Member (who was involved in the design of the current election process) that the intention of the current process had been to ensure that every participant who was entitled to cast a vote ended up with an elected member that they could communicate with. They also questioned if 1st preference votes did not count for anything, why have preferences at all and just rely on a first past the post principle.

Tactical Voting

The Group discussed the term 'tactical voting' and questioned what it was and how the Proposal would resolve it. A member stated that tactical voting under the current system was voting in a strategic manner so that your preference vote was likely to weigh more in later voting rounds. You could do this by deciding to cast only one preference or put your 1st preference candidate as your 2nd or 3rd preference on the voting forms.

The Group believed that such behaviour was merely strategic and perfectly legal under the current voting system, Parties had the right to vote for whom they wanted, how they wanted. A Group member commented that in order to carry out such a strategy the voter would have to second guess how others may vote and the outcome of those votes' and that this was not an easy thing to do.

A Group member also believed that even if you considered this is an issue, P251 would not resolve it as it would merely replace one set of voting tactics for another. The proposer argued that it may be harder to use such a strategy under the proposed arrangements.

One Group member commented that every voting, in theory, is tactical, since there is always considerations taking place when one casts a vote. Thus tactical voting shouldn't be an issue. On the other hand, the 'block voting' (voters gather and agree to cast in line with the majority decision) is arguably hard to avoid. One Group member 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.

The majority of the Group concluded that tactical voting was a 'red herring' and that Parties can vote how they wished as long as it was within the rules of the system. The Group also noted that voters should always vote for their preferred candidate, as to do otherwise was risky.

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Complexity

The Group noted that the proposer felt the complexity of the current election process could discourage participation in the election. The Group observed that in the 2008 Panel election, only 59 of 308 votes were cast. There was a view that adopting a standard mechanism of counting up votes, such as STV, which ensures that very few votes are wasted, would encourage more candidates to stand and hence a better turn-out.

To try and understand why Parties did not use their votes a question was asked as part of the Assessment Consultation as to whether respondents didn't vote since the process was too complex. In order to bolster responses ELEXON also raised the question at the Cross Codes Electricity Forum, attended by a number of smaller participants.

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. 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. A member commented that both the current and proposed method of counting votes are complex, and if complexity was not deterring participation in the process then what was the point in changing. The member also noted that they believed the proposed was even more complex than the current arrangements. The proposer responded that the process may be marginally more complex for ELEXON to administer, but it would be simpler for participants to understand. Another member questioned that since an explanation of how the voting system works would need to be provided under any methodology, was complexity even an issue.

Views from the Electoral Reform Society

We sought views from the ERS, however, the society could not comment on the Panel elections. They would only issue advice on technical queries about the STV system:

> *'…In terms of the advantages of STV, we feel it offers voter the best and most effective choice. If your preferred candidate has no chance of being elected or has enough votes already, your vote is transferred to another candidate in accordance with your instructions. STV thus ensures that very few votes are wasted, unlike other systems where only a small number of votes actually contribute to the result. This means that most voters can identity a representative that they personally helped to elect…'*

ERS also suggested that if STV is being used for the Panel election, they would recommend that the T/(N+1) formula is used for the reason below:

> *'… both the Hare quota (T/N) and the Droop quota ((T/(N+1))+1) cannot guarantee that a group of candidates supported by a solid majority of voters would receive a majority of seats whereas the Hagenbach-Bischoff quota (T/(N+1)) recommended by the Electoral Reform Society prevents such anomalies from occurring and could therefore be considered more democratic.*
>
> *Admittedly this is arguably more relevant to public elections where the party system is more commonplace but, as I stressed before, our work is primarily*

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focused on those elections rather than non-public elections like yours where candidate groupings are less common.'

Considerations on the previous Modifications

The Group reviewed the intention and solution of the related Modifications P129 (which proposed to enable the BSC Panel, where there is a substantial majority agreement, to make decisions to implement or reject Modification Proposals) and P206 (which proposed that Annex B-2 of Section B of the Code should be amended to require ELEXON to disclose the number of preference votes received in each voting round by candidates standing for election to the BSC Panel) and concluded they are not relevant to P251 and noted the suggestion in the P129 decision that having a Panel elected by different constituencies of Trading Parties would not be in keeping with the Panel's obligations to act impartially as industry experts.

Responses to consultation

The Group noted that the responses received from 6 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 P251 was not better than the current arrangements as they were:

- Not aware of any evidence which suggests the current voting arrangements are not working properly, felt neutral or considered the Proposal to be detrimental (objective (d)) to the BSC Applicable objectives as the Proposal may add complexity to the election process; and
- Not convinced that the existing election process is the cause of low turnout in the BSC Panel election.

A minority supported the Proposal because they believed:

- The Proposal would address the identified defect and result in a more reflective election process; and
- There would be positive benefits for competition and the efficient administration of the BSC arrangements (c) and (d).

Full responses can be found on the **P251** page of the ELEXON website.

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Applicable BSC Objectives

Overall, the **majority** of the Group **does not** believe that P251 Proposed or Alternative better facilitates the Applicable BSC Objectives. The **majority** also believes that the **Alternative is better** than the Proposed.

Proposed and Alternative Modifications vs. the current arrangements

The Group noted that the only difference between the Proposed and Alternative Modifications was the calculation used to work out the necessary quota. As such the views against the Applicable Objectives when compared with the current arrangements apply equaly to both Modifications. The views of the Group are summarised in the section below.

Applicable Objectives (a) and (b)

The Group **unanimously** believes P251 Proposed is **neutral** when compared to Applicable Objectives (a) and (b).

Applicable Objective (c)

The **majority** of the Group believes that P251 would be **neutral** when compared to Applicable Objective (c) as they did not believe a defect exists. The majority also believes that amending the method by which votes are counted would not increase participation in the process as parties have issues of higher priority to deal with.

The **minority** of the Group believes that P251 would **better** facilitate Applicable Objective (c) as it would remove the anti-competitive nature of the current system where the minority of votes are overly representative.

Applicable Objective (d)

The **majority** of the Group believes that P251 **would not** better facilitate Applicable Objective (d) as they either believed P251:

- Is marginally more complex to count up and transfer voting preferences so **detrimental** against Objective (d); or
- Has little or no impact, so **neutral** against Objective (d)

The **minority** of the Group believes that P251 would **better** facilitate Applicable Objective (d) as P251 would bring greater engagement in the election and would make the administration costs better value for money, therefore there is a marginal gain in efficiency.

Alternative Modification vs. Proposed Modification

The **majority** of the Group believes the Alternative Modification **is better** than the Proposed Modification because:

- The Alternative provides additional security to prevent more candidates than there are seats to fill being able to meet the quota (though such 'deadlock' is hypothetical and statistically unlikely); and
- The Alternative solution, with a slight tweak of the proposed quota value, still utilises the same mechanism as the STV, but also keeps the hurdle as low as possible to ensure candidates get elected.

The **minority** of the Group does not believe the Alternative Modification is better than the Proposed Modification as they believe that 'deadlock' could occur under either system, and although statistically unlikely the issue is not resolved.

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7 Panel's initial discussions

Panel's consideration of Assessment Report

The Panel considered the **P251 Assessment Report** of at its meeting on 8 April 2010.

The majority of the Panel agreed that the new election process proposed in the P251 Proposed and Alternative Modification is not better than the one in place. Both the P251 Proposed and Alternative Modification should be rejected, because:

- The Panel struggled to see how the new election process proposed would encourage engagement in the Panel election and felt **neutral** when compared Proposed P251 and Alternative to **Objective (c)**; and
- The Panel also felt the new election process may be more complex than the current election process. Hence there might be a marginal decrease in efficiency for ELEXON to when administering the process, but overall the Panel felt **neutral** when compared to **Objective (d)**.

The Panel noted both the Modification Group and industry struggled to see the issue this Modification is trying to address and therefore concluded that neither the Proposed nor the Alternative Modification better facilitates any of the BSC Applicable Objectives.

In addition, the Panel had no view as to whether P251 Alternative was better than P251 Proposed Modification since they felt both solutions are equally complex.

The Panel's initial recommendation was therefore that P251 Proposed and Alternative Modification should be rejected.

One Panel member noted that in current system, the vote is counted and not transferred. The intention is to give the remaining voters a chance to have their votes contributed to election of a candidate, which is considered to be a fair process. However, transferring votes seems odd in the STV system. For example, those voters casting 1st preferences with the majority in the 1st stage, still gain a second chance to vote for a second candidate by transferring the surplus votes from the first elected candidate.

One Panel member raised some suggestions that a review of the whole election process through an issues group prior to the 2012 election may have value.

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8 Report Phase Consultation Responses

Aside from the Panel's initial recommendation to reject the both Proposed and Alternative Modification, all Report Phase Consultation respondents supported the Panel's initial recommendations.

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?	5	1	0
Should the Alternative Modification be rejected?	5	1	0
Is the Alternative better than the Proposed?	3	3	0
Do you agree with an Implementation Date of 5 Working Days?	5	1	0
Does the legal text deliver the intention of the Proposed?	5	0	1
Does the legal text deliver the intention of the Alternative?	5	0	1
Do you have any other comments?	2	4	0

Majority of respondents believe the P251 Proposed and Alternative are not better than the current arrangements

The minority of the respondents (1 of 6) disagreed with the Panel's initial recommendation to reject the Proposed and Alternative Modification, whilst the majority of respondents (5 of 6) agreed. They agreed with the view of the majority of the Panel and their comments can be summarised as:

- The new election process proposed is not better than the one in place;
- The new election process proposed is different and may be even more complex than the current one. The complexity of the system could be a disincentive for BSC Parties;
- Neither the Proposed nor the Alternative Modification better facilitates any of the BSC Applicable Objectives;
- Both the Modification Group and the respondents struggled to see the issue this Modification is trying to address; and
- The suggested defect does not exist.

The Proposer reiterated that various defects exist in the current election system, including:

- Voting Parties must remember that if they contribute to a candidate's election in round one, their paper(s) will be excluded from round two and three, even if that candidate achieved more votes than required for election. Any such papers will be included in the inevitable 'further round', but as this counts first preferences only, seconds only in the event of a tie, such papers are unlikely to have an impact in this round.

- Voting for a candidate likely to be popular may well be a waste of your vote and lead to your paper(s) only influencing the election of one candidate. Parties may not realise this, or if they do, be encouraged to give their first choice(s) to another candidate, risking that the true first choice of many Parties might not be elected if

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several Parties took this course. Likewise a vote cast for an unpopular candidate may currently be wasted, disadvantaging those voters who prefer such candidates, but this would not happen under STV as such votes would be transferred to these papers' next choice candidates in the rounds of elect, transfer, exclude, transfer that STV involves.

- The current exclusion of some papers from the second and third rounds can result in the perverse situation of a majority of papers determining only one or two Panel places in the first and/or second rounds while a far fewer number of remaining papers determine three or four candidates., i.e. a disproportionate result.
- If the current inevitable further round results in a tie on first and second choices, presently third choices are overlooked and the election decided by chance. This is counterintuitive and would negatively impact engagement with the election process by those Parties who made the effort to express these preferences. As previously identified slight differences in only a few of the 59 papers cast in the 2008 election would have caused this situation to arise and 2 of the 5 industry members being decided by chance for no apparent benefit.

The Proposer also highlighted in the consultation response that although no Parties may have complained about the outcome of past elections or decisions made by the current Panel is no reason to stick with the present flawed methodology for electing industry members, which could clearly be improved. It would be a responsible, positive forward-thinking move towards best practice to switch to a standard, well recognised and more robust STV voting system. Particularly, it would seem sensible and timely to do so now with moves towards greater self governance in Code Administration and the likelihood of greater scrutiny of the Panel and legitimacy of its decisions from Parties, the Authority and other interested bodies.

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 10 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.

Amended Legal Text

Following the Panel meeting in April, we have made three very minor changes to the P251 legal text in both the Proposed and Alternative. None of these changes have any substantive impact on the text and are purely further refinement. In particular they are:

- Para 3.4.3(b) we have removed the words 'allocated or' from the second sentence as they were unnecessary;
- Para 3.4.5(b) we have changed 'Panel Member has' in the singular to 'Panel Members have' as there may be more than one Panel Member elected; and
- Para 3.4.6(f) we have changed 'their' in the fourth line to 'the relevant' as this is more technically correct because the transferrable votes don't actually belong to the elected candidates.

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Panel's consideration of Report Phase Consultation responses

The Panel noted that no new arguments had been raised, and that majority of the respondents supported Panel's initial recommendation, which was to reject P251 Proposed and Alternative Modification.

A Panel member commented that the election process proposed by P251 is different from the current electoral mechanism, however, would still give very similar outcome. By looking at the worked examples in Attachment A, they felt the current election system was complex in nature and believed the Proposed and Alternative Modification were marginally simpler than the one in place.

Another Panel member noted that, in their view, the change conflicted with the original intention of the current process, which was to ensure every electorate's votes to be counted once.

A Panel member also 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.

They also raised some concerns that P251 was progressed in a compressed timescale and suggested that an Issues Group may like to consider the subject as a whole, taking 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.

Applicable BSC Objectives

The Panel reaffirmed their initial views against the Applicable Objectives as outlined in section 8 above. The Panel by **majority** believe that both the Proposed Modification and the Alternative **do not** better facilitate the Applicable BSC Objectives.

A Panel member believed the Proposed and Alternative Modification would provide a more coherent election process which would increase confidence in the arrangements. Hence there would be a **marginal benefit** on **Objective (c)** and they felt **neutral** on **Objective (d)**.

Alternative vs Proposed

The **majority** of the Panel maintained their view that neither the Proposed nor Alternative is better than the current arrangements and also indicated that the Alternative was **not** a better solution when compared to the Proposed.

Two Panel members were in favour of the Alternative Modification as they believed it is more sensible than the Proposed and agreed with the Modification Group's view that the Alternative would further reduce the chance of a 'deadlock' when compared with the Proposed Modification.

Recommendations

The Panel by majority recommends to the Authority:

- that Proposed Modification P251 should not be made;
- that Alternative Modification P251 should not be made;
- an Implementation Date for the Proposed Modification or Alternative Modification of:

Recommendation

The Panel by **majority** recommends **rejecting the Proposed** and **Alternative** Modification.

The **majority** of the Panel believes the **Proposed** Modification is **better** than the **Alternative** Modification.

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- 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

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

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10 Further Information

More information is available in:

Attachment A: Additional Information

This information includes:

- Details of the Group's membership;
- A copy of the Group's Terms of Reference ;
- Analysis of the 2008 election;
- Worked examples; and
- A timetable showing the assessment activities which the Group has undertaken

Attachment B: Legal Text Proposed and Alternative

All P251 documentation can be found on the **P251 page of the ELEXON Website**.

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