# Urgent Modification Consultation

# P378 'Introduction of a CM Supplier Interim Charge'

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## About This Document

The purpose of this Urgent Modification Consultation is to invite BSC Parties, Party Agents and other interested parties to provide their views on the impacts and the merits of P378. The Panel will then consider the consultation responses at its meeting following this consultation before making a recommendation to the Authority on whether or not to approve P378.

There are six parts to this document:

- This is the main document. It provides details of the solution, impacts, costs, and proposed implementation approach. It also summarises the Panel's initial views on the proposed changes.
- Attachment A contains the P378 Proposal Form.
- Attachment B contains the proposed redlined changes to deliver the P378 solution.
- Attachment C contains a summary of the key points of the P378 proposed solution.
- Attachment D contains a summary of the Issue 76 conclusions.
- Attachment E contains the specific questions on which we seek your views. Please use this form to provide your response to these questions, and to record any further views or comments you wish to be considered.


**Contact**
**Matthew Woolliscroft**

020 7380 4165

matthew.woolliscroft@elexon.co.uk

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# 1 Summary

## Why Change?

### Background

On 15 November 2018 the General Court of the Court of Justice of the European Union annulled the European Commission's (EC) State aid approval for the Great Britain (GB) Capacity Market (CM). Consequently, BEIS has instructed the Electricity Settlement Company (ESC) to stop collecting supplier charges and making capacity payments to capacity providers.

The UK Government has confirmed that it intends to work with the EC to reinstate the CM. It has advised capacity providers that they should continue to fulfil their CM obligations during this period.

On 19 December 2018, the Department for Business, Energy and Industrial Strategy (BEIS) launched a consultation around technical amendments to the CM, which stated:

> *'After careful consideration of the representations from industry, we are minded to continue to collect payments from suppliers during the [CM] standstill period, and welcome views on our intended approach and on how these payments should be collected. The two options we are considering, discussed below, are: for ESC to continue to collect the Supplier Charge, or a modification to the Balancing and Settlement Code (BSC).'*

BEIS has further communicated to the market that it will look to secure agreement from the Commission that the currently suspended CM payments will be paid to capacity providers, and thus the Suppliers will be asked to fund those repayments. As it is unclear when such repayments will be made, the potential timing and size of the bill to Suppliers, and therefore customers, is unknown, but any retrospective payment is likely to be substantial as the value of the 2018/19 CM Delivery Year is circa £1 billion.

### Issue

If, when the standstill is lifted, back payments are authorised, and collections have not been made during the standstill period, then Suppliers will be faced with a substantial bill at that time, and may not have the means to pay it. Further, if Suppliers have not collected this money from their customers during the standstill period, the customers will also have a price shock. As such, if coordinated planning is not undertaken in a timely manner, then there is a risk of Suppliers defaulting when these payments fall due. As non-defaulting Suppliers may then be required to make up any shortfall from defaulting Suppliers, this would further exacerbate the situation.

## Solution

P378 seeks to introduce a new interim monthly BSC charge on Suppliers to be known as the CM Supplier Interim Charge. The charge will cover the annual amount that Suppliers would have expected to pay under the CM regulations before the standstill in respect of the CM year October 2018 to September 2019. The charge will form a simple fund, without provisions for credit cover or the mutualisation of any shortfall or interest on late payments. Any failure to make a payment will be treated as being in Default of the BSC,

**What is the Capacity Market?**

The Capacity Market is designed to ensure sufficient reliable capacity is available by providing payments to encourage investment in new capacity or for existing capacity to remain open. The CM is given effect through secondary legislation and is operated by the Electricity Settlements Company. Monthly payments for the provision of capacity are made to capacity providers in line with their Capacity Agreements. Monthly payments are received from suppliers based on forecast demands, which is reconciled once actual data is available. This payment is in relation to the Supplier Charge Levy.


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and carries the same BSC sanctions as any other Default under the BSC (as prescribed in Section H3 of the BSC).

At the time of release, the fund will either be paid:

- to the Electricity Settlements Company (ESC), where ESC invoice Suppliers for the same periods; or
- back to Suppliers, where payments for the CM standstill period are not, or cannot be, invoiced by the ESC, or by the end of September 2020, whichever occurs first.

In order to ensure the fund accrues to the required amount in a reasonably short period, the Proposer has requested earlier monthly charges be larger than subsequent monthly charges. In particular the first monthly invoice will include amounts for January 2019 and subsequent months up to and including the month in which the Implementation Date occurs, with payments for October to December 2018 being smeared equally across the subsequent two invoices. The Proposer believes that since industry has been notified of this in advance through BSC Change email notices, publication on the BSCCo website and circulars from EMRS on behalf of ESC, it will be able to plan for these invoices.

The fund will be held in a separate BSCCo bank account and be subject to existing ELEXON account governance with interest accruing to BSCCo to defray costs. BSCCo will report regularly on amounts invoiced and received. A summary of the key points of the P378 proposed solution is provided in Attachment C.

## Impacts and Costs

Suppliers will be impacted by P378 as they will be required to pay a new BSC Charge termed the 'CM Supplier Interim Charge' until September 2019. BSCCo will be required to operate this new service. This will be done using existing resource, exercising the same extent of good governance as currently utilised for other BSC funds. Additionally, existing systems will be used. Consequently whilst there will be a cost associated with this new activity, it will not require a change to ELEXON's budget.

## Implementation

The Panel recommends that P378 is implemented **5 Working Days** (WDs) after the Authority's decision.

## Recommendation

The Panel considered P378 at an urgent Panel meeting on 21 December 2018. The Panel noted that BEIS is considering two routes for resuming collection of CM payments, of which this Modification is one.

The Panel noted that allowing the ESC to restart collection of monies from Suppliers would be the preferred option, but considered that it would be prudent to progress this Modification in the meantime, so that it was available as an option in a timely manner, should it be needed. It should be noted that under this Modification, collection of the BSC CM Supplier Interim Charge will cease (and funds be transferred) as soon as ESC charges for some or all of the same period.


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The Panel agreed with the Proposer's request for Urgency and commented that as Issue 76 had assembled a Workgroup to consider the issue, it did not see further value in including an additional Workgroup in the proposed Urgent Timetable. It did request the ability to formulate an Alternative solution for P378 if it felt changes were required following this consultation and there were benefits in providing Ofgem with two solution options to choose from.

The Panel initially recommends that P378 be **approved**.

## P378 timetable and approach

The Proposer requested that P378 be treated as an Urgent Modification Proposal upon raising P378 on 20 December 2018. The Panel unanimously agreed to recommend to Ofgem that P378 be treated as an Urgent Modification Proposal on 21 December 2018. The Panel agreed with the Proposer that P378 would have:

a) a significant commercial impact on Parties and consumers and capacity providers – as it seeks to mitigate the risk of a 'price shock' for Suppliers and their customers in the future if back payments are authorised, and provide assurance to capacity providers that funds will be available to cover any back payments; and

b) a significant impact on the safety and security of electricity supply – as it will reduce the risk of Suppliers defaulting in the future.

The full rationale for requesting Urgency can be found in the P378 Initial Written Assessment.

Ofgem granted P378 urgent status on 8 January 2019 and stipulated that the Modification timetable and procedure includes a minimum 10 Working Day industry consultation and the capacity for the Panel to propose an Alternative Modification following this consultation. It also required that BSCCo allow time for consultation responses to be thoroughly considered by itself and the Panel before submitting a Modification Report to the Authority.

The Modification will therefore follow the below timetable.

| Urgent Progression Timetable for P378 | |
|---|---|
| Event | Date |
| Present Initial Written Assessment to Panel | 21 December 2018 |
| Consultation – minimum 10WD | 16 January 2019 – 29 January 2019 |
| Present Draft Modification Report to Panel | 4 February 2019 |
| Issue Final Modification Report to Authority | 5 February 2019 |


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# 2 Why Change?

## Background

On 15 November 2018 the General Court of the Court of Justice of the European Union found in favour of Tempus Energy, against the EC, annulling the Commission's State Aid approval for the GB CM. All CM cost recovery by Suppliers and payments to capacity providers have been suspended with all credit cover available to be returned.

The UK Government has confirmed that it intends to work with the EC to reinstate the CM, believing that it is the most cost effective way of ensuring security of supply in the GB energy market. It has advised capacity providers that they should continue to fulfil their CM obligations during this period.

On 19 December 2018, BEIS launched a consultation around technical amendments to the CM, which stated:

> *'After careful consideration of the representations from industry, we are minded to continue to collect payments from suppliers during the [CM] standstill period, and welcome views on our intended approach and on how these payments should be collected. The two options we are considering, discussed below, are: for ESC to continue to collect the Supplier Charge, or a modification to the Balancing and Settlement Code (BSC).'*

BEIS has further communicated to the market that it will look to secure agreement from the Commission that the currently suspended CM payments will be paid to capacity providers, and thus the Suppliers will be asked to fund those payments. As it is unclear when such payments will be made, the potential timing and size of the bill to Suppliers, and therefore customers, is unknown, but could be substantial as the value of the 2018/19 CM delivery year is circa £1 billion.

### Issue 76

Issue 76 'Using the BSC to support Suppliers and the Capacity Market Arrangements' was raised by VPI Immingham LLP on 6 December 2018. The Issue Group meeting was held on 17 December 2018 to discuss the optimal solution and gauge industry support for a subsequent Modification Proposal. P378 is based on the solution developed by the Issue 76 Workgroup. To support Issue 76 and any subsequent Modification Proposal ELEXON sought external legal advice. A summary of the legal advice can be found in the slide pack on the Issue 76 meeting page.

A summary of the discussions of the Issue 76 Workgroup can be found in Section 6 'Issue 76 Workgroup Discussions'. The Issue 76 Report will be presented to the BSC Panel on 14 February 2019.

## What is the Issue?

BEIS has requested that the parties obliged under the CM continue to discharge their obligations during the CM standstill period. As this is the BEIS minded to position, it is therefore prudent that Suppliers also continue to collect CM payments from customers. However, ESC, pending the outcome of the BEIS consultation noted above, was instructed to stop collecting the CM payments from Suppliers by BEIS. As such Suppliers currently


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appear to have no robust legal basis for collecting money from customers, to help them plan for any future liabilities if back payments are authorised.

While the market has supported the continuation of the CM, and urged the Government to find a pragmatic way forward, this industry is now 'missing' one month (December 2018) of CM payments by Suppliers. Furthermore, the ESC has advised Suppliers that they can request the return of the money already paid to the ESC in respect of the CM in both October and November 2018. The value of the missing payments will escalate further as each month passes. The Proposer therefore believes it is for the industry itself to undertake some contingency planning for the orderly reinstatement of the CM scheme in order to protect the CM parties and their customers from a price shock at some point in the future.

## Risk of defaulting BSC Parties due to large CM payments

There is currently a substantial potential CM liability being accumulated by Suppliers in the GB electricity market. The Proposer does not believe that all Suppliers feel willing to go on collecting CM payments from customers when they are not being billed by the ESC, and is concerned that not all will be saving all charges they have collected. There is therefore a substantial risk to all customers, Suppliers, capacity providers and all BSC Parties that reinstatement of the CM creates a default risk across the market. The market has already seen Suppliers face material costs from the Renewables Obligation (RO) mutualisation process and this Modification will aim to reduce the risks to all parties. A future large CM payment will put further Suppliers at risk of failure with the consequential negative impact upon consumers, unless some sensible planning is achieved.

Suppliers going out of business will have implications across the market place, for example:

- Renewable generators with Power Purchase Agreements (PPAs) will be concerned about Supplier defaults;
- Electricity System Operator (ESO) security of supply concerns will increase if Generators or Demand Side Response (DSR) providers cannot fund their activities for the longer term;
- Customers will risk substantial bills at a later point in time and the smearing of additional costs; and
- Knock on impacts to central bodies both for their funding and potentially operationally.

All of these issues have an impact on BSC Parties and the efficient operation of the BSC. We therefore believe that the BSC is an appropriate vehicle to help manage this market wide risk.

## Use of the BSC to mitigate risks

Issue 76 'Using the BSC to support Suppliers and the Capacity Market Arrangements' was raised to discuss the possibility of using the BSC to help the market manage the planning for the return of the CM, in line with Government policy. There was broad consensus that the BSC could be used for this purpose and that forward planning was a sensible action by the market as a whole. This was subsequently recognised by Government in BEIS's CM


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consultation of 19 December. This Modification is therefore based on many of the points raised and agreed in the Issue 76 workgroup.

At the Issue 76 meeting a number of Suppliers also raised issues around how they would account for such payments. The Proposer recognises that every new charge, levy, fine, etc. which a business faces, needs to be accounted for. However, it is not for BSCCo to offer accounting advice and the Proposer believes that the Suppliers could seek independent tax advice individually or collectively through bodies such as Energy UK or the I&C Shippers and Suppliers Group (ICoSS).


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# 3 Solution

## Proposed Solution

This Modification seeks to introduce a new monthly interim BSC charge payable by Suppliers to be known as the CM Supplier Interim Charge. This will be based on the existing schedule (known as the Regulation 27(1)(c) Notice) of monthly CM Supplier Charges for the 2018/19 CM delivery year (a Supplier specific version of which has been issued last summer to each Supplier by ESC). The charge will form a simple fund ("the CM Interim Fund") that will ultimately either be paid to ESC or returned to Suppliers. There will be no provisions for credit cover or the mutualisation of any shortfall or interest in respect of late payment. Instead, any failure to make a payment will be treated as being in Default of the BSC, with the full range of BSC sanctions available.

The solution is based on the solution agreed by the Issue 76 Workgroup. The reasons for the solution are detailed in section 6. Where the P378 solution differs from that of the Issue 76 Workgroup, we have tried to highlight that in section 6, along with the reasons. A short summary of the P378 solution is set out Attachment C and a summary of the Issue 76 Workgroup conclusions at Attachment D. The guiding principle for developing the P378 solution was to keep it simple so that the solution minimised implementation and operational costs and could be implemented quickly.

### Payment collection

BSCCo will be required to obtain the existing provisional annual payment schedule from ESC. This is calculated based on Regulation 27(1)(c) Notice payment schedule for each Supplier for the CM Supplier Charge for the 2018/19 CM delivery year. This schedule details the monthly amounts that each Supplier is required to pay for the Supplier Charge Levy. Under this Modification, Suppliers will be required to consent that this data can be shared with BSCCo for the purpose of invoicing a BSC CM Supplier Interim Charge and that all relevant financial information collected by BSCCo during the standstill period can be shared with ESC to enable a smooth transition to ESC operations in the event state aid approval is granted.

ELEXON will run a manual billing process and invoice Suppliers on the first Working Day (WD) of each month for the new CM Supplier Interim Charge based upon the payment schedule referred to above. Despite the process being 'manual' it will be subject to the same rigour and oversight as employed by ELEXON on similar processes. Under the solution, Suppliers will be required to consent to ELEXON being provided with any relevant data to operate the solution. This includes details of finance contacts, so the invoice for the CM Supplier Interim Charge will be sent (via email) to the contacts who usually receive the CM invoice. Suppliers will be required to consent to BSCCo acting as their agent for the purpose of transferring the funds held on account to ESC at the end of the standstill period, in the event that state aid approval is gained for CM back payments.

As BEIS has informed industry that its minded to position is to require back payment in the event that State Aid clearance is granted for the CM, and in order to ensure the fund accrues to the required amount in a reasonably short period, the Proposer has requested earlier monthly charges be larger than subsequent monthly charges. In particular the first monthly charge invoice will equate to the months of January 2019 and subsequent months up to and including the month in which the Implementation Date occurs, with payments for October to December 2018 being smeared equally across the subsequent two invoices. The Proposer believes that since industry has been notified of this in advance through BSC


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Change email notices, publication on the BSCCo website and circulars from EMRS on behalf of ESC, it will be able to plan for these invoices. The Proposer notes that Suppliers can request funds previously paid to ESC in respect of October and November 2018 be returned by ESC (and many have already).

The below table illustrates this payment profile. The example assumes that the Modification Implementation Date (which itself is subject to the timing of an Authority decision) is early in March 2019. Note: Should an Authority decision occur in early February enabling an implementation date before mid February, then the timing of each monthly payment will be one month earlier (see description of timing of first invoice below).

| Example payment profile of charges for interim months | |
|---|---|
| Payment month | Payments due for |
| Month 1 e.g. March 2019 | January 2019 and<br>February 2019 and<br>March 2019 |
| Month 2 e.g. April 2019 | April 2019 and<br>Half of total due for October to December 2018 |
| Month 3 e.g. May 2019 | May 2019 and<br>Half of total due for October to December 2018 |
| Subsequent months e.g. June to September 2019 | According to the monthly amounts in the payment schedule |

This will avoid Suppliers being given a substantial 'shock bill', while also ensuring that missing funds are quickly recovered.

Whereas Suppliers' ESC CM Supplier Charges are revised by the ESC once actual data is available and the revised charges are applied from May to September and a notice of the revised payments, using actual data, is sent to Suppliers before the start of the Delivery Year, the BSC will not be revising the payment schedule and the money collected will be based on the monthly payments already notified to each Supplier under the existing ESC payment schedule referred to above. We note that under BEIS's consultation it is considering the suitability of two alternative payment profiles, neither of which mirror the P378 proposal exactly. If BEIS provides clear guidance on its preference then the Panel can consider this following this consultation.

The BSC will not be making any CM payments, nor will it be reconciling CM Supplier payments, it will simply be facilitating the sensible planning by the market for the achievement of the Government's stated policy aims. It will be the role of the ESC, together with its Settlement Services Provider, EMRS, to reconcile the payments by Suppliers to their actual liability, which could result in repayments to or further payments from Suppliers if the CM is reinstated, and to make necessary back payments to CM agreement holders. Similarly it is recognised that events of default, an increase or decrease in customer numbers or volumes, or transfer of customer contracts to another Supplier, would under ESC CM payment reconciliation processes alter a Supplier's liability, but the BSC process will not make those changes. This approach is to aid simplicity and minimise costs and time of implementing any associated system.

Invoices will be issued on the first WD of the month (save for the first invoice). The payment terms for the CM Supplier Interim Charge will be 5WD as under the CM regulations.


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With regards to the first invoice, the Proposer believes that payments should begin being collected as soon as is practicable, so as to provide the greatest certainty to industry and reduce any risk of a price shock. It believes that the first monthly invoice should be issued within 2WD of the implementation date of the Modification. However, if the implementation date is within 10WD of the end of the month then, to avoid two invoices in quick succession, the first invoice should be issued on the first WD of the following month. For example, if an Ofgem decision is received on 14 February, the Implementation Date would be 21 February and the first invoice would be issued on 1 March for payment within 2WD.

| P378 Consultation Questions |
|---|
| Should this Fund be set up to cover the period up to the end of the current CM Delivery Year on 30 September 2019 (as drafted) or cover the Delivery Year 2019/20 as well?<br>*Please provide your rationale.* |
| Do you agree that for reasons of simplicity, charges are based on the existing schedule of CM payments (the Regulation 27(1)(c) Notice) and will not be varied whether for reconciliation purposes or because of changes to customers numbers or volumes, or for supplier default?<br>*If 'No' please provide your rationale.* |
| Is it appropriate to include monthly amounts for all months since and including January 2019 in the first invoice?<br>*If 'No' please provide your rationale and indicate how you think funds could be better recovered or an alternative profile for recovery of such funds.* |
| Is the profile of payments outlined above (i.e. where the 'missing months' of October to December 2018 are recovered over the second and third invoices) appropriate?<br>*If 'No' please provide your rationale and indicate how you think historic funds could be better recovered or an alternative profile for recovery of such funds.* |
| What is the commercial impact of the proposed collection profile, as outlined above, on your business?<br>*Please include details of how any impact will affect your customer base.* |
| This proposal does not facilitate Suppliers who may want to make additional or ad hoc payments into this fund. Would Suppliers want the ability to pay more than invoiced, to plan for what they believe may be their financial exposure in the future?<br>*If yes, please provide your rationale.* |
| We invite you to give your views using the response form in Attachment E |

## Consequence of non-payment

If a Supplier defaults on the new CM Supplier Interim Charge, then it will be subject to the usual BSC default process under Section H. The default process should be initiated quickly.

BSCCo will not hold any credit cover for this new CM Supplier Interim Charge nor will there be any mutualisation of unpaid invoices, or interest on late payment. This is for reasons of simplicity, as considered by the Issue 76 Workgroup. In particular, if non-payment led to mutualisation, compliant Suppliers could face a mutualisation charge for a cost that at that time was still contingent i.e. was still dependent on the CM suspension period being lifted. Similarly, for interest on late payments to be implemented would require a complex system to calculate interest on payments to account for payments that are one or many days late.

Failure to make any payment of this charge will, as with other BSC non-payments, be an event of Default under the BSC and as such will have the normal sanctions applied to it, including the ability to be expelled from the BSC. In the event of any Default, the


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Supplier's BSC Credit Cover will not be used to cover any outstanding CM Supplier Interim Charges. This will ensure that BSC Parties financial exposure to Defaulting BSC Parties will be unchanged.

| P378 Consultation Question |
| --- |
| Do you agree that the use of Section H Default is appropriate to mitigate the risk of non-payment?<br>*If 'No' please provide your rationale and indicate what you believe should be used instead.* |
| We invite you to give your views using the response form in Attachment E |

## Releasing of funds

The money collected will be held by BSCCo until one of these events occurs:

1. **The CM is reinstated and invoices for the relevant periods are issued by the ESC**

BSCCo will, on behalf of the Suppliers, transfer all money paid by Suppliers into the CM Supplier Interim Fund to the ESC, along with the information on the contribution made by each Supplier to the CM Supplier Interim Fund in the event ESC invoices for all or part of the period for which BSCCo has collected funds. The Issue 76 Workgroup agreed that this would ensure the collected monies are used for the purpose they were collected for.

2. **If the CM standstill is not lifted after all routes of appeal are exhausted or is lifted but without payments covering the relevant period, or the Secretary of State definitively states that there will be no payments in respect of the relevant period each as determined by the Panel on request by a Supplier**

BSCCo will repay to Suppliers the amount that each has paid into the fund. The Proposer (and Issue 76 Workgroup for the first two triggers) considered these triggers appropriate as it requires the process to have reached its conclusion whilst ensuring the onus is on Suppliers, rather than BSCCo, to demonstrate this.

3. **The end of September 2020**

The Proposer believes that a longstop date of the 30 September 2020 should be included in the solution as a backstop. At this time, if no other triggers have been invoked, then BSCCo will repay to Suppliers the amount that each has paid into the fund.

It is expected that if collections are returned to Suppliers, then these funds will be returned to customers, but the Proposer notes that how Suppliers choose to refund their customers is a commercial issue rather than a BSC issue. It is unclear how BSCCo could investigate or enforce this. The Proposer also notes that historically where funds have been returned by ESC to Suppliers either as part of reconciliation or more recently as refunds of October and November 2018 payments, there is no mechanism to ensure those funds are returned to customers.


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| P378 Consultation Questions |
| --- |
| Is the long stop date for repayments of the Fund to Suppliers set at the right point in time?<br>*If 'No' please provide your rationale.* |
| Are there any other triggers that are not covered adequately by the above cases?<br>*If 'Yes' please provide details.* |
| Is it possible to require Suppliers to return any collected payments to its customers in the event that the CM suspension is upheld or the long stop date reached, and is the inclusion of a BSC obligation the best way to achieve this? If so how would ELEXON be able to determine whether such an obligation has been fulfilled?<br>*Please provide your rationale.* |
| We invite you to give your views using the response form in Attachment E |

## Defaulting Suppliers

It is possible that in between BSCCo commencing collections of the CM Supplier Interim Charge and the completion of the scheme, Suppliers may pay into the fund and subsequently cease to trade. The intention is that accumulated funds are not an asset of a Supplier and are therefore not recoverable by an Administrator or Liquidator of a Supplier. If the funds are transferred to ESC, then the amount that the defaulting Suppliers had contributed will be included in this, as they will have had an obligation for the period during which they were active. If the funds are not transferred to ESC and instead returned to Suppliers, then the funds of an insolvent Supplier will be utilised by its Administrator, as is usual practice under insolvency law. We note that in such case, there will be no means for passing these funds onto consumers.

There may also be circumstances where a Supplier that has contributed to the CM Supplier Interim Fund is dissolved (so ceases to exist) prior to any release of funds to Suppliers. In these circumstances the solution provides for the funds to be transferred to another Supplier at the direction of the Authority.

In any case, any shortfall arising from the default of a Supplier would be addressed by ESC through mutualisation and funded by the remaining Suppliers. Additionally, it is likely that any Supplier that acquires customers in a Supplier of Last Resort (SoLR) event would see their ultimate contributions to ESC increase as now as their customer volumes would have grown.

## Holding of funds

The collected funds would be held in an existing, but currently unused ELEXON bank account. The alternatives of using an escrow account or on trust account were considered by the Issue 76 Workgroup, but were deemed unnecessarily complex given the existing governance employed by BSCCo over other industry funds. Such governance is to be replicated with this solution, to which the Proposer agrees.

The Proposer believes that it would be preferable for ELEXON to keep any interest earnt and use this to defray BSC Costs, which given ELEXON's not for profit funding model will benefit the whole industry and ultimately consumers. This is consistent with the Issue 76 Workgroup conclusions, and is designed to avoid complex systems and calculations necessary to determine interest for Suppliers who will be paying different amounts and may not always pay on the same day. Similarly the Issue Workgroup could see no


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rationale for passing the interest to ESC and the Workgroup also noted that currently interest is not paid by ESC on balances held by it.

We note that even if BEIS were to amend the CM regulations to allow ESC to collect interim funds, then as a government owned body using HM Treasury banking facilities, it would still hold funds in a non-interest bearing account and so no party would be able to benefit.

| P378 Consultation Question |
|---|
| Do you agree that funds should be held in an ELEXON bank account rather than on trust or in escrow?<br>*If 'No' please provide your rationale and indicate what type of account would be preferable and why.* |
| Do you agree that interest on the funds should be used by ELEXON to defray BSC Costs?<br>*If 'No' please provide your rationale and indicate what you believe should be done with interest.* |
| Do your accounting practices include adequate provisions for the proposed new charge?<br>*If 'No' please provide details with an explanation as to how this differs had the CM not been suspended.* |
| We invite you to give your views using the response form in Attachment E |

### Reporting requirements

ELEXON will make publicly available each month:

- the total value of the Fund;
- the total invoiced amount;
- the amount collected in that month; and
- the amount invoiced for that month

10WD after the payment due date each month. This will be achieved via an ELEXON Circular and published on the BSCCo Website.

## Legal advice on compliance with the Transmission Licence

ELEXON has taken external legal advice on whether the scheme proposed by P378 falls within the scope of the BSC under the Transmission Licence. This issue relates specifically to the scope of the BSC rather than ELEXON's vires. The latter can be adjusted by a BSC Modification approved by Ofgem such as that currently proposed in this Modification, whereas the former can only be adjusted by a change to the Transmission Licence. The legal advice is that P378 would be consistent with the Transmission Licence on the basis that the Licence provides a clear basis for the BSC to include provisions that mitigate risk to the stability of the market for the generation and supply of electricity and which facilitate the operation of the CM. ELEXON has received no legal advice that contradicts this view.

Whilst ELEXON has satisfied itself in this respect, we would expect Ofgem to form its own view on compliance with the Transmission Licence.


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## Applicable BSC Objectives

| Impact of the Modification on the Relevant Objectives: | |
|---|---|
| Relevant Objective | View of Proposer and Panel |
| (a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence | *Neutral* |
| (b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System | ***Positive*** |
| (c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity | ***Positive*** |
| (d) Promoting efficiency in the implementation of the balancing and settlement arrangements | ***Positive*** |
| (e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators] | *Neutral* |
| (f) Implementing and administrating the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation | ***Positive*** |
| (g) Compliance with the Transmission Losses Principle | *Neutral* |

The Proposer and the Panel unanimously believes that the Modification better facilitates the **Applicable BSC Objectives (b)**, **(c)**, **(d)** and **(f)** for the reasons provided by the Proposer, which are detailed below. The Panel therefore believes that P378 should be approved.

### Panel views against Applicable BSC Objective (b)

The Proposer and Panel believe that the Modification will better facilitate BSC Applicable Objective (b) as providing industry with the certainty that funds will be available to capacity providers if the standstill is lifted will encourage participants to continue normal operations, thus protecting the operation of the Transmission System.

### Panel views against Applicable BSC Objective (c)

The Proposer and the Panel believe that having the funds available for efficient restarting of CM payments will reassure investors to continue normal operations. The continued collection will also help Suppliers protect their customers against a price shock upon the restarting of the CM by requiring all Suppliers to continue paying into a fund, will ensure a level playing field by removing the risk that prudent Suppliers will pay more in the event that any shortfall is mutualised.

### Panel views against Applicable BSC Objective (d)

The Proposer and the Panel believe that by introducing a BSC planning charge, there is less risk of Parties paying BSC Default Funding Shares on BSC Defaulting Parties liabilities

**What are the Applicable BSC Objectives?**

(a) The efficient discharge by the Transmission Company of the obligations imposed upon it by the Transmission Licence

(b) The efficient, economic and co-ordinated operation of the National Electricity Transmission System

(c) Promoting effective competition in the generation and supply of electricity and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity

(d) Promoting efficiency in the implementation of the balancing and settlement arrangements

(e) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency [for the Co-operation of Energy Regulators]

(f) Implementing and administrating the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation

(g) Compliance with the Transmission Losses Principle


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as a result of shock CM charges. By requiring Suppliers to pay into the fund, it is less likely that Suppliers will Default on payments upon the restarting of the CM.

### Panel views against Applicable BSC Objective (f)

The Proposer and the Panel believe that if the CM standstill is lifted, the existence of the fund will make it easier for the market to return to normal operations of the CM regime. While this will not help the regime at present, the Proposer believes that this future planning will aid the efficient and economic return to normal CM operations.

| P378 Consultation Question |
| --- |
| Do you agree with the Panel that P378 does better facilitate Applicable BSC Objectives b, c d and f than the current baseline and should be approved?<br>*If 'No', please provide your rationale.* |
| We invite you to give your views using the response form in Attachment E |

## Legal text

To implement the new CM Supplier Interim Charge, a new supplement to the BSC (currently the only supplement to the BSC is the Pool Supplement) termed the 'CM Supplier Interim Fund Supplement' will be appended to the BSC.

The draft legal text can be found in Attachment B. Note that alternative wording has been provided for information in case the Modification applies to CM years 2019/20 AND 2020/21.

The legal text has been produced by ELEXON's external lawyers. The process for developing the text has included a review by competition law specialists with a view to minimising the risk of a BSC solution itself being contrary to State Aid rules.

| P378 Consultation Question |
| --- |
| Do you agree that the draft redlining delivers the intention of P378?<br>*If 'No', please provide your rationale.* |
| We invite you to give your views using the response form in Attachment E |


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# 4 Impacts and Costs

## Estimated central costs of P378

### Implementation costs

ELEXON estimates the costs of implementing P378 to be:

- Effort for external lawyers to draft the legal text and provide legal advice on the proposed Modification, amounting to approximately £45,000; and
- Effort to implement document changes to the BSC, amounting to £240.

Implementation of the P378 solution will be done using existing BSCCo resource, and whilst there will be a cost associated with implementation it will not require a change to ELEXON's budget.

### Ongoing costs

ELEXON will operate the new charge using existing resource, exercising the same extent of good governance as currently utilised for other BSC funds. Additionally, existing systems will be used. Consequently whilst there will be a cost associated with operating this new activity, it will not require a change to ELEXON's budget.

## Indicative industry costs of P378

Suppliers will incur additional BSC costs as a result of P378 as they will be required to pay into the new Fund. ELEXON notes that this cost will be equivalent to what Suppliers would have expected to pay under the CM regulations (prior to any reconciliation) and so should not have an unexpected impact on Suppliers' cash flow.

ELEXON does not envisage any implementation costs on industry participants for P378.

| P378 Consultation Questions |
|---|
| Will P378 impact your organisation?<br>*If 'Yes', please provide a description of the impact(s) on your organisation and any activities which you will need to undertake between the approval of P378 and the P378 Implementation Date (including any necessary changes to your systems, documents and processes). Where applicable, please state which of the roles that you operate as will be impacted and any differences in the impacts between each role.* |
| Will your organisation incur any costs in implementing P378?<br>*If 'Yes', please provide details of these costs, how they arise and whether they are one-off or on-going costs. Where possible please explain how these costs differ to those that would have been incurred had the CM not been suspended.* |
| We invite you to give your views using the response form in Attachment E |

## P378 impacts

| Impact on BSC Parties and Party Agents | |
|---|---|
| Party/Party Agent | Impact |
| Suppliers | Suppliers will be required to pay the new CM Supplier Interim Charge until September 2019. |


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| Impact on Transmission Company |
|---|
| No impact identified. |

| Impact on BSCCo | |
|---|---|
| Area of ELEXON | Impact |
| Finance | ELEXON's finance will need to issue manual invoices for the new charge and reopen an unused account in which to hold the funds. This will be done using existing resource and processes. |

| Impact on BSC Systems and process | |
|---|---|
| BSC System/Process | Impact |
| No impact identified. | |

| Impact on BSC Agent/service provider contractual arrangements | |
|---|---|
| BSC Agent/service provider contract | Impact |
| No impact identified. | |

| Impact on Code | |
|---|---|
| Code Section | Potential Impact |
| Addition of BSC Supplement | A CM Supplier Interim Fund Supplement will be appended to the BSC to implement the P378 solution. |

| Impact on Code Subsidiary Documents | |
|---|---|
| CSD | Impact |
| N/A | No impact identified. |

| Impact on other Configurable Items | |
|---|---|
| Configurable Item | Impact |
| N/A | No impact identified. |


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| Impact on Core Industry Documents and other documents | |
|---|---|
| Document | Impact |
| Ancillary Services Agreements | No impacts identified. |
| Connection and Use of System Code | |
| Data Transfer Services Agreement | |
| Distribution Code | |
| Distribution Connection and Use of System Agreement | |
| Grid Code | |
| Master Registration Agreement | |
| Supplemental Agreements | |
| System Operator-Transmission Owner Code | |
| Transmission Licence | |
| Use of Interconnector Agreement | |

| Impact on a Significant Code Review (SCR) or other significant industry change projects |
|---|
| Both ELEXON and the Proposer do not believe this Modification impacts any on-going SCR, and ELEXON submitted P378 to the Authority to request SCR exemption on 21 December 2018. The Authority confirmed that P378 was not in the scope of any on-going SCRs on 8 January 2019. |

| Impact on Consumers |
|---|
| The Proposer believes that this Modification will help protect consumers from a price shock if the CM standstill is lifted. Further details can be found in the Proposal Form in Attachment A. |

| Impact on Environment |
|---|
| No impact identified. |

| Other Impacts |
|---|
| No impact identified. |


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# 5 Implementation

## Recommended Implementation Date

The Proposer believes that this solution should be implemented as soon as is possible in order to provide the industry with the assurance and confidence it seeks.

The Panel recommends an Implementation Date for P378 of:

- 5WD after an Authority decision.

The Panel agreed with the Proposer that P378 should be implemented as soon as possible as to provide industry with the assurance it seeks.

| P378 Consultation Question |
| --- |
| Do you agree with the proposed implementation approach for P378?<br>*Please provide your rationale.* |
| We invite you to give your views using the response form in Attachment E |

## Self-Governance

The Panel does not believe this Modification should be progressed as a Self-Governance Modification as it believes the Modification will have a material impact on consumers by requiring Suppliers to continue collecting payments from its customers during the CM standstill. It will also have a material impact on competition by ensuring that a level playing field is maintained for Suppliers during the CM standstill. P378 therefore materially impacts the Self-Governance criteria (i) and (ii).

| P378 Consultation Question |
| --- |
| Do you agree with the Panel that P378 should **not** be treated as Self-Governance?<br>*If 'No' please provide your rationale.* |
| We invite you to give your views using the response form in Attachment E |

**What is the Self-Governance Criteria?**

A Modification that, if implemented:
(a) is unlikely to have a material effect on:
(i) existing or future electricity consumers; and
(ii) competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
(iii) the operation of the national electricity transmission system; and
(iv) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
(v) the Code's governance procedures or modification procedures; and
(b) is unlikely to discriminate between different classes of Parties.


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## Issue 76

Issue 76 'Using the BSC to support Suppliers and the Capacity Market Arrangements' was raised by VPI Immingham LLP on 6 December 2018. A Summary of the Workgroup discussion is provided below.

### Collection period

The Workgroup discussed whether any prospective Modification would collect funds within future invoices in respect of months from October 2018 or whether it would just be forward looking. The group noted the advice from BEIS that it intended for payments to be collected retrospectively and was looking at ways that this could be achieved. The Workgroup noted that CM providers were expected to continue fulfilling their obligations and so would expect to be fully reimbursed.

The Workgroup noted that payments for October and November had been collected by ESC, but that these were available to be returned to Suppliers upon request. The Workgroup considered whether any BSC solution should include invoices for these months so as to create a fund equivalent to the annual CM payments.

The Workgroup noted that Suppliers wanted certainty so that they could collect money from their customers to protect against a future price shock, but also noted that it needed to be clear on legal considerations.

The Workgroup questioned whether a solution would be consistent with Ofgem's price cap. Ofgem responded that it would like certainty to ensure that its cap is representative and noted that this was due to be reviewed in February 2019.

### Legal advice

ELEXON sought legal advice from Dentons, and noted that this was just a preliminary view intended to help guide the Workgroup discussions. Dentons advised that it saw no restrictions in the Transmission License that would prevent a BSC solution being implemented and that there were a number of factors that could influence the risk of a solution contravening State Aid laws. It believed that this risk would be lowered by having less involvement from the Secretary of State or Ofgem in administering or enforcing the scheme. The external lawyers also noted that the CM suspension related to payments being made to providers rather than the collection of money.

The Workgroup believed that the risk of being seen as State Aid would be lowered if the solution was presented as an industry insurance scheme against future liabilities rather than a replication of CM collections. A workgroup member questioned whether such a scheme could distort competition, regardless of State Aid considerations. The Proposer believed that the scheme would protect competition by requiring Suppliers to continue making payments, thus removing the possibility that a Supplier could use the funds to gain a competitive advantage.

The Workgroup questioned whether any Modification would be legitimate as BSC Modifications are approved based on the Applicable BSC Objectives, noting that the CM is outside of the BSC. The Proposer responded that they believed a Modification would better facilitate the Applicable BSC Objectives. The rationale for this is provided in section 3. A


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Modification also requires a defect or issue, which the Workgroup considered could be to provide Suppliers with confidence that they will be protected from price spikes in the event that the CM suspension is lifted and in doing so, promote competition.

ELEXON notes that while ''defect' implies a defect in the BSC, the term 'issue' has a wider meaning which could encompass the issue identified by P378. ELEXON's view is that the proposed changes fall within the scope of the Transmission License, but notes that this will ultimately be for the Authority to determine.

A Workgroup member expressed concern over replicating the CM regulations in the BSC, given the legal advice, and questioned whether the BSC had provisions for making payment at the end of the scheme (either to Suppliers or to the ESC). ELEXON saw no reason that it would be unable to make payments to ESC. The Workgroup considered that it would be cleaner to make the payment direct to ESC rather than returning the money to Suppliers for them to pay ESC. This would protect the paid money from being claimed by administrators or liquidators of Suppliers or used by Suppliers for other purposes.

The Workgroup wanted to protect against money being collected twice in the situation that the CM suspension was lifted and Suppliers were back billed by ESC for the money which had already been collected by ELEXON. ELEXON noted that this proposal was effectively for ELEXON to hold the money and release it at such a time as Suppliers were required to pay CM invoices for the same period, noting that payments to ESC wouldn't happen until the suspension was lifted.

A Workgroup member noted that it was payments that fell afoul of State Aid laws, but questioned whether collections under the BSC could be seen as a hypothecated levy, noting that the Transmission license allowed ELEXON to collect payments for the CM, which is suspended. The Workgroup considered that it would be pragmatic to present the solution as an industry lead planning scheme to help protect it against liabilities which it sees in the future.

ELEXON noted that in order to minimise the risk of being seen as State Aid, it was preferable to limit the involvement of BEIS, but questioned what an alternative trigger for releasing funds could be if not a direction from BEIS. An alternative would be to clearly define a trigger for funds to be transferred to ESC based on any decision by the EC to support the CM, with the money being returned to Suppliers in all other cases. Such a supportive decision of the EC would also need to be accompanied by a decision that payments in respect of the suspension period be made. A Workgroup member suggested that the ESC beginning to invoice Suppliers could be a trigger for releasing funds to ESC. The Workgroup agreed this could be a clear and appropriate trigger for releasing funds where CM payments are backdated. Further, the Workgroup agreed the money should be paid to the ESC under this scenario.

The Workgroup considered whether the payments would be considered a tax or not. One member commented that it was easier to pass through the cost to consumers if it was presented as a tax rather than a saving scheme, but that a saving scheme was less likely to be contested as State Aid. The Workgroup concluded that it was not for the BSC to prescribe how Suppliers account for the costs they incur.

### How closely should the existing CM regulations be replicated?

The Workgroup considered potential BSC solutions that could be implemented and how closely this should mirror the current CM arrangements. The Workgroup noted that the forecast demand on which CM invoices are based was not done by the BSC, and so


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questioned whether a new flow would be required to provide this information to the BSC. The Workgroup concluded that a provision in the BSC should be included to provide consent by Suppliers to provide the calculated CM Supplier Charge levy amounts for each Supplier and month from ESC to BSCCo.

The Workgroup considered whether a simple solution could be implemented to start, with layers being subsequently phased in. ELEXON noted that this would be complicated and may require multiple Modifications and so was not advised. The Proposer also commented that it did not intend to include reconciliation as part of the BSC solution as this would require new systems to be implemented, adding to the complexity.

A Workgroup member questioned what would happen with the credit cover currently lodged by Suppliers for their CM payments, noting that this burden shouldn't be duplicated in any cross over period. ELEXON responded that Credit Cover was still being held by ESC, but Suppliers could request to have it returned and so it believed there was little risk of this causing cash flow problems.

A workgroup member questioned whether Supplier payments could be based on their MWh share as this information was already available to ELEXON and would simplify the solution. Another member commented that, while this would collect the total amount required, it would be differently apportioned and so would not fully protect against price shocks. The member commented that it was unlikely any solution would completely remove the risk of price shocks and that the solution was seeking to minimise these.

A Workgroup member commented that in order to be able to implement a quick solution to provide the confidence to industry and investors, the solution should be kept as simple as possible. They believed that mutualisation shouldn't form part of the solution and noted that if the CM suspension was lifted, ESC could reconcile payments and mutualise any shortfall, noting that this would likely result in a decreased price shock. Another member believed that Credit Cover was not required for the solution either. They commented that if a default process was robust and quick enough the solution could omit Credit Cover to alleviate cash flow concerns. It was suggested that the existing BSC Default provisions could be used for events of non-payment. The Workgroup noted concerns around Ofgem enforcement being too close to state involvement, but concluded that BSC Defaults was at the lower end of the risk spectrum of being seen as state involvement as it was an existing BSC process. The Workgroup noted that anecdotally, BSC remedies are seen as a strong incentive for compliance.

A Workgroup member questioned what would happen in the event that the CM suspension was upheld, commenting that if a Supplier had gone into liquidation, money paid by its customers would be unable to be returned. They questioned whether money paid should move with the customer in the event of a SoLR event. ELEXON noted that this would complicate the solution and as the ESC was holding two months' of payments, a similar solution would be needed for this. A member commented that most Workgroup discussions were based on the assumption that the CM suspension would be lifted, but that it also needed to consider the event where the suspension was upheld. A member commented that the solution would be a pay off between protecting against a price shock if the CM suspension is lifted and ensuring that money is correctly returned if retrospective payments were not authorised. A Workgroup member commented that returning the money to customers was more of an Ofgem issue, as the issue sat under their vires and not the BSC.

The Workgroup considered escalation routes for non-payment. It commented that any enforcement methods would need to be backed by Ofgem in order to carry weight. The


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Workgroup considered that stronger enforcement methods were preferable to requiring Credit Cover to be lodged. The Workgroup suggested adding a new criterion to Section H for invoking default procedures, but noted that it would need to be clear and robust against loopholes. The Workgroup considered that a quick default process would mitigate against the risk to other Suppliers. It noted that if an urgent Panel meeting was required, then Quoracy rules may need to be relaxed in this case.

## Length of solution

The Workgroup considered how long any solution should endure for. One member believed that it should just last for one year, as under the suspension, the scheduled capacity auctions could not be held. They believed that a subsequent Modification could be raised to extend this if required. The Workgroup noted that if we were to use the existing payment schedule for billing, then this would need to be recalculated for any solution that endured beyond the current delivery year. ELEXON noted that while payments under the CM had been suspended, the other processes remained, so ESC should be able to produce new payment schedules for future delivery years. The Workgroup preferred using the payment schedule as opposed to some other calculation as it provides simplicity, certainty, and accuracy. The P378 solution proposes to collect payments for just the 2018/19 delivery year, but to hold these until September 2020 if no other trigger for release is invoked.

The Workgroup considered how uncollected months before a solution is implemented could be handled. One Workgroup member suggested smearing past months over future months to avoid the need for a lump invoice. The Workgroup noted that if the suspension was lifted before the end of the smear this would result in a shortfall, but considered that ESC could address this in its reconciliation. A Workgroup member suggested announcing a commencement date from which payments would accrue. They noted that this would need to be in the future when it was announced, but could be before implementation. They believed that this would warn industry that payments would include amounts for earlier months and so limit the possibility of Suppliers having cash flow issues. One Workgroup member suggested the first invoice should include amounts for months since 1 January 2019, and smearing any previous month's amounts over the rest of the year. This approach was notified to industry on 20 December 2018 via email to the BSC change distribution list, which includes licensed Suppliers, and by EMRS on behalf of ESC via its CM Supplier contacts.

The Workgroup expressed a preference for an enduring rather than time limited solution, feeling that this provided the greatest certainty to Suppliers. The P378 solution only collects money until September 2019, as the P378 Proposer believes that this will mitigate the risk of a 'price shock' for Suppliers and customers, without creating an 'evergreen' requirement on Suppliers. The Proposer notes that the payment period could be extended by a subsequent Modification if the industry believed it was needed. The Proposer believes that this will send the right signals to Ofgem and BEIS that use of the BSC is an interim solution and an enduring solution should be found.

## Release of funds

The Workgroup considered what should initiate the release of funds collected under the BSC solution. If the suspension is lifted then this could be when ESC starts invoicing in respect of the same period, but there would need to be a clear trigger for releasing funds


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back to Suppliers if the suspension is upheld. The Workgroup agreed that if the suspension was lifted and 2018/19 payments required, ELEXON should transfer the funds it is holding to ESC with details of what Suppliers have paid in, so that ESC can reconcile these payments. The trigger for this would be ESC invoicing Suppliers for the equivalent months. A Workgroup member noted that any ESC invoices would need to be clear that the invoice is for CM payments covering the period for which the BSC was collecting funds.

A Workgroup member suggested that if the suspension is upheld, a Supplier should apply to the Panel for the funds to be released. Another member was unsure what benefit requiring Suppliers to take an active step added. The P378 Proposer believes that the trigger for releasing funds back to Suppliers in the event that the suspension is upheld should be clearly defined. The draft legal text requires a Supplier to present evidence to the Panel, upon which the Panel will determine whether all avenues for restarting the CM have been exhausted and that the collected funds should be returned.

## Accounting and governance

The Workgroup agreed to mirror the existing BSC accounting governance for any funds to be held under the solution. The Workgroup noted that under the CM regulations, funds were held in a non-interest bearing account. The Workgroup considered that the most suitable beneficiary of interest from funds accrued under the BSC solution would be ELEXON, as it would use this to defray its BSC costs, thus passing through the benefit to the whole of industry, and ultimately consumers. A Workgroup member questioned what cost would be associated with ELEXON running the scheme, and commented that the interest could be used to fund this.

The Workgroup considered where funds should be held. The Workgroup expressed a preference to keep it in an ELEXON account provided there were no legal issues with this. ELEXON has not received any legal advice that would suggest it could not hold the collected funds in this way.

## Reporting

The Workgroup considered what reporting should be required to provide assurance to industry that the scheme was functioning as intended. The Workgroup considered that as well as publishing the amount collected and the amount invoiced for, ELEXON should also publish the amount that ELEXON has spent on running the scheme.

## Applicable BSC Objectives

Due to time constraints, the Issue 76 Workgroup was not asked to provide comments on the Proposer's views against the Applicable BSC Objectives. Although comments were not explicitly requested from the Workgroup, the Proposer's rationale was made available to Workgroup members and we received no comments. Industry views on the Applicable BSC Objectives will be sought through this consultation.


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# 7 Panel's Initial Discussions

The Panel considered P378 at its ad hoc meeting on 21 December 2018.

The Ofgem representative noted that the Panel was requesting that the Modification be treated as Urgent on the basis of security of supply and protecting competition. They considered that this seemed sensible, but noted that the Authority would need to properly assess the Modification before it could make a decision. The Authority confirmed its decision to treat P378 as an Urgent Modification on 8 January 2019. The Ofgem representative urged caution of the proposed timeline and questioned whether it would allow enough thought to be given to the Modification before it was submitted to the Authority for a decision. The Ofgem representative noted that the issue had been discussed by the Issue 76 Workgroup, but considered that it might be advantageous to allow for further discussion.

A Panel Member noted that BEIS was exploring two options for restarting collections – of which this Modification was one. The Member commented that the preferred route would be for ESC to resume collections, and questioned whether progressing with this Modification while BEIS was still consulting could hinder the process, and wondered whether the Panel should wait until the BEIS consultation had closed before issuing its own consultation. Another Panel Member responded that although the general consensus was that using the ESC would be the quicker and easier route, BEIS was supportive of industry making preparations through the BSC. The member also noted that they wouldn't expect the Authority to make a decision on whether to approve the Modification before BEIS had made a decision on its preferred rectification route.

Asked whether the Panel thought issuing a consultation before BEIS has concluded its consultation would get in the way, a Panel member responded that it wouldn't and would ensure that BEIS had different options available to it. The Member noted that there was uncertainty over whether it would be possible for collections to be made by ESC, it would be prudent for the Panel to progress with the BSC solution to ensure that it would be available in a timely manner if required. The member noted the urgency request and commented that the Modification should therefore be progressed sooner rather than later.

A Panel member questioned whether the Modification should be paused if BEIS decided to progress with using ESC to collect payments. ELEXON responded that the proposed Modification contained the condition that when ESC starts issuing invoices, payments under the BSC will stop and any collected funds will be released. A Member commented that this allowed flexibility for the variety of situations that may occur and considered that this was sensible.

ELEXON asked the Panel whether it thought a Workgroup should be included in the proposed Urgent Timetable, noting that this would likely extend the timescales as it would need to be held before the consultation was issued to maximise value. ELEXON advised that if the Panel did want to include a Workgroup, it should be clear on why this was the case and what the Workgroup would be expected to discuss. A Panel member noted that Issue 76 had been raised to discuss the same issue and did not see what additional value could be gained through a Workgroup for P378 that could not also be gathered as part of this consultation.

A Panel member questioned whether there was any potential risk to funds if they were held in ELEXON account. ELEXON responded that it required banks to have a certain credit rating and that this minimises the risk to capital. It also noted that there would be risk to


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capital regardless of where the funds were held, and that the Issue 76 Workgroup was supportive of ELEXON holding the funds.

The Panel requested that a question be added to this consultation to gather industry views on the use of Section H Default against non-payment of the new CM Supplier Interim Charge, and if not Section H Default, then what sanctions should be applied.

The Panel requested that it have the option to formulate an Alternative solution for the Modification. This would be used to make any changes to the proposed solution the Panel felt was necessary following its consultation.


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# 8 Recommendations

The BSC Panel initially recommends to the Authority:

- That P378:
    - **does** better facilitate Applicable BSC Objective (b);
    - **does** better facilitate Applicable BSC Objective (c);
    - **does** better facilitate Applicable BSC Objective (d); and
    - **does** better facilitate Applicable BSC Objective (f);
- that P378 should be **approved**;
- an Implementation Date for P378 of:
    - **5WD** after the Authority makes its decision; and
- That P378 should **not** be treated as a Self-Governance Modification Proposal.


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# Appendix 1: Glossary & References

## Acronyms

Acronyms used in this document are listed in the table below.

| Acronyms | |
|---|---|
| Acronym | Definition |
| BEIS | Department for Business Energy and Industrial Strategy |
| BSC | Balancing and Settlement Code |
| BSCP | Balancing and Settlement Code Procedure |
| BSCCo | Balancing and Settlement Code Company (ELEXON) |
| CSD | Code Subsidiary Document |
| CM | Capacity Market |
| DSR | Demand Side Response |
| EC | European Commission |
| EMR | Electricity Market Reform |
| ESC | Electricity Settlement Company |
| ESO | Electricity System Operator |
| GB | Great Britain |
| ICoSS | I&C Shippers and Suppliers Group |
| IWA | Initial Written Assessment |
| MWh | Megawatthour |
| PPA | Power Purchase Agreement |
| RO | Renewables Obligation |
| SCR | Significant Code Review |
| SoLR | Supplier of Last Resort |
| WD | Working Day |

## External links

A summary of all hyperlinks used in this document are listed in the table below.

All external documents and URL links listed are correct as of the date of this document.

| External Links | | |
|---|---|---|
| Page(s) | Description | URL |
| 2 | Capacity Market page of the EMRS website | https://www.emrsettlement.co.uk/about-emr/capacity-market/ |
| 2, 4 | BEIS Consultation of restarting CM collections | https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767015/proposals-for-technical-amendments-to-the-capacity-market.pdf |


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| External Links | | |
|---|---|---|
| Page(s) | Description | URL |
| 3, 20 | BSC Panel meeting 285B page of the BSC Website | https://www.elexon.co.uk/meeting/bsc-panel-285b-urgent/ |
| 4 | P378 page of the BSC Website | https://www.elexon.co.uk/mod-proposal/p378 |
| 4, 5, 16 | Issue 76 page of the BSC Website | https://www.elexon.co.uk/smg-issue/issue-76/ |
| 4 | Issue 76 meeting page of the BSC Website | https://www.elexon.co.uk/meeting/issue-76/ |
| 4 | Authority decision on urgency | https://www.ofgem.gov.uk/publications-and-updates/p378-introduction-cm-supplier-interim-charge-decision-urgency |


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# Appendix 2: Issue 76 Workgroup details

## Workgroup's Terms of Reference

| The Issue Proposer asked the Workgroup to consider these areas. |
|---|
| CM elements to include |
| What period should the solution cover (assumed payments will be backdated to last payment month)? |
| What CM elements and payments should the solution include? |
| What Credit Cover elements should the solution include? |
| Should mutualisation be included? |
| Consider interest on funds held |
| CM elements to include |
| What payment default options should be included? |
| How can the solution be enforced? |
| What BSC sanctions should apply for non-payment? |
| Legal considerations |
| Whether a prospective BSC solution risked being contrary to state aid rules |
| Whether there were any steps we could take in designing a solution that might lower that risk |
| Nature of account holding funds |
| Escrow, on trust, 'normal' |
| Release of funds |
| On lifting of suspension: |
| What will be the trigger for releasing funds? |
| Should these be released to the ESC or Suppliers? |
| On upholding of suspension: |
| What will be the trigger for releasing funds? |
| Should these be released to Suppliers? |
| What if not one of the above? |
| Longstop date |
| Reporting and monitoring |
| What reporting should be made public? |
| What other reporting and monitoring should be required? |
| Other |
| ELEXON costs |
| Price cap |


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## Workgroup membership and attendance

| Issue 76 Workgroup Attendance | | |
|---|---|---|
| Name | Organisation | 17 December 2018 |
| Lawrence Jones | ELEXON *(Chair)* | ✓ |
| Matthew Woolliscroft | ELEXON *(Lead Analyst)* | ✓ |
| Nick Brown | ELEXON *(Lead Lawyer)* | ✓ |
| Peter Frampton | ELEXON *(Design Authority)* | ✓ |
| Matt Johnson | ELEXON *(EMRS)* | ✓ |
| Darren Draper | ELEXON *(EMRS)* | ✓ |
| Mark Bygraves | ELEXON *(CEO)* | ✓ |
| Iwan Hughes | VPI Immingham *(Proposer)* | ✓ |
| Bill Reed | RWE | ✓ |
| Chris Harris | Npower | ✓ |
| Chris Thackeray | Ofgem | ✓ |
| Colin Prestwich | Smartest | ☎ |
| Gareth Evans | Waters-Wye | ✓ |
| Josh Logan | Drax | ✓ |
| Keith Munday | Bryt Energy | ☎ |
| Konstantina Maniki | National Grid | ✓ |
| Lisa Waters | Waters-Wye | ✓ |
| Mark Bellman | SP Retail Energy | ✓ |
| Matt Dietz | Energy UK | ☎ |
| Natasha Ranatunga | EDF | ✓ |
| Paul Jones | Uniper | ✓ |
| Phil Broom | Engie | ✓ |
| Phil Russell | Self Employed | ✓ |
| Pooja Darbar | Ofgem | ✓ |
| Robert Smith | National Grid | ✓ |
| Ross Haigh | ESC | ✓ |
| Rowan Hazel | Cornwall Insight | ✓ |
| Ruth Herbert | ESC | ✓ |
| Saskia Barker | Flexitricity | ☎ |
| Scott Keen | Triton Power | ✓ |
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