

## Phase

Initial Written Assessment

Definition Procedure

Assessment Procedure

Report Phase

Implementation

## P440 'Enabling Elexon to administer the Capacity Market Advisory Group'

This Modification seeks to enable Elexon to administer the Capacity Market Advisory Group (CMAG), which in turn supports Ofgem's Capacity Market (CM) Rules change process. Ofgem awarded Elexon the administrative work (subject to this Modification) in its 'Decision to establish a Capacity Market Advisory Group' dated 9 May 2022.

Elexon will be required by the Balancing and Settlement Code (BSC) to maintain and operate the processes (that it shall develop separately to this Modification) for the CMAG in support of [Ofgem's updated guidance on 'The Change Process for the Capacity Market Rules'](#). In performing the secretariat role, Elexon shall be directly accountable to Ofgem rather than the BSC Panel. Elexon's costs for the administrative work will be recouped from BSC Parties in proportion to their market share through the Main Funding Share, in line with Ofgem's decision letter.



The BSC Panel initially recommends **approval** of P440



The BSC Panel **does not** believe P440 impacts the European Electricity Balancing Guideline (EBGL) Article 18 terms and conditions held within the BSC

This Modification is expected to impact:

- BSC Trading Parties
- Market participants wishing to engage in the CM Rules change process
- Elexon as the Balancing and Settlement Code Company (BSCCo)
- Ofgem as the GB Regulator

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**Contact**

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**Chris Arnold**

020 7380 4221

[BSC.change@elexon.co.uk](mailto:BSC.change@elexon.co.uk)[chris.arnold@elexon.co.uk](mailto:chris.arnold@elexon.co.uk)

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## About This Document



Not sure where to start? We suggest reading the following sections:

- Have 5 mins? Read section 1
- Have 15 mins? Read sections 1, 7 and 8
- Have 30 mins? Read all sections
- Have longer? Read all sections and the annexes and attachments
- *You can find the definitions of the terms and acronyms used in this document in the [BSC Glossary](#)*

This is the P440 Draft Modification Report, which Elexon will present to the Panel at its meeting on 9 June 2022.

There are three parts to this document:

- This is the main document. It provides details of the solution, impacts, costs, benefits/drawbacks and proposed implementation approach.
- Attachment A contains the draft redlined changes to the BSC for P440.
- Attachment B contains the P440 Proposal Form.

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## What is the issue?

The BSC does not currently allow Elexon to undertake administrative activities that would support the CMAG. This does not align to [Ofgem's decision](#)<sup>1</sup> to appoint Elexon to undertake the CMAG administrative activities on its behalf.

## What is the proposed solution?

This Modification should enable Elexon as the BSCCo to conduct the administrative process work for the CMAG, on a not for profit basis, that Ofgem is awarding to Elexon (subject to this Modification) per its decision dated 9 May 2022.

Elexon shall:

- be required by the BSC to create, maintain and operate the CMAG processes in support of the Change Process for the Capacity Market Rules guidance, that Ofgem publishes;
- be accountable to Ofgem rather than the BSC Panel for operating and maintaining (including changing) the CMAG processes; and
- recover its costs for the administrative work from BSC Parties in proportion to their market share through the main funding share.

## Impacts & Costs

BSC Trading Parties will be impacted by this Modification as they contribute to the Main Funding Share.

CM parties and those wishing to engage with the CM Rules change process will be impacted by the solution implemented as they will engage with Elexon to propose and progress CM Rules changes through the administrative process that Elexon will facilitate.

The Proposed Modification shall be document-only and have an expected implementation cost of less than £1k. The enduring colleague cost of the solution implemented shall be approximately four full time equivalent (FTE) per annum.

## Implementation

The Panel initially recommends and Implementation Date of:

- **1 September 2022** if the Authority's decision is received on or before 25 August 2022.

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<sup>1</sup> <https://www.ofgem.gov.uk/publications/decision-establishing-capacity-market-group-cmag>

This is because Elexon is anticipated to begin administering the CMAG processes from September/October 2022, in line with Ofgem’s decision following its minded-to consultation.

## Recommendation

The Panel initially believe P440 will better facilitate Applicable BSC Objective (f), (c), (d) and should therefore be **approved**. The Panel unanimously do not believe P440 impacts the EBGL Article 18 balancing terms and conditions. The Panel also do not believe P440 should be progressed as a Self-Governance Modification Proposal (so will require Ofgem decision).

## 2 Why Change?

### What is the issue?

Ofgem has conducted a review of the CM Rules change process (that it currently administers), and proposes some amendments to the process, including the formation of the CMAG. Together with the CMAG, the changes to the process are intended to create greater efficiencies in the CM Rules change process for industry.

Further, Ofgem considers that it would be beneficial to appoint an organisation to independently manage the administration activities of the CMAG, to ensure the rule change process can be an efficient, fair, objective and transparent industry led process that will in turn reduce administrative burden on Ofgem.

According to Ofgem, due to Elexon's expertise in code administration, it has awarded Elexon with the administrative work to support the CMAG (subject to this Modification). Therefore, the BSC should be amended to enable Elexon to conduct the work.

It is appropriate for Elexon to conduct the CMAG administration work, as it is supportive of Applicable BSC Objective (f) "Implementing and administering the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation".

As the BSC does not currently permit Elexon to undertake this work, if this Modification were not progressed, the benefits (outlined in the solution section) to the market of having a neutral, centrally administered CMAG may not be realised.

### Background

The CM is formed through secondary legislation through a combination of [The Electricity Capacity Regulations 2014 \(the Regulations\)](#) and the [Capacity Market Rules \(the Rules\)](#). The Rules provide the detail for implementing the CM framework as outlined in the Regulations.

Regulation 77 provides Ofgem (as the GB Authority) with the power to amend, add to, revoke or substitute any provision of the Rules, so long as those Rules or amendments are not inconsistent with the Regulation, confer with functions of the Secretary of State or provide Ofgem with additional accountability.

Regulation 78 outlines the objectives that Ofgem shall consider when making capacity market Rules changes, in addition to its wider statutory duties:

- promoting investment in capacity to ensure security of electricity supply;
- facilitating the efficient operation and administration of the capacity market; and
- ensuring the compatibility of capacity market rules with other subordinate legislation under Part 2 of the Energy Act of 2013 (which relates to Electricity Market Reform (EMR) and established the CM).

Regulation 79 outlines the high level change principles that Ofgem must adhere to when making or amending CM Rules. Where a proposal is not made by Ofgem, but is made by someone that is permitted to propose Rule changes, Ofgem must consider the proposal and consult on it if it is minded to approve the proposal, or publish its reasons for rejecting the proposal without consultation.

The detail of how Ofgem meets the aforementioned change principles is not contained in the Regulations themselves, rather Ofgem created a CM Rules change guidance document, which has been active since the inception of the CM in 2014. This document outlines the change processes in greater detail.

In [Ofgem's Call for input on the formation of CMAG and updates to the CM Rules change guidance](#)<sup>2</sup>, it noted that the CM Rules change process has *"increased in duration, complexity, and difficulty increasing the risk of non-delivery for delivery partners and Ofgem. There is also a risk of non-compliance for CM participants because of the short time between the change consultation and the [CM] qualification window."*

Therefore, as part of [Ofgem's five-year review on the CM Rules](#)<sup>3</sup>, it proposed reforms as part of the CM Rules change process on 16 April 2019, which included the formation of the CMAG. Ofgem subsequently held a stakeholder engagement event in October 2019, whereby it outlined its proposals to reform the CM Rules change process to rectify the challenges faced by the current process, and to reduce the administrative burden on Ofgem of operating the CM Rules change process.

Since this time (during which there have been delays due to an Ofgem-wide reprioritisation in response to Covid-19), Elexon and Ofgem have been engaging about how Elexon can support Ofgem by using its Code administration experience, to support the administrative work of the CMAG.

## Desired outcomes

To enable Elexon as the BSCCo to administer the CMAG, in line with Ofgem's decision dated 9 May 2022.

The Modification should be progressed in a manner that enables Elexon to commence its administrative activities on 1 September 2022, following Ofgem approval. Ofgem should receive the Final Modification Report for decision by 14 June 2022.

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<sup>2</sup> <https://www.ofgem.gov.uk/publications/establishing-capacity-market-advisory-group>

<sup>3</sup> <https://www.ofgem.gov.uk/publications/five-year-review-capacity-market-rules-first-policy-consultation>

### Proposed solution

This Modification should enable Elexon as the BSCCo to conduct the administrative process work for the CMAG, on a not for profit basis, that Ofgem is awarding to Elexon (subject to this Modification) per its decision dated 9 May 2022.

Elexon shall:

- be required by the BSC to create, maintain and operate the CMAG processes in support of the Change Process for the Capacity Market Rules guidance, that Ofgem publishes;
- be accountable to Ofgem rather than the BSC Panel for operating and maintaining (including changing) the CMAG processes; and
- recover its costs for the administrative work from BSC Parties in proportion to their market share through the main funding share.

In contrast to the BSC Change process, where the BSC Panel oversees the change process, Elexon will be directly accountable to Ofgem for the CMAG work, akin to a service provider type relationship. Therefore, a role including the BSC Panel in the CMAG work is not expected.

The scope of this Modification should be limited to enabling Elexon to conduct the work on behalf of Ofgem, and making clear the funding position of BSC Parties. The low level detail of the processes that Elexon shall operate are not considered as part of this Modification, as these processes will separately be developed by Elexon and approved by Ofgem (similar to how Ofgem developed the current Rules change process).

To implement the solution to this Modification, amendments will be required to [BSC Section C 'BSCCo and its Subsidiaries'<sup>4</sup>](#).

### Proposed Legal Text

The draft legal text to BSC Section C for this Modification can be found in Attachment A.

### Benefits

Enabling Elexon to administer the CMAG processes will ensure the efficient facilitation and operation of Ofgem's CM Rules change processes. Therefore, Elexon will be supporting a revised process that is more dynamic and capable of adapting to changing market conditions, as well as promoting a more transparent approach to CM Rules change for the benefit of market participants. This new process was identified by Ofgem as one of its priorities in its 2021 Forward Work Plan, [published as part of its July 2021 decision to amend the CM Rules](#).

Elexon providing a central, neutral and not-for-profit support service to market participants in facilitating the CMAG will reduce the burden on proposers of CM Rules change, as Elexon will be able to provide 'critical friend' support' in the drafting of documentation. This will ensure the CM change process is accessible to all sizes and scale of market participant, which should foster proposals from all scales of CM participant.

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<sup>4</sup> <https://www.elexon.co.uk/the-bsc/bsc-section-c-bscco-subsidiaries/>

Further, Ofgem will be able to focus on its statutory consultation and decision making duties as part of the CM Rules change process, as the industry led supporting processes will be efficient, fair, objective and transparent, in turn reducing administrative burden on Ofgem.

## Applicable BSC Objectives

The Panel initially agreed that P440 is positive against Applicable BSC Objectives (f), (c), and (b) for the following reasons:

- (f) - This Modification will allow Elexon to facilitate the operation of a Capacity Market pursuant to CM legislation. Specifically, this Modification will enable Elexon to neutrally support the administrative work of a more effective and efficient market change process.
- (c) – The CM is a competitive market in the generation of electricity. Therefore, Elexon supporting a more inclusive and effective change process in that competitive market through the BSC, supports competition and development in the CM.
- (b) – National Grid Electricity System Operator (NGESO) uses the CM as one of its mechanisms for economically and efficiently balancing the National Electricity Transmission System. Therefore, Elexon facilitating the operation of an efficient change process through administering the CMAG shall benefit the development of the CM. It also has the potential to improve the CM arrangements and thus assists NGESO in its efficient, economic and co-ordinated operation of the Transmission System.



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### What are the Applicable BSC Objectives?

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(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 administering 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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## 4 Impacts & Costs

Please note that where an impact has been identified, we have indicated whether we believe the costs are likely to be high, medium or low based on the following categories:

- High: >£1 million
- Medium: £100-1000k
- Low: <£100k

### Estimated implementation costs

Implementation cost estimates			
Organisation	Item	Implementation (£)	Comment
Elexon	Systems	N/A	
	Documents	<1k	These are the costs associated with the development of the Section C legal text
NGESO	Systems/documents	N/A	
Industry	Systems & processes	None	
<b>Total</b>		<1k	

### Impacts

Impact on BSC Parties and Party Agents		
Party/Party Agent	Potential Impact	Potential cost
Trading Parties	<p>Elexon's relative low costs in undertaking the administrative work will be recouped from BSC Trading Parties in proportion to their market share through the main funding share (as BSC Costs), in line with Ofgem's decision.</p> <p>For the avoidance of doubt these costs are the same as the ongoing Elexon costs reported elsewhere in the document. The costs are reported as low here as each Trading Party's share of the Medium Elexon costs is expected to be small.</p>	L

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Impact on non- BSC Parties		
Party/Party Agent	Potential Impact	Potential cost
CM parties	<p>CM parties will be impacted by the operation of this Modification, as they will engage with Elexon to propose and progress CM Rules changes through the CMAG administrative process that Elexon will facilitate.</p> <p>Elexon will engage with these parties through Ofgem, Electricity Settlements Company (ESC), the CM delivery body and the Electricity Market Reform Settlement (EMRS) company.</p>	L

Impact on the NETSO	
Potential Impact	Potential cost
None anticipated	N/A

Impact on BSCCo		
Area of Elexon	Potential Impact	Potential cost
Rules Management	<p>In order to support the CMAG and this Modification, Elexon will expand the Rules Management function to provide administrative services to the CMAG on behalf of Ofgem.</p> <p>Elexon anticipates that the enduring cost of administering the work to be 4FTE per annum. The cost value shall be around £400k, which includes ancillary items such as CMAG member expenses.</p>	M

Impact on BSC Settlement Risks
We do not anticipate that this Modification will impact BSC Settlement Risks.

Impact on BSC Systems and processes	
BSC System/Process	Potential Impact
No impacts on existing BSC Systems or processes are anticipated. Elexon will to be able to collect monies via existing systems and processes, and so no functional changes are required.	

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#### Impact on BSC Agent/service provider contractual arrangements

BSC Agent/service provider contract	Potential Impact
None anticipated.	

#### Impact on Code

Code Section	Potential Impact
BSC Section C 'BSCCo and its Subsidiaries'	A new section will need to be added to provide Elexon with the ability to conduct the CM Rules change and CMAG work on behalf of Ofgem.

#### Impact on EBGL Article 18 terms and conditions

This Modification does not impact any European Electricity Balancing Guideline (EBGL) provisions held within the BSC, or create any new provisions that should be considered EBGL provisions.

#### Impact on Code Subsidiary Documents

CSD	Potential Impact
None anticipated.	

#### Impact on other Configurable Items

Configurable Item	Potential Impact
None anticipated – the processes that Elexon will develop and have approved by Ofgem in support of the CMAG administrative work will sit outside the BSC, as Elexon will be directly accountable to Ofgem.	

#### Impact on Core Industry Documents and other documents

Document	Potential Impact
We have not identified any impact on other Core Industry Documents arising from this Modification.	

#### Impact on a Significant Code Review (SCR) or other significant industry change projects

We do not expect that this Modification impacts any ongoing SCR or other significant industry change projects. We requested SCR exemption from Ofgem for P440 on 10 May 2022. Ofgem agreed to this request on 12 May 2022.

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Impact of the Modification on the environment and consumer benefit areas:

Consumer benefit area	Identified impact
1) Improved safety and reliability One of the CMs roles is to ensure security of supply. Therefore, enabling Elexon to facilitate the administration activities of a more efficient and effective change process for the CM will support improvements to the CM and thus have a positive impact on security of supply and reliability.	<b>Positive</b>
2) Lower bills than would otherwise be the case	Neutral
3) Reduced environmental damage	Neutral
4) Improved quality of service	Neutral
5) Benefits for society as a whole	Neutral

## 5 Implementation

Elexon is anticipated to begin administering the CMAG processes from September/October 2022, in line with Ofgem's decision following its minded-to consultation. The Proposer and Elexon would like to kindly request an Ofgem decision by 30 June 2022, as this will provide final certainty that the CMAG will be operated by Elexon, enabling preparations to commence for CMAG activities beginning September/October 2022.

However, the final date for an Ofgem decision i.e. the Modification decision backstop date, should include contingency, and be 5 Working Days before the earliest CMAG start date of 1 September 2022. Taking the above into consideration the Panel recommends an Implementation Date for P440 of:

- **1 September 2022** if the Authority's decision is received on or before 25 August 2022.

## 6 Panel's Initial Discussions

The P440 Initial Written Assessment Report was presented to the Panel at its meeting on 12 May 2022 ([326/03](#)).

A Panel Member questioned whether the Main Funding Share was the most appropriate way of recovering the costs associated with CMAG administration activities and noted that not all BSC Parties are involved in the Capacity Market. Elexon highlighted that the funding approach was consulted on in the Ofgem [Call for Input for establishing the Capacity Market Advisory Group](#)<sup>5</sup> and that whilst other possible funding approaches were considered, Ofgem determined in their decision document that, on balance, recovering costs through the Main Funding Share was the most proportionate and appropriate cost recovery mechanism. The rationale given by Ofgem is that:

- The costs associated with CMAG administration activities will be relatively small; and
- The CMAG will better facilitate Applicable BSC Objective (f).

The Panel questioned how much Elexon expected to spend per annum on CMAG administration activities. Elexon clarified that they expect the annual spend to be approximately £400k and committed to report the CMAG administration activity spend in the BSC Annual Budget as a separate line item to ensure transparency to industry in Elexon costs.

The Panel asked what controls would be in place to prevent overspend on CMAG administration activities and suggested a cap could be specified to control costs. Elexon stated that CMAG administration costs would be part of the Elexon Annual Budget and that the usual cost control mechanisms would apply (details of the Annual Budget process can be found in page 6/7 of [Final Modification Report for P416](#)<sup>6</sup>).

Panel Members also asked how Elexon performance for CMAG administration would be managed. The Ofgem representative highlighted that Elexon would be accountable to Ofgem for their performance and that if Elexon's performance in administering the CMAG administration activities was not sufficient Ofgem have powers to remove Elexon and appoint another body to undertake the work. Ofgem confirmed that there would be no financial penalties on Elexon and thus there is no liabilities or risk to BSC Parties arising from Elexon's performance, or otherwise, in its role as CMAG secretariat.

A Panel Member queried whether Applicable BSC Objectives c) and b) would be better facilitated by P440 on the basis that any improvements in competition as well as improvements to the efficient, economic and co-ordinated operation of the Transmission System would be indirect and it is not clear that the administration of the CM Rule change process would necessarily lead to improvements in these areas. Panel Members agreed by majority that P440 better facilitates Applicable BSC Objectives f), c) and d), with two members voting neutrally due to the impact not being direct.

The Panel agreed to send P440 directly to the Report Phase. The Panel agreed that this would be more appropriate than sending the Modification to the assessment phase as:

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<sup>5</sup> <https://www.ofgem.gov.uk/publications/establishing-capacity-market-advisory-group>

<sup>6</sup> <https://www.elexon.co.uk/mod-proposal/p416/>

- Ofgem indicated in both its minded-to consultation, and subsequent decision, that it intended for the costs to be recouped through the main funding share, due to the relative low scale of cost and efficiencies
- Market participants had the opportunity to comment on the proposed funding mechanism through Ofgem’s minded-to consultation, and no material comments that would require further industry analysis were received
- The detail of the CMAG processes will be held in documentation outside the BSC itself, and approved by Ofgem. Therefore, this Modification simply requires Elexon to create, maintain, and comply with the processes developed, and makes clear the funding position for BSC Parties. As such, we believe the solution is self-evident

The Panel agreed that P440 should not be treated as a Self-Governance Modification as it materially impacts the Code’s governance or Modification procedures.

Panel Members unanimously agreed that P440 should be approved.

## 7 Report Phase Consultation Responses

The Report Phase Consultation was published between 16 May 2022 and 27 May 2022. No responses were received to the consultation. Elexon note that the lack of responses is not unexpected as Ofgem has already consulted on the merits of Elexon conducting the administrative work for the CMAG and the Authority call for input received a relatively large response rate (18 responses in total).

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## 8 Recommendations

We invite the Panel to:

- **AGREE** that P440:
  - **DOES** better facilitate Applicable BSC Objective (f);
  - **DOES** better facilitate Applicable BSC Objective (c); and
  - **DOES** better facilitate Applicable BSC Objective (b);
- **AGREE** that P440 does not impact the EBGL Article 18 terms and conditions held within the BSC;
- **AGREE** a recommendation that P440 should be **approved**
- **APPROVE** an Implementation Date of:
  - 1 September 2022 if an Authority decision is received on or before 25 August 2022;
- **APPROVE** the draft legal text; and
- **APPROVE** the P440 Modification Report.