P378 'Introduction of a CM Supplier Interim Charge'

P378 seeks to use the Balancing and Settlement Code (BSC) to introduce a Capacity Market (CM) Supplier Interim Charge for Suppliers. This will act as a contingency fund to protect the industry, and consumers, from a price shock in the event that the CM standstill is lifted and back payments are required to be made by Suppliers.

The BSC Panel recommends **approval** of P378

This Modification is expected to impact:

- Suppliers
- ELEXON as Balancing and Settlement Code Company (BSCCo)

Contents

About this document

This is the P378 Final Modification Report, which ELEXON has submitted to the Authority on behalf of the BSC Panel. It includes a summary of the Panel's full views and the responses to both the Modification Consultation. The Authority will consider this report and will decide whether to approve or reject P378.

There are six 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 approved redlined changes to the BSC for P378.
- Attachment B contains the full responses received to the Modification Consultation.
- Attachment C contains the P378 Proposal Form.
- Attachment D contains a summary of the key points of the P378 proposed solution.
- Attachment E contains a summary of the Issue 76 conclusions.

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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.

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 consumers, 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.

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.

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, 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;
- back to Suppliers, where 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 Stare 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; or

- back to Suppliers at the end of September 2020 if no other trigger has been invoked by this point

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 D.

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) following Authority decision.

Panel's 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.

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 industry consultation, highlighting benefits in ensuring the most effective solution is implemented, by providing Ofgem with two solution options.

The Panel initially recommended 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 ability 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 has followed the below timetable:

Urgent Progression Timetable for P378	
Event	Date
Present Initial Written Assessment to Panel	21 December 2018
Consultation – 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

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.

At time of writing, BEIS has not reached a conclusion on if/how funds should be collected in the standstill period. As such it is prudent to continue progression of this BSC Modification, so the solution is available should it be required.

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. 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 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 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).

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. A summary of the key points of the P378 proposed solution is provided in Attachment D.

The solution is based on the solution agreed by the Issue 76 Workgroup. The reasons for the solution are detailed in section 6 of this paper. 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. 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, as BSCCo, 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.

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 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 February 2019 and March 2019
Month 2 e.g. April 2019	April 2019 and Half of total due for October to December 2018
Month 3 e.g. May 2019	May 2019 and 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.

The BSC would not make any CM payments, nor reconcile CM Supplier payments, it would 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.

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 5WD.

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 BSC 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 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.

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 consumers, 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.

Releasing of funds consultation responses

As part of the P378 consultation, ELEXON asked respondents whether it would be possible to mandate, through a BSC obligation, that Suppliers return collected funds to consumers in the event that the money is not transferred to ESC. Respondents unanimously believed this is outside the remit of the BSC and so would not be appropriate. The Proposer also notes that ELEXON would be unable to check or enforce this, hence introducing an obligation that couldn't be audited. Consultation respondents stated that it is for the Authority to consider how to ensure that funds can be returned to consumers, if appropriate, when assessing the merits of this Modification.

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 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.

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.

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 unanimously 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 unanimously 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 unanimously believe that by introducing a BSC planning charge, there is less risk of Parties paying BSC Default Funding Shares on BSC Defaulting

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

Parties liabilities 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 unanimously 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.

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 A.

The legal text has been produced by ELEXON's external lawyers and reviewed by its own 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.

Are there any (other) alternative solutions?

No Alternative solution to P378 was proposed. The Panel considered whether it should raise an Alternative Solution to extend the Modification solution to also collect for the 2019/20 CM delivery year. The Panel concluded that this was not necessary and commented that if it was needed it could be achieved through a subsequent Urgent Modification.

4 Impacts & costs

Identified 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 no more than £45,000; and
- Effort to implement document changes to the BSC, amounting to £240.

Implementation of the P378 solution within the BSCCo will be completed using existing ELEXON resource, which will not require amendment to ELEXON's budget.

Ongoing costs

ELEXON will operate the P378 provisions utilising existing resource, exercising the same extent of good governance as currently utilised for other BSC funds. Additionally, existing systems will be used. Therefore, no amendment to ELEXON's budget is required for the ongoing operation of the P378 provisions.

Identified 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 material implementation costs on industry participants for P378.

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 as required by the Proposed solution.

Impact on Transmission Company
No impact identified.

Impact on BSCCo	
Area of ELEXON	Impact
Finance	ELEXON's finance team 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.

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	

Impact on Core Industry Documents and other documents	
Document	Impact
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 C.

Impact on Environment
No impact identified.

Other Impacts
No impact identified.

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.

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).

6 Issue 76 Workgroup discussions

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.

The Issue 76 discussions preceded the raising of this BSC Modification P378.

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 seeking ways 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 2018 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 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 legal considerations needed to be clear.

Interactions with Ofgem's price cap

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 price 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. It added 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 issue in relation to the BSC framework

The Workgroup questioned whether a Modification would be legitimate as BSC Modifications are approved based on the Applicable BSC Objectives, noting that the CM is outside the BSC framework. The Proposer responded that they believed a Modification would better facilitate the Applicable BSC Objectives, with rationale provided in Section 3 of this paper. A 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 noted 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 or Suppliers. 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 these 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 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 on grounds of efficiency. 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 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 would 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 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 the Modification consultation.

7 Panel's initial discussions

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

The Ofgem (Authority) 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 Authority 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 Authority 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 the Modification 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

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 the Modification 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.

8 Modification Consultation responses

This section summarises the responses to the Modification Consultation. We received 22 formal responses to the consultation questions, outlined in the table below, and three email responses. Note that some of the questions were not straight forward yes/no questions and so the below table should be read in conjunction with the rationale provided. You can find the full responses in Attachment B.

Summary of P378 Consultation Responses

Question		Yes	No	Neutral/ No Comment	Other
1	Should this Fund be set up to cover the period up to the end of the current CM Delivery Year (as drafted) or cover the Delivery Year 2019/20 as well? ['Yes' means 2018/19 only]	7	12	2	1
2	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?	19	2	1	0
3	Is it appropriate to include monthly amounts for all months since and including January 2019 in the first invoice?	17	4	1	0
4	Is the profile of payments outlined (i.e. where the 'missing months' of October to December 2018 are recovered over the second and third invoices) appropriate?	16	5	1	0
5	What is the commercial impact of the proposed collection profile, as outlined above, on your business?	0	0	20	2
6	This proposal does not facilitate Suppliers who may want to make additional or ad hoc payments into this fund. Would you want the ability to pay more to plan for what you believe may be their financial exposure in the future?	5	10	7	0
7	Do you agree that the use of Section H Default is appropriate to mitigate the risk of non-payment?	18	4	0	0

Summary of P378 Consultation Responses					
Question		Yes	No	Neutral/ No Comment	Other
8	Is the long stop date for repayments of the Fund to Suppliers set at the right point in time?	17	3	2	0
9	Are there any other triggers that are not covered adequately by the above cases?	1	16	5	0
10	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?	0	22	0	0
11	Do you agree that funds should be held in an ELEXON bank account rather than on trust or in escrow?	21	1	0	0
12	Do you agree that interest on the funds should be used by ELEXON to defray BSC costs?	17	4	0	1
13	Do your accounting practices include adequate provisions for the proposed new charge?	13	0	9	0
14	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?	17	4	1	0
15	Do you agree with the Panel that the redlined changes to the BSC deliver the intent of P378?	18	0	4	0
16	Will P378 impact your organisation?	13	5	2	2
17	Will your organisation incur any costs in implementing P378?	6	13	1	2
18	Do you agree with the proposed implementation approach for P378?	20	2	0	0
19	Do you agree with the Panel that P378 should **not** be treated as Self-Governance?	22	0	0	0
20	Do you have any further comments?	7	15	0	0

The majority of respondents to the consultation considered that it would be preferable for ESC to resume collecting funds from Suppliers, as they believed this would be easier and

quicker to implement, but that it was sensible to progress the BSC solution so that it would be available if needed.

One respondent disagreed with the intent of P378 and commented that as the General Court of the European Court of Justice had annulled the State Aid clearance for the Capacity Market, they believed that it would be inappropriate to continue collecting funds from Suppliers until such a time as clearance is granted. ELEXON noted that BEIS is working with the EC to reinstate the CM and intends for back payments to be made to cover this stand still period. P378 seeks to protect Suppliers and their customers from a price shock if and when this occurs. We also note that in its technical consultation BEIS states that the EC has no objection to the resuming of collecting funds from Suppliers during this period.

Solution duration

12 respondents believed that the P378 solution should cover both the 2018/19 CM delivery year as well as the 2019/20 delivery year. Seven respondents believed that the P378 solution should only cover the 2018/19 delivery year, but many of these thought that there should be the option to extend the solution if clarity is not obtained over the coming months. ELEXON notes that it is unlikely there will be sufficient time for a subsequent Modification to extend the solution, and so the Panel may wish to raise this as an Alternative Modification solution. Two respondents did not express a view and one respondent disagreed with collecting funds to cover either CM delivery year.

Collecting funds

19 respondents agreed that credit cover and mutualisation should not form part of the solution for purposes of simplicity to enable quick implementation. One respondent did not provide a view, and two respondents disagreed. Of those, one believed that a more complex solution would be more effective, and one believed that Settlement data should be used rather than payments based on Supplier forecasts.

17 respondents agreed with the Proposer that the first invoice should collect all amounts due from 1 January 2019 to the Implementation Date, noting that Suppliers had been made aware of this in December and so should have been able to adequately plan for this. One respondent did not express a view. Two respondents believed that the missing funds should be collected over the remaining invoices for the 2018/19 delivery year. One respondent believed that each invoice should amount to two months' worth of funds until the 'missing' months had been recovered and one respondent believed that the missing funds should be recovered over five instead of three invoices to ease cash flow for Suppliers.

A number of respondents (mostly in the role of generator) commented that the collection of funds would provide confidence to their businesses that they will be fully reimbursed for continuing 'normal' operations at the end of the stand still period. A number of Supplier respondents commented that P378 would affect their cash flow by collecting monies that were no longer being invoiced by ESC. Some Suppliers noted that as they were working under the assumption that monies would eventually be paid to generators, they would not notice any commercial impact. One respondent commented that as it didn't enter the market until mid-2018 it would have no obligation under the P378 solution. ELEXON notes that the amounts collected under the P378 solution will differ from the ultimate liabilities of Suppliers at the end of the standstill period as will be determined by ESC, but it seeks to

reduce price shocks at this point. ELEXON also notes that Suppliers who experience rapid growth should be aware of their liabilities and should undertake their own planning for this. One Supplier commented that it had not requested payments for October and November 2018 be returned from ESC, and so would need to do so before they were collected by ELEXON.

Paying additional funds

10 respondents commented that they did not believe the solution should allow for Suppliers to pay anything into the fund above the amounts they will be invoiced, believing that this would unnecessarily add complexity to the solution and that any Suppliers that did want to do this could use an internal process. Five respondents believed that this feature would be beneficial to the P378 solution, but most of these commented that while it would be a benefit, it should not be done at a cost to the simplicity of the solution. Seven respondents did not express a view on the matter.

Use of Section H Default

18 respondents agreed that the Section H Default process should be used to mitigate against non-payment of the new charge being introduced by P378, as it used existing processes which aids the simplicity of the Modification. Four respondents disagreed that the Section H Default processes were appropriate. One believed that as the CM was separate from the BSC, it would be inappropriate for the usual BSC sanction to apply, and one respondent disagreed that sanctions should apply, citing the annulment of State Aid clearance for this. One respondent noted that many Suppliers had defaulted over the past year and so did not think that BSC sanctions provided an adequate deterrent, preferring instead to include credit cover. ELEXON notes that where Suppliers default on their BSC charges, it is often because they are ceasing to trade as opposed to not prioritising BSC invoices. It therefore maintains that BSC sanctions do offer a strong incentive against non-payment. One respondent commented that an alternative sanction could be to prevent Suppliers from registering new Meters until the default has been rectified.

Triggers for releasing (or returning) funds

17 respondents agreed that the long stop date of 30 September 2020 for returning collected funds to Suppliers if no other triggers have been invoked was appropriate, as they did not believe it was likely that a positive decision on State Aid clearance would be reached after this time. Three respondents disagreed that this was an appropriate time. Of these, one respondent believed that the date should be at the end of the winter rather than the end of the summer. ELEXON notes that the date 30 September was chosen as this aligns with the end of the CM delivery year. One respondent believed that a long stop date of 2021 would provide the industry with additional confidence in case the reinstatement of the CM was delayed. Another respondent commented that the long stop date should align with the date when payments from Suppliers stop being collected. Under the proposed solution this would be September 2019.

16 respondents agreed that the triggers for ELEXON to stop collecting and release (or return) funds listed in the consultation document were comprehensive. One respondent thought that the triggers could be better aligned with those described in the BEIS consultation. ELEXON believes that those situations are adequately covered by the

proposed legal text and so does not propose to change it in response to this comment. Five respondents did not express a view.

Ensuring that collected money is returned to customers in the event that payment for the standstill period cannot be made

All respondents to the consultation agreed that it would not be appropriate to include an obligation in the BSC for Suppliers to return any collected money to customers, believing that this sits outside the scope of the BSC. All but four respondents agreed that it would be right for the money to be returned to customers, and 12 respondents commented that they believed that this could be best achieved through legislation or licencing and enforced by Ofgem as GB regulator.

Account management

21 respondents agreed that it would be appropriate for ELEXON to hold the funds in an unused and separate ELEXON bank account, noting that ELEXON already handles millions of pounds of industry money and employs good account governance. One respondent believed that the funds should be held in an escrow or on trust to avoid the additional financial responsibility for ELEXON.

17 respondents agreed that ELEXON should use any interest earnt on the funds to defray BSC costs as this will avoid the need for complex calculations and benefit the industry as a whole. Four respondents believed that ELEXON should use any interest to cover the cost of running the scheme, but any surplus should be passed to: generators if payments are made, or Suppliers is collected funds are returned. One respondent believed that if payments were based on forecasts then interest should be given to Suppliers as they believed this would stop Suppliers that had under forecast being advantaged. They also commented that if the solution were to use Settlement data to calculate invoices then the interest should be used by ESC to defray CM costs.

13 respondents agreed that their accounting practices included adequate provisions for the proposed charge. Nine respondents did not express a view as they did not believe they would be subject to the new charge.

Applicable BSC Objectives

17 respondents agreed with the Prosper and the Panel that P378 does better facilitate BSC Applicable BSC Objectives (b), (c), (d) and (f) for the reasons presented by the Prosper.

One respondent did not believe that collecting funds under the BSC would provide any certainty or assurance to the industry until such a time as State Aid clearance was granted. For this reason, they did not believe that P378 better facilitates any Applicable BSC Objectives. One respondent commented that collection of CM payments had nothing to do with the BSC and so did not believe that the proposal would better facilitate any BSC Applicable BSC Objectives.

One respondent believed that the proposal would give a competitive advantage to Suppliers who had under forecast and so would be detrimental against BSC Applicable Objective (c). They also believed that the proposal would be detrimental against Applicable BSC Objective (e) as the CM's State Aid Clearance had been annulled by the courts. The respondent believed that if the solution were to use actual settlement data to calculate

invoices, then it would be positive against Applicable BSC Objective (c), and would also increase the independence of any solution from BEIS, this reducing the detriment against Applicable BSC Objective (e).

One respondent did not believe that the proposed solution would be positive against Applicable BSC Objective (b) as they did not see any benefit in the absence of BEIS direction. The respondent did not believe that collecting funds during the standstill period would have any impact on competition. The respondent believed that the proposal would be neutral against Applicable BSC Objective (f) and detrimental against (d) for the reason that requiring Suppliers to pay into the fund would increase the risk of Suppliers defaulting from cash flow issues.

One respondent did not express a view.

Proposed legal text

18 respondents agreed that the proposed legal text would deliver the intent of P378. Four respondents did not express a view.

Impacts and implementation

13 respondents believed that they would be impacted by P378. Impacts included providing confidence to generators that funds would be available in the event that back payments were authorised, manging customer communications and training of staff, changes to billing systems, accounting and reporting. ELEXON does not believe these impacts will be substantial.

13 Respondents did not believe that they would require any effort to implement the P378 solution. Seven respondents identified implementation activities, but considered that these would be minimal.

20 respondents agreed with the implementation approach for P378, noting that the solution should be implemented quickly to end the period of uncertainty. One respondent disagreed with the implementation approach, but did not provide any rationale. One respondent commented that a firm Implementation Date should be given to enable Suppliers to better plan for payments. ELEXON notes that the proposed P378 solution was widely publicised to industry in December 2018, and that BEIS noted that it was seeking to require payments to cover the standstill period in its consultation.

All respondents agreed with the Proposer and the Panel that P378 should not be treated as Self-Governance.

Other comments

One respondent commented that if the collection were to cover the 2019/20 delivery year as well as the 2018/19 delivery year, then there should be reconciliation at the end of the first year to reduce the unease of rapidly growing Suppliers who would not be paying enough to meet their future liabilities. ELEXON notes that the proposal is just to cover the 2018/19 delivery year. If the Panel chose to extend the solution via an alternative solution, then a new billing schedule would be calculated taking account of Supplier growth, but to reconcile would add complexity to the solution which would make it harder to implement quickly.

One respondent commented that how the new charge featured in Ofgem's price cap would be important for their ability to pass the cost through to consumers. ELEXON notes that this is outside the remit of this Modification and would expect the Authority to consider this when assessing the merits of P378.

One respondent noted concerns over the governance process for the Modification, noting that under the urgent timetable, the Panel has the ability to suggest an Alternative Modification solution following the consultation, believing that this reduced the transparency of the process. ELEXON notes that this timetable was approved by the Authority and has made the consultation as broad as it can to ensure that if the Panel does decide to propose an Alternative solution, then it will be able to do so on the basis of industry views, and that the Panel would be mindful of this of it did decide to raise an Alternative Modification.

Views of email respondents

ELEXON received three responses to the P378 Modification consultation in the form of letters or emails.

All three of these respondents agreed with the intent of P378, but commented that it would be preferable for ESC to resume collecting from Suppliers. The respondents commented that it was important that collections resume quickly in order to provide the industry with confidence, noting that it is BEIS's intention to allow payments to capacity providers in respect of the standstill period. The respondents also noted that Ofgem was due to make a decision of its price cap review in February and that certainty over the continued collection of funds should be an important factor in this.

9 Panel's final discussions

The Panel considered the P378 Draft Modification Report at its urgent meeting on 4 February 2019.

The Panel noted the overwhelming support in the 25 consultation responses for the Modification.

The Panel considered whether the solution should just collect funds to cover the 2018/19 CM delivery year, as is proposed, or whether it should also collect for the 2019/20 delivery year. A Panel member expressed concern that if the solution were extended to cover a second delivery year, it could be seen as sending a message to the Government and EC that the a decision on State Aid clearance for the CM was less urgent. The Panel member commented that an Urgent Modification could be raised if required at a later date to cover the 2019/20 CM delivery year.

A Panel member noted that some respondents to the Modification consultation had suggested alternative payment profiles for collecting the 'missing months'. The member commented that to smooth the payments over the remaining invoices would go further to reduce the impact of a 'price shock' on Suppliers. Another Panel member countered this by noting that industry had been made aware of the Proposed Modification in December 2018, and that BEIS had confirmed it was minded to seek payments for periods during the standstill period and that the money had been collected from consumers so was already in the hands of suppliers. The member believed that in light of this, Suppliers should have been preparing for potential changes. The Ofgem representative added that the period 1 price cap, up to April 2019, allowed for CM funds to be collected from consumers.

The Panel noted concerns regarding the governance of any Alternative Solution raised by a respondent to the Modification consultation. In considering whether to amend the payment profile and whether to extend the solution to the 2019/20 CM delivery year, the Panel concluded that it did not wish to raise any Alternative Solution as it did not believe there was sufficient benefit in amending the P378 Proposed Solution.

The Panel noted that 10 consultation respondents expressed that they would prefer for ESC to resume collection of CM charges, but that this BSC Modification was a sensible alternative solution given there was no certainty over whether or when ESC might resume collections. ELEXON commented that BEIS had identified several elements, which they have expressed as legal issues, required to enable ESC to resume collections. However, following legal advice, ELEXON had not identified any issues or dependencies preventing implementation of the BSC solution other than an Ofgem decision on the Modification itself. ELEXON had invited Ofgem and BEIS to communicate any issues or dependencies that they may be aware of and none had been shared. The Panel noted this and considered that it was pragmatic to present the Final Modification Report to Ofgem promptly to enable a decision at the earliest opportunity, for the benefit of market participants. The Panel noted that Ofgem was in discussion with BEIS.

A Panel Member questioned whether the Panel approving P378 could influence bilateral discussions between Ofgem and BEIS. Another member noted that a previous Urgent Modification took six months to approve, and sought comfort from the Ofgem representative that a decision on P378 would be made in a timely manner. The Ofgem representative responded that approval of the Modification would need due consideration, but that it appreciated industry's need for urgency on this matter, and thanked ELEXON for its early engagement and collaboration in preparing the Modification consultation.

A Panel member noted that there had been confidential responses to the Modification consultation. ELEXON responded that confidential responses would be shared with the Authority for it to consider when making a decision, and that this was usual process. However, these responses were not shared with the Panel, as the respondents had not positively provided confirmation that their responses could be shared confidentially with the Panel. It added that the Panel was presented with all information and considerations through the non-confidential responses that it would need to a make an informed recommendation to the Authority.

A Panel member commented that they believed the Proposed Modification had two key results: reducing the risk of subsequent BSC Defaults, and providing confidence to capacity providers and investors. The member did not believe that the second point was within the vires of the BSC, but that the first was important to protect BSC Parties. Another member commented that these points had been discussed by the Issue 76 Workgroup, and noted that the 'price shocks' could include the effect of mutualisation of unpaid invoices on the remaining Suppliers.

A Panel member expressed concern over how the Panel would apply the BSC Section H Default procedures to BSC Parties that fail to pay the CM Supplier Interim Charge. ELEXON responded that non-payment of the new charge would trigger BSC Default, following which it would be for the Panel to decide which sanctions should be applied to the Defaulting Party, as is the case with any BSC Default.

On the issue of whether the Proposed Modification better facilitated Applicable BSC Objective (c), one Panel Member commented that they did not believe there was a strong enough case to demonstrate this, and considered that it may have the effect of distorting competition. Another Panel Member countered this, commenting that unless a solution is put in place soon, some Industry and Commercial Suppliers may struggle to collect payments from customers. They noted the contract renewal round in April and commented that this may leave Suppliers with a liability that they cannot recover as they no longer supply the customer. Following this discussion, the Panel member agreed that the Proposed Modification better facilitates Applicable BSC Objective (c).

A Panel member commented that they did not believe there was a strong enough case that the Proposed Modification would have a positive effect on Applicable BSC Objective (d). However, the member considered that the positive impact against the other identified objectives outweighed this.

The Panel noted that Ofgem was due to announce its new price cap on 7 February, and hoped that this Modification would give it 'sufficient certainty' as referred to in its open letter of 15 January entitled 'Capacity market allowance in the default tariff cap' to include CM payments in this allowance. A Panel Member also noted that the EC was appealing the court ruling that lead to the suspension of the CM and hoped that this would be taken into consideration in Ofgem's price cap decision. Ofgem responded to confirm that it appreciated the engagement to date regarding P378, but that it couldn't fetter its discretion regarding the price cap ahead of its decision on 7 February. Ofgem noted the P378 Final Modification Report was intended to be submitted to it prior to its price cap decision.

In consideration of the P378 Draft Modification Report and Panel discussions, the Panel:

- **Unanimously agreed** that P378:
    - **Does** better facilitate Applicable BSC Objective (b);

- **Does** better facilitate Applicable BSC Objective (c); and
- **Does** better facilitate Applicable BSC Objective (f);

- By **majority agreed** that P378:
  - **Does** better facilitate Applicable BSC Objective (d);
- **Unanimously agreed** a recommendation that P378 should be approved;
- **Unanimously approved** an Implementation Date of:
  - 5WD after an Authority decision is received;
- **Unanimously approved** the draft legal text for P378; and
- **Unanimously approved** the P378 Modification Report.

10 Recommendations

In consideration of the recommendations of the Panel at its urgent meeting on 4 February 2019, the BSC Panel recommends to the Authority:

- that the P378 Proposed Modification should be **approved**;
- an Implementation Date for the P378 Proposed Modification of:
    - 5WD after an Authority decision is received;
- The BSC Legal text for the P378 Proposed Solution.

Appendix 1: Issue 76 Workgroup details

Workgroup considerations

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

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	✓
Terry Carr	E.ON	✓

Appendix 2: 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	Megawatt hour
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

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
6	BSC Panel meeting 287	https://www.elexon.co.uk/meeting/bsc-panel-287/
28	BEIS Technical Consultation	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767015/proposals-for-technical-amendments-to-the-capacity-market.pdf
35	Panel 286C page of the BSC Website	https://www.elexon.co.uk/meeting/bsc-panel-286c-urgent-meeting/