

## URGENT MODIFICATION REPORT for Modification Proposal P128

### Correction of Erroneous Energy Contract Volume Notifications in Specifically Defined Limited Circumstances

Prepared by: Settlement Standing Modification Group

<b>Date of issue:</b>	<b>06/06/03</b>	<b>Document reference:</b>	<b>P128UR10</b>
<b>Reason for issue:</b>	<b>For Panel Decision</b>	<b>Version number:</b>	<b>1.0</b>
		<b>Issue:</b>	<b>FINAL</b>

This document has been distributed in accordance with Section F2.1.10<sup>1</sup> of the Balancing and Settlement Code.

#### [RECOMMENDATIONS]

The Balancing and Settlement Code Panel recommends that:

- **The Proposed Modification P128 should not be made; and**
- **In the event that the Authority determine that P128 should be made, AGREE the P128 Implementation Date of 5 Business Days after the Authority's decision.]**

#### Intellectual Property Rights and Copyright

This document contains materials the copyright and other intellectual property rights in which are vested in ELEXON Limited or which appear with the consent of the copyright owner. These materials are made available for you to review and to copy for the purposes of the establishment, operation or participation in electricity trading arrangements in England and Wales under the BSC. All other commercial use is prohibited. Unless you are a person having an interest in electricity trading in Great Britain under the BSC you are not permitted to view, download, modify, copy, distribute, transmit, store, reproduce or otherwise use, publish, licence, transfer, sell or create derivative works (in whatever format) from this document or any information obtained from this document otherwise than for personal academic or other non-commercial purposes. All copyright and other proprietary notices contained in the original material must be retained on any copy that you make. All other rights of the copyright owner not expressly dealt with above are reserved.

#### Disclaimer

No representation, warranty or guarantee is made that the information provided is accurate, current or complete. Whilst care is taken in the collection and provision of this information, ELEXON Limited will not be liable for any errors, omissions, misstatements or mistakes in any information or damages resulting from the use of this information or any decision made or action taken in reliance on this information.

<sup>1</sup> See [www.elexon.co.uk/ta/bsc/bsc\\_docs/bsc\\_code.html](http://www.elexon.co.uk/ta/bsc/bsc_docs/bsc_code.html) for latest version of the Balancing and Settlement Code

## CONTENTS TABLE

<b>Summary of impacted parties and documents .....</b>	<b>3</b>
<b>1 Description of Proposed Modification and assessment against the Applicable BSC Objectives .....</b>	<b>4</b>
1.1 Modification Proposal .....	4
1.2 Proposed Modification .....	4
1.3 Issues raised by the Proposed Modification .....	5
1.3.1 Softer rules principle .....	5
1.3.2 Claims process and its adjudication.....	5
1.3.3 P107 interaction .....	5
1.3.4 Restriction.....	6
1.3.5 Period for which claims can be made .....	6
1.3.6 Claims Period .....	6
1.3.7 Principle of Retrospection.....	6
1.3.8 Balancing and Settlement Code Procedure .....	7
1.4 Assessment of how the Proposed Modification will better facilitate the Applicable BSC Objectives .....	7
1.5 Modification Group’s cost benefit analysis of Proposed Modification.....	7
1.6 Alternative Modification .....	7
<b>2 Rationale for Panel’s Recommendations .....</b>	<b>8</b>
<b>3 Impact on BSC Systems and Parties .....</b>	<b>8</b>
3.1 BSCCo.....	8
3.2 BSC Systems.....	8
3.3 Parties and Party Agents .....	8
<b>4 Impact on Code and documentation.....</b>	<b>8</b>
4.1 Balancing and Settlement Code.....	8
4.2 Code Subsidiary Documents.....	8
4.2.1 BSCP .....	8
4.2.2 Service Descriptions.....	9
4.2.3 Other Configurable Items .....	9
4.3 BSCCo Memorandum and Articles of Association .....	9
4.4 Impact on Core Industry Documents and supporting arrangements .....	9
<b>5 Summary of consultations .....</b>	<b>9</b>
5.1 Modification Group’s summary of the consultation responses .....	10
<b>6 Summary of Transmission Company analysis.....</b>	<b>12</b>
<b>7 Summary of external advice .....</b>	<b>12</b>
<b>8 Document control .....</b>	<b>12</b>
8.1 Authorities.....	12
8.2 References .....	13
<b>Annex 1 Draft legal text.....</b>	<b>14</b>
<b>Annex 2 Modification Group details.....</b>	<b>14</b>
<b>Annex 3 Consultation responses.....</b>	<b>14</b>
<b>Annex 4 Confidential Consultation responses .....</b>	<b>14</b>

## SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

The following parties/documents have been identified as being potentially impacted by Modification Proposal P128<sup>2</sup>.

Parties	Sections of the BSC	Code Subsidiary Documents
Suppliers <input checked="" type="checkbox"/>	A <input type="checkbox"/>	BSC Procedures <input checked="" type="checkbox"/>
Generators <input checked="" type="checkbox"/>	B <input type="checkbox"/>	Codes of Practice <input type="checkbox"/>
Unlicensed Suppliers <input type="checkbox"/>	C <input type="checkbox"/>	BSC Service Descriptions <input checked="" type="checkbox"/>
Licence Exemptable Generators <input type="checkbox"/>	D <input checked="" type="checkbox"/>	Service Lines <input type="checkbox"/>
Traders <input type="checkbox"/>	E <input type="checkbox"/>	Data Catalogues <input checked="" type="checkbox"/>
Transmission Company <input type="checkbox"/>	F <input type="checkbox"/>	Communication Requirements Documents <input type="checkbox"/>
Interconnector <input type="checkbox"/>	G <input type="checkbox"/>	Reporting Catalogue <input type="checkbox"/>
Distribution System Operators <input type="checkbox"/>	H <input type="checkbox"/>	MIDS <input type="checkbox"/>
<b>Party Agents</b>		
	J <input type="checkbox"/>	<b>Core Industry Documents</b>
Data Aggregators <input type="checkbox"/>	K <input type="checkbox"/>	Grid Code <input type="checkbox"/>
Data Collectors <input type="checkbox"/>	L <input type="checkbox"/>	Supplemental Agreements <input type="checkbox"/>
Meter Operator Agents <input type="checkbox"/>	M <input type="checkbox"/>	Ancillary Services Agreements <input type="checkbox"/>
ECVNA <input type="checkbox"/>	N <input type="checkbox"/>	Master Registration Agreement <input type="checkbox"/>
MVRNA <input type="checkbox"/>	O <input type="checkbox"/>	Data Transfer Services Agreement <input type="checkbox"/>
<b>BSC Agents</b>		
	P <input checked="" type="checkbox"/>	British Grid Systems Agreement <input type="checkbox"/>
SAA <input type="checkbox"/>	Q <input type="checkbox"/>	Use of Interconnector Agreement <input type="checkbox"/>
FAA <input type="checkbox"/>	R <input type="checkbox"/>	Settlement Agreement for Scotland <input type="checkbox"/>
BMRA <input type="checkbox"/>	S <input type="checkbox"/>	Distribution Codes <input type="checkbox"/>
ECVAA <input checked="" type="checkbox"/>	T <input type="checkbox"/>	Distribution Use of System Agreements <input type="checkbox"/>
CDCA <input type="checkbox"/>	U <input type="checkbox"/>	Distribution Connection Agreements <input type="checkbox"/>
TAA <input type="checkbox"/>	V <input type="checkbox"/>	<b>BSCCo</b>
CRA <input type="checkbox"/>	W <input type="checkbox"/>	Internal working procedures <input checked="" type="checkbox"/>
Teleswitch Agent <input type="checkbox"/>	X <input checked="" type="checkbox"/>	<b>Other Documents</b>
SVAA <input type="checkbox"/>	Y <input type="checkbox"/>	Transmission Licence <input type="checkbox"/>
BSC Auditor <input type="checkbox"/>	Z <input type="checkbox"/>	<b>Other Agents</b>
Profile Administrator <input type="checkbox"/>		SMRA <input type="checkbox"/>
Certification Agent <input type="checkbox"/>		Data Transmission Provider <input type="checkbox"/>
MIDP <input type="checkbox"/>		
TFLA <input type="checkbox"/>		
<b>Other Agents</b>		
SMRA <input type="checkbox"/>		
Data Transmission Provider <input type="checkbox"/>		

<b>Estimated cost for progressing P128 through Modification Procedure</b>	£ 0 + 41.5 ELEXON man days
<b>P128 implementation cost</b>	
• Change specific	Documentation only
• Operational/maintenance	As required
• ELEXON effort	43 man days
<b>TOTAL COST</b>	<b>£0 + 84.5 ELEXON man days</b>

<sup>2</sup> No representation, warranty or guarantee is made that the information provided is accurate, current or complete. Whilst care is taken in the collection and provision of this information, ELEXON Limited will not be liable for any errors, omissions, misstatements or mistakes in any information or damages resulting from the use of this information or any decision made or action taken in reliance on this information.

# 1 DESCRIPTION OF PROPOSED MODIFICATION AND ASSESSMENT AGAINST THE APPLICABLE BSC OBJECTIVES

## 1.1 Modification Proposal

Modification Proposal P128, 'Correction of erroneous Energy Contract Notifications in specifically defined limited circumstances' ('P128'), was submitted by Gaz de France Marketing Ltd, on 6 May 2003. The Proposal is both retrospective and prospective in application and seeks to provide 'new internal transactors'<sup>3</sup> with the same provisions that were allowed for existing market participants following the introduction of paragraph P6 into the Code by Modification Proposal P37.

Modification Proposal P37 'To provide for the remedy of past errors in Energy Contract Notifications and in Metered Volume Reallocation Notifications' ('P37') identified a similar perceived defect – there being no facility available to correct erroneous Contract Volume Notifications, (although it was purely retrospective), and was approved by the Authority on 10 May 2002. Modification Proposal P44, 'Correction of Notification Errors where Parties are able to satisfy a Reasonable and Prudent Operator test' (Reference 2) was solely prospective, applicable to all Parties, and was rejected by the Authority on 10 May 2002. P128 refers to the Authority's determination with regards to both these proposals.

P128 was submitted with the request that it be treated as an Urgent Modification Proposal. Directives from Section F2.9 of the Code were followed. BSCCo recommended to the Panel Chairman that P128 be treated as an Urgent Modification Proposal since it was likely that the identified defect would result in disproportionate costs on impacted Parties. The Panel Chairman sought the views of the Panel as to whether P128 should be treated as an Urgent Modification Proposal. The Panel agreed that P128 should be treated as an Urgent Modification Proposal and the Panel Chairman passed this recommendation on to the Authority.

On the 7 May 2003, the Authority agreed that P128 should be progressed as an Urgent Modification Proposal and the following timetable was also agreed:

Activity	Date
Initial meeting of the P128 Modification Group	09/05/03
Second meeting of the P128 Modification Group	16/05/03
Issue Consultation	20/05/03
Closing date for responses to Consultation	30/05/03
Third meeting of the P128 Modification Group	02/06/03
Issue draft Urgent Modification Report to the Panel	06/06/03
Consideration of draft Urgent Modification Report by the Panel	12/06/03
Issue final Urgent Modification Report to the Authority	13/06/03

## 1.2 Proposed Modification

P128 aimed to give 'new internal transactors' the same treatment available to market participants under P37 to claim Past Notification Errors (PNE). P128 seeks to allow certain Parties the possibility of correcting erroneous Energy Contract Volume Notifications (ECVN) under specific defined limited circumstances. This will be achieved by submitting a claim of a PNE to the Panel.

The main requirements of P128 are:

### Who can claim?

<sup>3</sup> A 'New internal transactor' is a single Party who carried out transactions between their production and consumption accounts for the first time.

Only 'new internal transactors' can claim under P128. Namely those Parties who are trading internally between their Production and Consumption Energy Accounts where there are no previous Notifications between these accounts.

### **Which Notifications can be included within a claim?**

Only ECVNs can be included within a claim. P128 excludes the possibility of claiming for MVRNs.

### **Which Settlement Periods can be claimed for?**

Claims will only apply to Notifications made in respect of Settlement Periods within the first 28 Settlement Days for which Notifications between Production and Consumption Energy Accounts have been made.

### **When can a claim be made?**

It is anticipated that the Code change resulting from P128 will be effective from an Implementation Date 5 Business Days after an Authority decision. Claimants will then have a further 5 Business Days to submit claims for relevant Settlement Periods that occurred prior to the Implementation Date. For all subsequent Settlement Periods, claimants must submit claims by the closure of a period 5 Business Days after the first 28 Settlement Days during which the relevant Notification applied.

## **1.3 Issues raised by the Proposed Modification**

The Settlement Standing Modification Group (SSMG) identified a set of issues considered to be critical in the assessment of P128 against the Applicable BSC Objectives. The discussions and views of Modification Group (the Group), with respect to these issues, are set out in this section.

### **1.3.1 Softer rules principle**

The principle of softer rules for new participants (in this case limited to 'new internal transactors') was considered. Currently there is no facility to claim for errors made in Notification of Energy Contract Volumes for Settlement Periods after the existing paragraph P6 deadline (20 May 2002). Some members of the Group felt that new participants have a choice about when to enter the market and about how long they spend checking their systems are robust before making any Notifications which they did not have at Go-Live. They highlighted the ability to undertake a test of participants' systems and processes in conjunction with BSC Systems and Processes. In addition they noted the frequency of reports received that enable Parties to establish their imbalance position. These Group members considered that for those reasons a facility whereby new participants could make claims to potentially correct Past Notification Errors (PNE) in the Code was not warranted. Other members of the Group felt that new participants should have a short window of time to claim for mistakes that have triggered a disproportionately large penalty.

### **1.3.2 Claims process and its adjudication**

The Modification Group noted that the current PNE claims and adjudication processes were one off processes. An enduring process would have to be implemented for P128. The Group expressed the hope that this enduring process would be efficient, economic and timely. The Group considered that the P6 claims adjudication procedure was appropriate in that it would be up to the Panel to determine whether they wished to appoint a separate Panel sub committee to deal with the claims themselves. The Group considered it appropriate to retain the P6 provisions of an Authority appeal process for P128.

Since the claims process would be ongoing, and the number of claims arising both retrospectively and prospectively is unknown, the number of full time staff required by ELEXON to deal with them is uncertain. It is likely that a new BSCP would have to be written to outline the process fully.

### **1.3.3 P107 interaction**

There is an interaction between P128 and Approved Modification P107 'Data Retention Requirements for Post-Final Trading Disputes' (P107, Reference 3). P107 sought to include appropriate data retention

obligations within the Code, reducing the time settlement data is held live from 36 months to 28 months, with the exception of paragraph P6. The Modification Group considered that it was not the intention of P107 to exclude other claims from future Modification Proposals such as P128 and thus the Group felt that the draft legal text for P128 should exclude the provisions made for P6 in the P107 legal text. As an Approved Modification with an Implementation Date of 04 November 2003, P107 is part of the legal baseline of the Code but not yet included within the operational baseline. Complications regarding this issue have concluded with the draft legal text containing no reference to P107 and its exceptions. To exclude P128 from P107 provisions, separate action will have to be taken to coincide with the P107 Implementation Date. The Modification Group agreed with the approach taken i.e. there should be no explicit reference to P107 provisions included within the legal text.

#### **1.3.4 Restriction**

Some members of the Group commented that the Proposed Modification is overly restrictive in several of its aspects and thus felt it was discriminatory. They felt that P128 should not be limited to 'new internal transactors' but should apply to all Parties and also all types of transactions/trades not just internal ones between the Production and Consumption Energy Accounts. In addition they felt that P128 should apply to both ECVNs and MVRNs. Other members considered that the restrictive nature of the Proposed Modification was not discriminatory but benefited Parties who were not familiar with BSC Systems and thus more liable to make Notification Errors.

#### **1.3.5 Period for which claims can be made**

The Group considered the proposed 28 days time period during which, under P128, Notification errors that have been made can be claimed for. They considered the appropriateness of this period and whether reference should be made to the FAA Notification Day as defined within the Settlement Calendar.

A member of the Group thought the period should be shorter than this as a prudent operator would check settlement reports and thus identify any errors earlier than this. The Group noted that a change in the timescale could form part of an Alternative Modification.

Several alternative time periods were proposed ranging from a few hours to three months. The Group however concluded that this issue did not merit the creation of an Alternative Modification.

#### **1.3.6 Claims Period**

The Group considered the period allowed for claims to be made under paragraph P6 and noted that when introduced, paragraph P6 allowed a period of 5 Business Days to make a claim. This had subsequently been extended to 10 days as a result of P83 (Reference 4). The Group agreed that the original 5 Business Days claim window was appropriate and was consistent with the provisions introduced following P37. The Group agreed that this 5 Business Day claim window would apply to both the prospective and retrospective elements of the Modification Proposal.

The Group concluded that the 5 Business Day period was appropriate.

#### **1.3.7 Principle of Retrospection**

The Group noted the retrospective element within the Modification Proposal and determined that there were no new facts to add to the debate that had not previously been aired in respect to other Modification Proposals such as P37. Some members of the Group felt that it would seem appropriate that a retrospective element be present in the Modification Proposal to enable a consistent approach to be taken for all NETA Settlement Days. However other members considered that an Alternative Modification without retrospection might better facilitate the Applicable BSC Objectives. Some members of the Group considered that the retrospective aspect of P128 should not be limited to 'new internal transactors' but should be open to all market participants whereas the prospective aspect of P128 could be limited to 'new internal transactors'.

### **1.3.8 Balancing and Settlement Code Procedure**

A member of the Group queried the necessity for a new Balancing and Settlement Code Procedure (BSCP) to be made. Since an ongoing process is required under P128 working practice suggests that the enduring process be documented in a Code Subsidiary Document, namely a BSCP.

### **1.4 Assessment of how the Proposed Modification will better facilitate the Applicable BSC Objectives**

A majority of the Modification Group agreed that the P128 did not fulfil Applicable BSC Objective (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. This is because they felt that it would increase uncertainty in the market and thus decrease confidence. It was their opinion that this would potentially deter new entrants. A minority of Group members felt that P128 did fulfil Applicable BSC Objective (c). This is because the ability for a 'new internal transactor' to make PNE claims would decrease the risk of entry into the market.

A majority of the Group agreed that P128 did not fulfil Applicable BSC Objective (d). They felt that incorporating an enduring PNE claims process would decrease efficiency in the implementation and administration of the balancing and settlement arrangements. Concern was expressed at the cost and length of the current PNE claims process and there were fears that this may occur for the P128 process. A minority felt that P128 would better facilitate Applicable BSC Objective (d) reducing the risk of participating in the market and thereby reducing the risk related costs of balancing and settlement activities.

On balance the Group (by a majority) concluded that P128 did not better facilitate the Applicable BSC Objectives.

### **1.5 Modification Group's cost benefit analysis of Proposed Modification**

In assessing P128 the Modification Group believed that its introduction would increase the costs to the industry as an enduring claims assessment process would have to be established.

The Group felt they were not able to predict the number, scale or frequency of the claims that would be made under P128. In addition they noted that, what might be considered a benefit for one Party may be detrimental to another. For these reasons the Modification Group decided it was not possible to undertake a detailed cost benefit analysis.

### **1.6 Alternative Modification**

No Alternative Modification was identified.

Several options for inclusion in an Alternative Modification were suggested by both the Modification Group members and Consultation respondents. There was a discussion as to whether an Alternative Modification could be suggested that better facilitated the BSC Objectives relative to the Proposed Modification.

A potential option for an Alternative Modification was one that allowed all Parties to submit claims for ECVN errors in all types of transactions or trades under very limited circumstances as in P44. Some members considered this appropriate as it is non discriminatory as it is not restricted to new internal transactors only. However some felt it was discriminatory against MVRNs.

Another potential option for an Alternative Modification was considered that allowed all Parties to submit claims for ECVN and MVRN errors in all types of transactions or trades under the same circumstances as P128. However some of the Group felt that extending the limited circumstances in P128 was not appropriate.

Other members felt that an Alternative Modification should be one that was solely prospective. Some of the Group felt it was inconsistent having a gap in between claims periods i.e. gap from P37 end and P128 start.

On balance the Group felt that there did not exist a suitable Alternative Modification.

## **2 RATIONALE FOR PANEL'S RECOMMENDATIONS**

[This section will be completed following the Panel meeting 12/06/03]

## **3 IMPACT ON BSC SYSTEMS AND PARTIES**

An assessment has been undertaken in respect of BSC Systems and Parties and the following have been identified as potentially being impacted by the Proposed Modification.

### **3.1 BSCCo**

BSCCo will be impacted in a number of areas which will include additional:

- Analyst resource to collate and assemble claims
- IT resource to develop and maintain systems to record and manage the claims process
- Resource to raise invoices for fees and recover payments
- Legal resource to join the claims committee
- Work load on Panel members depending on how claims process is assessed and adjudicated

This will potentially increase BSCCo's costs however the extent of the cost increase i.e. the amount of additional resource required, will depend on the volume and complexity of the claims received.

### **3.2 BSC Systems**

The Modification Group believe that the BSC Systems will be unaffected by P128. For this reason together with the constraints of the Urgent Modification timetable, no formal Impact Assessment was requested by the Group.

### **3.3 Parties and Party Agents**

ELEXON did not envisage any change to Party and Party Agent systems and the Modification Group agreed with this, thus, no additional Party Impact Assessment was conducted.

## **4 IMPACT ON CODE AND DOCUMENTATION**

### **4.1 Balancing and Settlement Code**

Amendments will be required to the following Sections of the Code:

Section D 'BSC Cost Recovery and Participation Charges' to ensure any paragraph cross references to section P are consistent.

Section P 'Energy Contract Volumes and Metered Volume Reallocations' to introduce a claims process by which 'new internal transactors' can claim Past Notification Errors.

Annex X-1 'General Glossary'

The legal text for the Proposed Modification is attached in Annex 1.

### **4.2 Code Subsidiary Documents**

#### **4.2.1 BSCP**

A new BSCP should be produced which outlines the entire claims process, in support of the Code obligations, from the submission to the processing of claims. This BSCP would be based on the local working instructions of the P6 Claims committee. It is likely that the BSCP would be completed after the P128 Implementation Date.

#### 4.2.2 Service Descriptions

Contract changes may be required to the ECVAAs service to accommodate their involvement in the rectification process, including the handing over of relevant data as required.

#### 4.2.3 Other Configurable Items

These should be changed as appropriate so as to be consistent with any Service Description changes.

### 4.3 BSCCo Memorandum and Articles of Association

No changes are foreseen to the BSCCo Memorandum and Articles of Association.

### 4.4 Impact on Core Industry Documents and supporting arrangements

No changes are foreseen to the Core Industry Documents.

## 5 SUMMARY OF CONSULTATIONS

The Consultation Document and questions were sent out by 5pm 20 May 2003 with responses to be returned by 12pm on 30 May 2003. The Consultation proforma contained a confidential section for which responses would be presented to the Modification Group only in aggregated form and to the Authority only in full.

The Modification Group realised that in order to fully assess P128 it would be necessary to obtain answers to a significant number of questions. These questions are included in the table below together with the number of respondents (Parties) supporting a particular view.

A confidential question was asked as part of the consultation, see Annex 4.

10 responses (43 BSC Parties) were received to the Consultation questions

Consultation question	Respondent agrees	Respondent disagrees	No opinion expressed
Do you believe Proposed Modification P128 better facilitates the achievement of the Applicable BSC Objectives? Please give rationale and state objective(s).	2 (3)	7 (39)	1 (1)
Do you believe the draft Legal Text addresses the defect identified in P128?	4 (27)	2 (5) <sup>4</sup>	4 (11)
Do you believe there are any advantages/disadvantages in implementing another Past Notification Error (PNE) process and do you believe this will affect competition and/or confidence in the market?	Increase 3 (9)	Decrease 3 (14)	4 (20)
Do you believe there are significant differences now for a new internal transactor compared to the situation for all parties at NETA Go Live? If so please state what these are	7 (37)		3 (6)
Do you consider that there is a barrier to enter the market without P128?	3 (9)	4 (29)	3 (5)
Do you believe this Modification Proposal should apply both retrospectively and prospectively?	4 (24)	5 (18)	1 (1)
Do you agree that P128 should be limited a) retrospectively b) prospectively to new internal transactors?	a) and b) 1 (1)	a) and b) 8 (41)	a) and b) 1 (1)
Do you believe the Code should contain a mechanism that allows mistakes made by Parties to be rectified?	6 (28)	3 (14)	1 (1)
The Modification Proposal refers to a new entrant to the market which has been defined as a new internal transactor. Do you agree with the definition of a new internal transactor to the market as 'a single Party who carried out transactions between their production and consumption accounts for the first time'?	3 (18)	4 (20)	3 (5)

<sup>4</sup> One of these responses (4 BSC Parties) only disagreed with the legal text as they did not believe that there was a defect.

Consultation question	Respondent agrees	Respondent disagrees	No opinion expressed
Do you agree that P128 should be limited to transactions between the Consumption and Production accounts of a Single BSC Party? If your answer to the previous question was no then what is your suggested revised scope?	2 (3)	6 (36)	2 (4)
Do you agree that an appropriate period for a new internal transactor to be able to raise a claim is in relation to the first 28 Settlement Days of undertaking internal transactions?	2 (3)	5 (32)	3 (8)
Do you agree that a Party should be given 5 Business Days to make a claim a) retrospectively b) In relation to the first 28 days of transactions?	a) and b) 5 (28)	a) and b) 1 (6)	a) and b) 4 (9)
Do you agree with the proposed Implementation Date of 5 Business Days after the Authority's decision?	6 (34)		4 (9)
Do you believe that implementation of P128 will promote ex-post trading?		5 (33)	5 (10)
Do you believe that the actions and behaviour of new entrants will be different under P128? If yes, please identify which of the following may be carried out differently and why: a. Development and testing of systems and processes b. Operation of systems and processes c. Trading and notification strategies d. Other	2 (5)	3 (9)	5 (29)
Do you believe that P128 will affect the incentives on Parties to submit accurate notifications going forward?	Yes it will 5 (32)	No it will not 3 (9)	2 (2)
Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered? Consider with reference to table in Consultation Document Section 4.12 and any other issues. Please give rationale.	2 (21)	4 (13)	4 (9)
Does P128 raise any issues that you believe have not been identified so far and that should be progressed as part of the assessment of P128? Please give rationale.	3 (11)	4 (27)	3 (5)
Are there any further comments on P128 that you wish to make?	4 (17)	3 (21)	3(5)
<b>Confidential Section</b>			
Would you enter a claim under P128?	2 (3)	2 (5)	6 (35)

## 5.1 Modification Group's summary of the consultation responses

### Applicable BSC Objectives

2 respondents thought that P128 better facilitated Applicable BSC Objectives (c) and (d) since it will promote competition by reducing the barrier to enter the market hence encouraging new entrants, will reduce the risk of participating in the market and stop a Party being disproportionately penalised for an error that caused no physical imbalance on the system.

6 respondents felt that P128 did not better facilitate Applicable BSC Objectives (c) and (d). 2 of these respondents felt that although they may agree that a similar Modification Proposal would better facilitate the Applicable BSC Objectives, P128 was too discriminatory as it is restricted to 'new internal transactors'. The other respondents thought that retrospective changes increase market uncertainty and undermine confidence in the market. They felt that this could act as a disincentive to new entrants to enter the market and could adversely effect competition between incumbents in the market. Some concern was also expressed about the length and cost of the administrative process necessary to deal with any claims arising from P128.

On balance the Group (by a majority) concluded that P128 did not better facilitate the Applicable BSC Objectives.

### **Advantages and disadvantages of another PNE claims process**

Respondents were concerned about the incentives on Parties to deliver correct Notifications if there was a mechanism to rectify mistakes in the Code. It was thought that Parties may take risks in the knowledge that the error can be disputed and fixed after the event. They felt that new entrants need to be incentivised to ensure that when they choose to participate that their systems are proven and robust and having a claims process would not accomplish this. Several respondents thought they may not take as much care in both development and operation of systems and processes were there to be a claims process.

Other respondents felt that no new entrant would intentionally undertake actions that would expose them to huge financial losses and that incentives are still strong. In addition they felt that it would reduce barriers to entry and increase confidence that parties will not incur disproportionate imbalance charges in the event of a Notification Error.

One respondent felt that the risk of Notification Errors would always be present as long there is an ex-ante notification regime and that the residual 'unmanageable' risk is a cost to *a//* BSC parties whether small or large, new or established players.

In addition another respondent mentioned that the solution will, by nature, be expensive and inefficient, as has been demonstrated by the current PNE process.

Overall the balance of consultation responses was on the side of disadvantages as although most did not think that the actions of a new entrant would be different in the development of systems they thought the incentives on a Party to submit accurate contracts may be affected.

The Group agreed that it would be apt for any new claims process to be as streamlined as possible.

### **New entrant similarity with NETA Go-Live**

A majority of responses felt that there was a difference between a new entrant to the market now and participants at NETA Go-Live. However respondents differed between who they thought was in a more difficult situation.

2 responses considered that new entrants were in a more difficult position than those at NETA Go-Live in that the market has become increasingly complex and there is less industry wide help available.

5 responses considered that at NETA Go-Live, participants had no choice about when to enter the market. In addition, the market has evolved since Go-Live and there is better reporting available now as well as the ability to learn from other participants' mistakes.

### **Barrier to entry**

A majority of participants claimed there was no existing barrier to enter into the market stating the number of participants in the market and the ability to correct errors outside your control. 2 respondents claimed there was a barrier to entry as the need to balance on a half-hourly basis under NETA, and the consequent requirement of substantial systems to manage and support the process, new entrants have a considerable number of barriers to climb before, during and after their participation in the market. However one of those felt the barrier to entry would remain under P128, given its restricted scope.

### **Retrospective and Prospective**

Several responses suggested that a preference for a similar type of Modification Proposal that was purely prospective. Others did not support the Modification Proposal in any way and thus rejected both prospective and retrospective aspects. Others agreed with the Modification being both retrospective and prospective in nature but just disagreed with the restrictive applicability of P128 to 'new internal transactors'.

### **Period for which claims can be made**

Several alternative time periods were proposed ranging from a few hours to three months. A majority of the Group considered shorter timescales for which claims can be made seemed more appropriate as

there are a number of reports, produced on a daily basis that could be used to identify any error much sooner than 28 days. One response suggested a time period of three months as being more appropriate but gave no rationale for this.

### **Claims Period**

A majority of responses felt that an Implementation Date of 5 Business Days after an Authority decision was appropriate. Furthermore a majority of responses felt that 5 Business Days was suitable to make a claim retrospectively as well as in relation to the first 28 days of transactions. One respondent felt that 10 Business Days was more appropriate for this (as available post P83).

### **Legal Text**

The draft legal text was sent out with the Consultation Document and proforma questions on 20 May 2003. In parallel to this a review process was undertaken and a revised copy of the draft legal text was sent out on 23 May 2003. One of the changes was that Paragraph 6.2.9 has been removed from the legal text. This was due to issues arising from the approval of P107 which changes Section U 2.2.4 but which is not due to be implemented until November 2003. Any reference to Section U2.2.4 in the legal text of this Modification Proposal would have to be made by reference to Section U2.2.4 as amended by P107. However if this present Modification Proposal were approved and implemented prior to the Implementation Date of P107 there would inevitably be an element of confusion as to the applicable provision. In practical terms, the likelihood is that any PNE claims made under P6.2.2 will be resolved within a 28 month period of the relevant settlement day. If deemed necessary, any clarification of the method of rectification post 28 months can be resolved post P107 implementation.

There was a comment on the legal text made by one respondent who considered that the present drafting i.e. the introduction of the additional claim regime within the current P6 provisions, may create confusion between claims already made under the P37 regime and those that may be made under this P128. Particularly it was felt confusion could arise as the new provisions, as well as recognising claims for retrospective errors, in addition, introduces the concept of prospective notification error claims, but in respect of a separately defined, and additional, claim group from that already identified in the current P6 provisions. To avoid any confusion, the respondent suggested that the new P128 regime should be introduced by way of a new, separate, paragraph P7, to provide a clearer distinction between claims made under P37 and P128.

The Group discussed this and agreed that as all of the remaining provisions of P6 would have to apply to any claims raised under any new P7, it was felt that separation of the claim entitlements into separate provisions would be largely artificial and cosmetic in nature and should not result in a change to the legal text.

The Modification Group agreed with the current draft legal text, that it addresses the defect in the Modification Proposal, and no changes were required.

## **6 SUMMARY OF TRANSMISSION COMPANY ANALYSIS**

No Transmission Company analysis was sought.

## **7 SUMMARY OF EXTERNAL ADVICE**

No external advice was sought.

## **8 DOCUMENT CONTROL**

### **8.1 Authorities**

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Reviewer</b>	<b>Change Reference</b>
0.1	27/05/03	Dena Harris	Richard Clarke	
0.2	03/06/03	Dena Harris	Modification Group	

## 8.2 References

Ref	Document	Owner	Issue date	Version
1	Modification Report P37	ELEXON	05/11/01	1.0
2	Modification Report P44	ELEXON	21/02/02	1.0
3	Modification Report P107	ELEXON	17/03/03	1.0
4	Modification Report P83	ELEXON	23/05/02	1.0

**ANNEX 1 DRAFT LEGAL TEXT**

Text for Proposed Modification is contained within a separate document and attached.

**ANNEX 2 MODIFICATION GROUP DETAILS**

Name	Company Name	Member or Attendee	Present at Modification Meetings		
			09/05/03	16/05/03	02/06/03
David Ahmad/ Melanie Naulls	ELEXON	Attendee	✓	✓	✓
Justin Andrews	ELEXON	Chairman	✓	✓	✓
Peter Bolitho	Powergen	Member	✓	✓	✓
Marie Branch	International Power	Member			
Richard Clarke	ELEXON	Member	✓	✓	✓
David Edward	Ofgem	Attendee	✓		
Dena Harris	ELEXON	Member	✓	✓	✓
Richard Lavender	NGC	Member			
Mark Manley	British Gas Trading	Member	✓	✓	✓
David Reed	Gaz de France Marketing Ltd	Member	✓	✓	✓
Sanjukta Round	Cornwall Consulting	Member	✓	✓	✓
Phil Russell	TXU	Member	✓	✓	✓
Nick Simpson	Ofgem	Attendee		✓	
Maurice Smith	Campbell Carr	Member	✓	✓	
Mark Thomas	Innogy	Member		✓	✓
Lisa Waters	Waters Wye	Member	✓	✓	
Jerome Williams	Ofgem	Attendee			✓

**ANNEX 3 CONSULTATION RESPONSES**

See attached document.

**ANNEX 4 CONFIDENTIAL CONSULTATION RESPONSES**

The responses to the consultation contained confidential information that will be sent to the Authority in full. For all other recipients this information is presented in aggregated form only.