



# Consultation on the Design and Delivery of the Energy Industry Code Reform

## Response form

The consultation is available at:

<https://www.gov.uk/government/consultations/energy-code-reform-governance-framework>

The closing date for responses is 28 September 2021.

Please return completed forms to:

### **BEIS**

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### **And**

### **Ofgem**

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Office of Gas and Electricity Markets  
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BEIS and Ofgem will share with each other all responses that are received.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

## Personal / Confidential information

Please be aware that we intend to publish [a summary of] all responses to this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see the consultation document for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential

Comments: [Click here to enter text.](#)

## About You

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	<b>Respondent type</b>
<input checked="" type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

## Questions

### Question 1

*This question refers to chapter 2 – Scope of reform.*

To what extent do you agree with our proposals on the licensing of a code manager for engineering standards, and why?

Strongly agree     Agree     Neither agree nor disagree     Somewhat disagree     Disagree     Not sure

Comments:

Energy UK would like to note at the outset that the tick box options are not symmetrical there is no 'somewhat agree' nor 'strongly disagree' option, we therefore:

#### **Somewhat agree**

Energy UK considers there may be merit in engineering standards being the responsibility of a single body to ensure consistency of approach and that change is delivered. We are unclear as to why this is limited to electricity engineering standards. With respect to gas IGEM is working on standards in relation to hydrogen pipelines which would seem important for net zero, so should potentially also fall under a body responsible for energy related engineering standards.

It is also proposed, subject to HSE consultation and changes to legislation, that IGEM should be the body responsible for the gas quality standard. The IGEM governance process relating to this seems to be wholly inadequate, as it does not meet tests of transparency and accountability. Therefore, we consider this should be within scope of an engineering standards code manager, with appropriate governance.

The proposal suggests the Future System Operator (FSO) would be heavily involved in the engineering standards if it was not the code manager (CM) but in parallel with this consultation BEIS / Ofgem is seeking views on the FSO, so there are interactions between the consultations that make it difficult to comment on two inter-related and moving issues. It is not clear to what extent the FSO (as code CM or not) has or would have the skills, knowledge and expertise to fulfil this task.

### Question 2

*This question refers to chapter 2 – Scope of reform.*

What are your initial views on how central system delivery bodies should be regulated (including their relationship or integration with code managers and the extent to which licensing may be appropriate), bearing in mind this will be the subject of future consultation?

Comments:

Energy UK agrees that central system delivery functions play an important role in the current framework and in future development of the system. Further clarity of the scope of delivery functions is needed, does it for example include companies that provide IT systems.

We note that there are currently different approaches for different codes, with some delivery bodies being aligned with code administration (CA) or CM functions. Central system delivery is the implementation stage of code change delivery and needs to be fully integrated in code management. In the gas regime, the CA and delivery body, Xoserve are not well aligned, with limited accountability, this can be problematic, eg project NEXUS, which was beset by delays. Another problematic example was Electricity balancing settlement (EBS) for system changes initiated by the ESO which was never delivered despite industry having committed substantial resources. There could be benefits in more rigor in the approach. In electricity the Elexon model provides alignment and is the best model for delivering change. We should avoid mis-alignment between system changes and code changes where one is taken forward in isolation to the other.

The proposals with respect to central system delivery are not very clear, but there seems to be a trend towards licencing most activities, **the sheer number of licences could make this very onerous and costly for Ofgem to administer. It is also not self-evident that Ofgem is best placed to oversee central system delivery as a licenced activity**, CM's may be better placed to fulfil this role being closer to the code change and detailed delivery processes.

We are further concerned that if, for example an IT company, were to be only able to offer a new system to the market/delivery body/code manager if it agrees and negotiates a regulated licence that they would want to tender. Questions remain:

- Do Ofgem regulate all delivery bodies?
- Is there a materiality cut off for requiring a licence?
- How quickly will a licence be agreed or does this add to delivery times?
- If a party does not deliver, will the breach of licence process delay swapping to a new service provider?

### Question 3

*This question refers to chapter 3.1 – Setting the strategic direction, chapter 3.2.4 - Detailed roles and responsibilities of the strategic body, and chapter 3.2.7 – How would our proposals differ under option 2?*

To what extent do you agree with the detailed roles and responsibilities of the **strategic function** as set out above, and why?

Strongly agree     Agree     Neither agree nor disagree     Somewhat disagree     Disagree     Not sure

Comments:

Energy UK is aware that this consultation is being run in parallel with the FSO consultation. This makes consideration of option 2 challenging as the FSO is not yet defined, and details of how the FSO could take on the role of the strategic body even more difficult to understand. Essentially only one option is presented.

Energy UK is concerned that potential quick wins are not being considered, including; alignment of code objectives across codes and the inclusion of a net zero objective.

Other proposals are not prioritised, for example NGESO is bottom of all the Ofgem Code Administrator surveys and yet removing their code administration role is not mentioned. There is also no timetable to work towards merging and rationalising some codes, which we would support as codes seem to grow in number not reduce.

Energy UK notes that the need to establish a strategic direction was originally proposed by the CMA energy market investigation in 2016<sup>1</sup>. We consider it could have a useful role as a means to deliver changes to codes consistent with government policy objectives and taking a whole system perspective. This will be particularly useful as changes to deliver net zero ambitions are wide ranging and are more likely to impact multiple codes. However, it is important to ensure that there is separation between government policy and delivery to ensure codes do not become politicised, which could undermine the credibility and integrity of the market rules and damage investor confidence.

The designation of a Strategy and Policy Statement (SPS) by the Secretary of State is the vehicle by which government policy priorities are expected to be communicated to Ofgem as the strategic body. Consideration will need to be given to the level of detail provided, for example providing clarity on how government policies should be interpreted in line with net zero delivery.

It is the case that there are often many ways of delivering policy, it is not clear from the document whether the strategic body will consider various routes and options and narrow these down in setting the strategic direction or whether this will fall to the code manager in setting the delivery plan. The proposals are therefore incomplete and conceptual only. A high-level example, even based on past policy decisions, would aid greater understanding of the roles and responsibilities and linkages between; policy, SPS, the strategic direction and the code manager delivery plan. In this context **we expect consultation to be a key part of each stage of this process to ensure industry views and expertise are taken into consideration to ensure that not only change is delivered but that the changes are appropriate, achievable and deliver best value, else there is a risk of sub-optimal change.** Change processes that fully involve affected parties are far more likely to deliver good outcomes than change imposed on those parties.

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<sup>1</sup> <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

The proposals seem to provide the strategic body with the ability to hold the code managers to account for delivering change, the ability to directly change codes and, if the SCR process is retained, instruct licensees to progress specific change. If Ofgem is the strategic body this gives it very wide-ranging powers to drive change; set direction, incentivise or direct delivery and determine outcomes. This is being proposed without the context of further clarity in relation to the role of Ofgem as energy regulator (either through changes to its statutory duties and/or a Strategic Policy Statement). **We have serious concerns with all these roles sitting with one body**, particularly if some change is not even subject to consultation or prior engagement with relevant stakeholder advisory forums. These powers also rely on the strategic body having the requisite detailed knowledge and in-depth understanding to convert an urgent direction into a specific code deliverable(s) that do not result in unintended consequences or adverse impacts. It seems more likely that this capability to translate requirements into code changes would fall much more naturally in a CM organisation and by engaging with stakeholders. Therefore, the strategic body utilising its powers in this way does risk under-developed changes being ratified without the full consequences on the industry, consumers and the technical operation of equipment / the system being understood. This concept is also inconsistent with the principles of good governance. Notwithstanding the above, in our view the Nolan Principles<sup>2</sup>, in terms of standards in public life; should be applied to (and followed by) the strategic body.

**Engagement with industry processes and parties will become even more important, if timely and efficient governance of code changes is a desired outcome. Ofgem will need to more actively engage in industry discussions, at the appropriate level than has been the case in recent years**, rather than a more arm's length relationship as could be taken from the proposals as they stand, *'by holding the code managers to account'*. A more open discussion of issues and viewpoints will greatly assist the code modification development process and enable Ofgem to influence the code change process rather than it reserving its views until after final reports are submitted which has often wasted many months or even years of industry time.

Energy UK does not support the establishment of an IRMB, this would combine too many roles and responsibilities in one entity which may not fit well together. This would risk reduced transparency and accountability with the risk of perceived or real conflicts of interest, even if some of the strategic function roles were to sit with Ofgem. This option would also take longer to implement than option 1.

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<sup>2</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

#### Question 4

*This question refers to chapter 3.2.3 - Detailed roles and responsibilities of the code managers, and chapter 3.2.7 – How would our proposals differ under option 2?*

To what extent do you agree with the proposed roles and responsibilities of the **code manager function** as set out above, and why?

Strongly agree     Agree     Neither agree nor disagree     Somewhat disagree     Disagree     Not sure

Comments:

Section 3.2.3 sets out a number of detailed roles and responsibilities for code managers, which we comment on below. We note that these roles represent varying degrees of change for each code, some CM already raise modifications, however all are likely to require far greater resource and expertise than they currently have. A much-diminished role for industry is proposed even though the codes are effectively multi-lateral contracts between industry parties with potentially significant commercial consequences for the parties involved. Once changes are approved, code parties are faced with costs to implement changes but CMs are not directly affected by code changes.

It is also the case that **the role of stakeholders is not clearly defined**, as it is stated there will be further consultation on the detailed code change process under the new governance framework at a future date. Whilst we appreciate the current thinking on this helps to bring to life the process, we have reservations about providing firm views due to this uncertainty. The comments below are on this basis.

Delivery Plans: As licenced parties it is reasonable that CMs should have a licence condition to develop a delivery plan consistent with the strategic direction and for this to be kept under review and be updated where necessary. The challenge is at what level of detail this delivery plan needs to identify code and system changes, including any optionality in order to deliver the strategic direction. This will require extensive expertise and knowledge of the codes, systems and business activities of stakeholders. Identifying timelines for delivery of change will require close working with the delivery bodies, this relationship requires further definition.

We welcome the requirement to consult with code parties and other stakeholders on the delivery plan, timing and possible alignment with publication of the strategic direction needs consideration.

A requirement for collaboration if there are multiple code managers is appropriate.

Proposing Code Changes:

- CMs/panels can already raise modifications under some codes. We would expect proposals to be in line with the delivery plan.

- Triage could be a useful process; the criteria need to be well understood and the process needs to be transparent. We note the criteria will be subject to consultation
- The CM should have a role in designating parties able to raise proposals, the current process is slow. This will enable any interested or materially affected person to raise a code modification.
- Future change to code objectives is mentioned on page 39, this could be a quick win but is not prioritised.

In general, we support the self-governance process and have welcomed the way it has been used since it was introduced, for example setting up a BSC sandbox. We can see this could usefully be extended to changes which are more material, but where Ofgem agree self-governance is appropriate. We are aware that the BSC Panel has asked Ofgem's views on some mods in this way.

### Prioritising Code Changes

**The prioritisation process should retain industry input. There is a need to understand the criteria and process for assessing proposals**, including those raised that are not part of large-scale strategic change proposals.

However, as a general principle we have strong reservations about prioritisation as could result in good proposals being pushed down the priority list, in the case of the CUSC and the Grid Code by the party who has to deliver them. For example; GC109 which seemed to be deprioritised in favour of things like NGENSO's separation. A change that has a positive cost benefit, even if only for a few customers should be progressed. If everything is prioritised, we are likely to lose the opportunity to make changes for new innovative technologies and business models.

GC109 was raised in February 2018, as NGENSO refused to make this change with no-mod, despite multiple industry discussion. As this was then "not prioritised" by NGENSO until the report into the power cut of 2019 saw E3C and Ofgem raise concerns over the way NGENSO communicated with the market. At that point the proposer sought urgency from Ofgem, which was declined, though work then did progress again, though 10 workgroups were held on what was a simple change. NGENSO even raised an alternative in 2021 which had no support, except from itself. The final report went to Ofgem in May 2021 and was approved in July 2021. This was a simple mod, that was simply not progressed, though in August 2019 this would have provided valuable market data.

### Managing the Code change process

We welcome managers being given responsibility for ensuring legal drafting is prepared.

### Cross-code coordination

We expect there will be more than one CM, therefore facilitating cross-code coordination is sensible. CACOP could be used to enable this.

## Decision making

**Energy UK welcomes the recognition of the important role for industry expertise in the code governance process** but do not see how disbanding panels is consistent with that. It seems **the detailed processes for stakeholder engagement are to be developed at a later stage, but they are critical for industry to understand now to be able to provide informed comments on the wider proposals.** Much of the expertise around the codes sits with industry and independent code panellists and is vitally important to ensure this expertise remains visible and at the core of the code process.

**We have strong concerns about both the code managers and the strategic body being able to raise modification proposals and determine their progress and implementation. For all changes we feel it is essential there is separation in these roles, to ensure the principles of good governance are achieved.** No party should be able to raise a proposal or direct a change and determine on its implementation, except under very extreme circumstances; for example, where security of supply is at risk.

Energy UK would suggest an alternative approach where the panels are retained, with membership and roles reviewed to ensure, better representation of industry parties and to work with the CM on prioritisation, delivery of change, approval of non-material code changes, whilst retaining a recommendation on material changes that go to Ofgem for decision. This would mean change to legislation with respect to appeals would not be needed.

An example may be useful here:

Elexon raised BSC P417 'Move the Letter of Credit templates and Approved Insurance Product requirements to the BSC Website' The Panel had concerns and following consultation it was found not to be workable. It was rejected by the panel, this demonstrates that self-governance and housekeeping modifications can be effectively managed by code parties, but also that they can provide effective checks on understanding the commercial realities parties face.

### **Question 5**

*This question refers to chapter 3.1 – Setting the strategic direction, chapter 3.2.5 - Roles and responsibilities of other stakeholders, including code parties, and chapter 3.2.7 – How would our proposals differ under option 2?*

To what extent do you agree with the proposed roles and responsibilities of **stakeholders** as set out above, including the role of the stakeholder advisory forum, and why?

Strongly agree    Agree    Neither agree nor disagree    Somewhat disagree    Disagree    Not sure

Comments: **strongly disagree**

The proposals recognise that stakeholders play a central role in supporting codes decision making and that it is crucial that they continue to do so. We agree with this view, but note the proposals only provide vague ideas about how this will be achieved. Absent further detail **industry cannot be confident that their views and expertise will be sufficiently considered in the development of codes, we believe this may lead to the risk of more appeals and litigation.**

Whilst commitment to progress change to deliver net zero is a shared aim, material change to codes can and will have material effects on the parties to those codes, which may be positive or negative for their business models and commercial viability. In this context **it is vital that there is an open and transparent exploration of options and alternative solutions so that these are not narrowed down too early in the development process.**

More detail is needed on:

- The role of the stakeholder advisory forums
- Composition of forums
- How participants are identified
- The legal standing of forums
- How the forums agree the advice to be provided
- How the code manager will demonstrate it has given advice 'due regard'
- The relationship with working groups, which is where most of the detailed development work takes place

Energy UK believe it is important to engage the right experts at the right time. For example; the group of metering experts that review the BSC codes of practice, compared to the more engineering experts that serve the Grid Code and SQSS Panels, the economic and market experts that review BSC and UNC changes. The energy market is complex and the role of experts in developing policy is critical to making changes work while keeping settlement robust.

It is not clear what the problem with the current Panels and workgroups, that these proposals are trying to address. CMs and Ofgem between them will simply not have the expertise and hiring them all in seems inefficient. Energy UK would say the BSC is the current gold standard of code administration, so what should we change? Energy UK believe that there is a need to engage industrial customers in the change process, potentially more smaller parties and new entrants. We note the BSC and UNC allows anyone to join a working group, but NGENSO requires parties are sponsored to join a CUSC or Grid Code group.

## Question 6

*This question refers to chapter 3.3 - Appeals process and compliance.*

In relation to option 1, where Ofgem would be the strategic body, to what extent do you agree with our proposals on how **decisions by the code manager** would be overseen by

the strategic body with, as a minimum, existing appeal routes retained and moved to the strategic body

Strongly agree    Agree    Neither agree nor disagree    Somewhat disagree    Disagree    Not sure

Comments:

We agree that compliance with licence conditions should remain an issue for Ofgem.

CM decisions are inextricably linked to how account is taken of stakeholder input in arriving at those decisions, the frameworks supporting this are unclear. It is therefore **essential that there is a route to appeal such decisions to Ofgem / strategic body/ CMA**, during implementation and in the longer term. Current appeals processes can be lengthy and expensive and the proposals in the consultation may therefore unduly introduce a significant barrier, particularly to smaller industry participants.

It is also suggested that the strategic body should be able to overrule certain code manager decisions, but no scope or criteria are suggested, but are clearly needed.

## Question 7

*This question refers to chapter 3.3 - Appeals process and compliance.*

In relation to option 2, where the FSO would take on the role of the IRMB, to what extent do you agree with our proposals on how relevant **decisions by the code manager function** would be appealable to Ofgem, with a potential prior review route via an internal body?

Strongly agree    Agree    Neither agree nor disagree    Somewhat disagree    Disagree    Not sure

Comments:

As there is no clarity on any internal review process within the FSO, we consider all appeals should be directed and addressed by Ofgem.

The FSO (as outlined in the recent consultation) could be conflicted over changes, for example if change A is made, they must spend £5m on IT but change B needs £25m, what does its price control allow? what does this do to their incentives? does it interfere with another IT program they are running?

The proposed separation of the FSO from NG is due to a perception of conflict. We believe that there is a real, current conflict between the role of NGESO as the system operator and its code administration responsibility

## Question 8

*This question refers to chapter 3.3 - Appeals process and compliance.*

Do you have any views on the two proposed options for appealing **decisions made by Ofgem on material code changes** in option 1 (with Ofgem as the strategic body) and option 2 (with the FSO as the IRMB)?

Comments:

**Energy UK considers it is vital code parties (including customers) are able to appeal decisions made by Ofgem as the strategic body irrespective of whether or not the decision aligns with the recommendation of the code manager. This is to ensure good governance which requires separation of roles and responsibilities**, with appropriate checks and balances and transparency of process. It is important for the industry to be able to challenge both the context and process of the decision. This means that **appeal routes to both the CMA and by judicial review should be available to industry**. Appeals of this nature are not frequent nor are they pursued lightly as they are resource intensive for the parties involved. We acknowledge that the criteria for an appeal to the CMA will need to be developed, if panels are disbanded and industry will value engagement in this process. It will also be important to ensure appeal rights are not diminished during implementation as appeals to CMA will require change to primary legislation.

The number of appeals could be used as an indicator of the success of the reforms.

Additionally, under option 2 where Ofgem is the decision-making body, for changes that materially impact consumers and competition and those relating to the TCA or retained EU law the routes of appeal as above should be available.

It is important that Ofgem does not see appeals as necessarily a bad thing. The point of the appeals is to keep regulators "honest". Knowing a decision can be challenged results in more robust decision making. All regulated industries have these rights of appeal as they are the sectors where a body, in this case Ofgem, has far more direct control over their business activities than general competition law implies. The codes are contracts that parties have to comply with, other industries who do not like contract terms do not have to sign them

## Question 9

*This question refers to chapter 3.3 - Appeals process and compliance.*

Do you have any thoughts on other potential appeal routes?

Comments:

Energy UK considers it is vital that appeal to the CMA on economic grounds for decisions by an economic regulator is retained alongside judicial review.

## Question 10

*This question refers to chapter 4.1 - Proposed operating model and accountability (for option 1).*

To what extent do you agree with the proposed operating model and accountability structure for Ofgem as the strategic body, and why?

Strongly agree    Agree    Neither agree nor disagree    Somewhat disagree    Disagree    Not sure

Comments: **Somewhat agree**

In 2019 Energy UK considered that the strategic function role did not appear to fit well with any existing entity and that it might be necessary to establish a new entity, whilst noting that this would increase the number of parties industry participants would need to engage with. The option of a separate entity is not being considered rather rolling the strategic function within Ofgem without ring fencing.

We acknowledge there may be benefits in this approach, in that implementation will be more straightforward, given the overlap with Ofgem's existing remit and duties.

We also have concerns that from an industry perspective there is a risk of conflict between the strategic function and Ofgem's role and it may not be clear whether Ofgem is acting as the regulator or as the strategic body. This will need to be clearly identified in written communications, participation at industry meetings and other forms of engagement.

Energy UK agrees that Ofgem already has some of the skills and capabilities needed for the strategic body, but that it may need to review its resources and skills to fulfil this role. Its challenge will be to train and retain staff, since staff turnover is already a significant problem. Both the gas transmission charging review and the electricity access and forward-looking charges review have suffered from staff changing and the learning curve being reset during the development processes.

Energy UK notes Ofgem often do not have the ability to engage with change process at all levels. To address this **Ofgem needs to establish a better corporate memory and empower staff to engage in debate with a more collaborative approach to code developments with code managers and industry.** If Ofgem adopts an arm's length relationship with code managers, managing by licence sanctions and not fully engaging with development discussions it is difficult to see how these reforms will deliver the changes necessary in the desired timescales. Better engagement and earlier intervention at working level is seen as a quick win and can prevent wasted resource for both industry and Ofgem.

It will also be important to recognise that there is likely to be continued material proposed change to codes which do not arise from the strategic direction which will need to be progressed, so that both the code manager and Ofgem will need to be resourced to engage with these.

## Question 11

*This question refers to chapter 4.2 - Monitoring and evaluation (for option 1).*

To what extent do you agree with the monitoring and evaluation approach for Ofgem's performance as strategic body, and why?

Strongly agree     Agree     Neither agree nor disagree     Somewhat disagree     Disagree     Not sure

Comments:

Accountability of Ofgem will be important to ensure delivery of the SPS aims. We note the Utilities Act Section 5<sup>3</sup> provides for an annual report on activities to deliver the SPS aims to the Secretary of State, whilst also providing scope for additional reports from the Authority. Given the importance of net zero delivery, government will have an important oversight role. Energy UK hopes that these reports will be published.

The Utilities Act also anticipates that activities that relate to SPS delivery will form part of the Ofgem forward work plan. We think this is a sensible approach to avoid a proliferation of documents. **The forward workplan should also set out in some detail how Ofgem will engage with the CM and industry, to ensure a fully co-ordinated approach to change.** For Ofgem to be an effective strategic body, it will have to become more actively involved in code governance processes: not just giving high-level views and ultimate yes/no decisions, but by sending representatives to participate in working groups who have the expertise and the authority to apply the strategic view to the detailed matters under discussion. Sending a silent observer, leaving participants to guess Ofgem's views, is not enough.

It will be important to seek stakeholder views on the performance of the strategic body and of code managers, in our view this should be carried out by a separate organisation rather than the organisation itself, to ensure impartial reporting.

## Question 12

*This question refers to chapter 5.2 - Establishing code managers.*

To what extent do you agree with the ways we propose that the strategic body select code managers, and why?

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<sup>3</sup> <https://www.legislation.gov.uk/ukpga/2000/27/section/5>

Strongly agree    Agree    Neither agree nor disagree    Somewhat disagree    Disagree    Not sure

Comments:

At this time, it is not clear how many CMs there will be, nor what their role in implementation of reforms including code consolidation will be, this will need to be better defined before any tender or allocation process, and may influence selection criteria. It will also be important to build on lessons learned from the REC appointment process.

Energy UK has a general concern over licencing of CMs.

The document says that licences will help with the management of CMs because of the “relative ease with which the strategic body can modify the licence conditions”. Changing licences is neither easy nor quick. Ofgem will also have to set price controls, usually for multiple years, devise incentives and be involved in setting and changes to the CMs’ budgets.

The obvious benefit over the parties funding the codes and the use of licences is that change in say spend can be quick. They can agree to increase parties’ charges after a quicker consultation. The parties also have more expertise in setting budgets for work like IT projects, than Ofgem does, so are able to use industry expertise to drive efficiency and value for money. If Ofgem is going to set CMs’ budgets, etc. it should call on those with relevant expertise. We believe the Panel and Board model can work well for this if Ofgem engage at the right level.

**Energy UK is not convinced that the most appropriate way to appoint a code manager is through a competitive tender process as there may not be sufficient parties for the tender to be truly competitive and price is not the only factor to consider, relevant skills, competencies, experience and ability to deliver CM role will be equally as important** whilst ensuring the service provides value for money. Public procurement rules may also not support a flexible approach. A rigorous pre-qualification process followed by bilateral negotiation may provide a better alternative.

A key issue will be needing to ensure there are no perceived or real conflicts of interest with the code manager entity. Any affiliated company / activities must not have vested interests in codes and intellectual property rights must be clearly defined. Interested parties must demonstrate this as part of the tender or other allocation process, we expect this to be a high hurdle and to be monitored regularly. **Ideally CMs should focus only on CM activities, other activities can be a distraction.**

The impacts on staff of the current code administrators should be considered. Additionally, the knowledge and processes these staff have acquired will be vital in the transition to this new governance model.

### Question 13

*This question refers to chapter 5.3 – Budget and funding.*

To what extent do you agree with our proposed approach to code manager funding, and why?

Strongly agree    Agree    Neither agree nor disagree    Somewhat disagree    Disagree    Not sure

Not sure

Comments:

Energy UK supports code parties funding CMs and considers that the Elexon not for profit model, has merits and should be rolled out to other codes, and delivery bodies  
Consideration will need to be given to which parties pay for the CM if they are not active in all the market segments covered by the CM.

This benefits from flexibility in being able to increase spend or reduce it in response to market changes, such as the need for a large IT project. A price control which sets capex spend several years in advance may not offer the flexibility that the energy transformation will need.

### Question 14

*This question refers to chapter 5.3 - Budget and funding.*

To what extent do you agree with our proposal that the strategic body should be accountable for code manager budgets, and why?

Strongly agree    Agree    Neither agree nor disagree    Somewhat disagree    Disagree    Not sure

Comments:

This approach seems to lack any accountability to the parties paying for the CM, there needs to be ex ante and ex post accountability to industry.

The delivery plan consultation should also consider the budget to deliver it and be open to industry comment.

As noted before, the Elexon model seems to be the one scoring highest on the Ofgem surveys. We would suggest that this may be because the Elexon Board is informed by the BSC Panel strategy, which identifies the changes that the industry know need to be delivered, such as half hourly settlement, and want to be delivered as additional improvements, such as digitalisation of the entry process. The Strategic Body may be too

far removed from these types of detailed plans to oversee whether the CM is delivering to time, economically and efficiently, and with the flexibility to respond to issues as they arise.

### Question 15

*This question refers to chapter 6.1 - Proposed operating model and accountability (for option 2).*

To what extent do you agree with the proposed operating model and accountability structure for option 2, where the FSO takes on the role of the IRMB, and why?

Strongly agree     Agree     Neither agree nor disagree     Somewhat disagree     Disagree     Not sure

Comments:

Energy UK does not support the FSO being designated as the IRMB. Further, we consider that the FSO having code management responsibilities may detract from its core activities. We consider combining all these roles in one body creates risks and challenges in terms of internal conflicts of objectives which it may be difficult to identify and monitor by external parties. This would also be a very significant expansion in the ESO current role creating a very influential body with oversight across multiple sectors that other parties may not have the resources to challenge and fully engage with. This would risk a single view of the future being established, potentially with limited scope for other options to be developed and considered. Whereas **separation of the strategic function, code manager and system operator(s) will provide clarity and focus for each organisation on its role, with open and clear communication between these bodies to ensure alignment of objectives in a transparent manner and be better aligned with good governance principles.**

### Question 16

*This question refers to chapter 7.1 - Options analysis*

Overall, which of the two options do you think would be best placed to reform code governance, and why?

Option 1, where Ofgem is designated as the strategic body with the power to licence separate code managers

Option 2, where the FSO takes on the role of an IRMB, which combines the strategic and code manager functions

Not sure

Comments:

Energy UK favours Option 1 over Option 2, Although as the FSO is yet to be established this isn't really a choice.

We largely agree with the analysis in chapter 7. **We see the relationships between; Ofgem, code managers and industry being key to the success of these reforms. With a more engaged and collaborative approach essential**, an arms-length relationship will be unlikely to deliver effective and timely code change.

Energy UK is disappointed the idea of a newly established separate entity as the strategic body has been dismissed. This would have provided greater clarity on roles and responsibilities. The functions of the strategic body and Ofgem's normal roles risk being blurred, we expect Ofgem to clearly manage this in its communications and engagement.

We also have a number of concerns as outlined in the responses above, including:

- Many details are yet to be established and are open for further development so industry cannot see and understand the complete package of change
- The value of industry expertise is recognised in the text but not embedded in the proposals
- Concern that the relationship between Ofgem, code managers and industry may become more distant when closer more collaborative working is essential, to deliver effective and timely code changes.
- The FSO role, particularly with respect to gas activities is subject to consultation, current skills and capabilities are insufficient

*The following three questions relate to the impact assessment on the code reform that is published along with this consultation. Please only answer the questions below if you have read the Impact Assessment.*

### Question 17

To what extent do you agree with our estimated costs for the new code manager function set out in the impact assessment, and why?

Strongly agree    Agree    Neither agree nor disagree    Somewhat disagree    Disagree    Not sure

Comments:

See Question 19 below

## Question 18

To what extent do you agree that the case studies included in the impact assessment are indicative of the major barriers facing code changes under the current system, and why?

Strongly agree    Agree    Neither agree nor disagree    Somewhat disagree    Disagree    Not sure

Comments: **Strongly disagree**

### Case Study 1

P272 was a problem in so much as the process tried hard to assess the costs based on the information provided. Had the analysis been showing a net benefit then the Panel would have seemed likely to agree it. While it may have disadvantaged some companies, we believe changes should not be being made where they impose significant costs with limited benefits, and we have seen the BSC Panel approve other changes where benefits are marginal, but there are potential improvements.

Ofgem's SCR has now mandated HH settlement, based on its analysis seeing a benefit to customers. However, P272 was back in 2012 when we did not have smart meters, EVs, aggregators, VLPs, etc. The potential for customers to benefit from passive engagement in the market (using remote load control) is far greater now. In 2012 most DSR was in response to the Triad regime, where the customers were all already HH metered. Further Ofgem asked for the CBA to be redone, it still showed no benefit and Ofgem rejected the change. In our view this looks like the right outcome at the time.

### Case Study 2

There is no dispute that the reform of gas transmission charging arrangements was not good in process terms from the perspective of any of the parties involved. However, the perspective presented in the impact assessment only presents Ofgem's view.

During the workgroup meetings associated with UNC proposals 0621 and 0678 Ofgem was often present but rarely expressed any view on the direction of proposals. The main area of contention flagged is compliance which is subjective in nature and even legal QC opinions vary, but only Ofgem's legal view mattered.

Ofgem's representatives at these meetings did not express specific concerns about compliance, whilst the industry led proposals were believed to be compliant. Industry did not deliberately raise non-compliant proposals as the impact assessment suggests. With respect to 0621, everyone was surprised when 5 months after submission of the final modification report all proposals were rejected on compliance grounds. If non-compliance was so clear why did this take 5 months?

Ofgem's decision letter for UNC proposal 0621 did provide some understanding of Ofgem's perspectives on compliance, which subsequently informed the UNC proposals 0678 and alternatives. There was an intense period of industry meetings between January and March 2019 as this was an urgent proposal with the final modification report being

delivered to Ofgem in May 2019, Industry then waited 7 months for an impact assessment which identified most proposals again being non-compliant and a further 5 months before a decision was issued.

Ofgem felt it was not its role to influence proposals rather just determine on them once finalised. Whilst absent a more detailed understanding of Ofgem's interpretation of compliance, industry was searching for the 'needle in the haystack' to achieve compliance.

Reflecting on this, the gas charging review could have been a SCR or Ofgem could have directed change, it already has powers to do this for achieving compliance with EU law, neither of these happened.

Considering this in the context of the proposals for reforms to code governance under option 1.

Ofgem could direct the code manager to implement reforms to the gas charging arrangements which are compliant with EU law.

Absent any further engagement this would not be an improvement on the current processes. The Code Manager would have no greater insight into Ofgem's thinking on compliance than industry did, even if it sought its own legal opinion this could be different to Ofgem's opinion and nothing would be gained. This is why irrespective of the wider frameworks **the key issue is early and meaningful engagement of Ofgem with the code manager and industry on redline issues**, in this case compliance so that **Ofgem's thinking develops in line with the development processes rather than comes as a surprise to all at the end**. Otherwise, these reforms will achieve very little and could make issues a whole lot worse if Ofgem hold Code Managers to account via licence sanctions whilst providing inadequate guidance.

The impact assessment also references a number of proposals which were raised following approval of 0678A, namely 0727, 0728, 0729. It is not uncommon for a significant code change to lead to further changes. All of the topics considered by these proposals had been explored during 0678 development. As such they were not new to Ofgem, so there should have been good understanding and established positions yet decisions took 6, 9,10 months from submission of the final modification report. It is not reasonable to blame industry for Ofgem's slow decision making.

**A lesson learned here would be to carry out an initial impact and compliance assessment at the start of the reform process.** Ofgem has adopted this approach in the past for significant change. This could have avoided proposals which were later seen as non-compliant being raised and delivered a more focussed efficient process. This approach to implementation of gas charging reform for compliance with the EU TAR code was adopted by Ireland and ensured timely implementation.

Can you provide further examples of when current code governance has resulted in either optimal or sub-optimal outcomes?

Comments:

Optimal outcomes

In sharp contrast to gas transmission charging reforms are the electricity charging SCRs to which Ofgem committed substantial resources and facilitated engagement of wider stakeholders by making the process and information accessible.

COVID – the response from industry to the pandemic was enabled by industry, Ofgem and BEIS working closely together to identify new working practices and processes to ensure continuity of supply to customers and remote delivery of services. This demonstrates that agile responses are possible when working in close co-ordination between industry, regulators and government. For example, the BSC Panel quickly agreed to change the performance requirements on Suppliers that required them to enter customers houses.

There are also examples where the urgent process has worked to deliver necessary outcomes at pace, including CMP 373 and UNC 0748. Whilst the process is less robust and not favoured by Ofgem or industry there are times when its use has been necessary. There could be useful learnings from this.

### Sub-optimal outcomes

In the gas governance framework, there continue to be sub-optimal processes with Ofgem unable or unwilling to express any early view or opinion on licencing issues relating to UNC modification proposal 0761 and retrospectivity in relation to 0765. It prefers to wait until proposals are fully developed and consulted upon before expressing any view, when an early view on a key aspect, not the wider merits could avoid significant industry resources being use developing and consulting on these proposals. Perhaps these could be used as case studies for the Code manager triage process.

One area that members have sought to improve things, via code changes, has been transparency on the part of NGET (as both SO and TO at the time) and more latterly NGESO. For example, after some three years of engaging informally by EUK with the SO in terms of seeking greater real time visibility of electricity warnings and alerts it became clear that the SO was not in agreement with this move to greater transparency. A modification proposal to the Grid Code (GC0109) was raised and, subsequently, approved by Ofgem (and implemented at the end of August 2021, some five years after EUK had sought to resolve this via direct engagement with the SO).

Another example, regarding transparency by the electricity SO, concerns what used to be its reporting of system frequency discursions. For some 15 years or so the SO would provide an annual report on this topic to stakeholders. However, the SO unilaterally (and without consulting stakeholders) stopped providing that report at the start of 2017 which resulted in a Grid Code party raising a proposal (GC0105) in late 2017 to formally codify an obligation on the SO to produce the report it used to produce (and added an increase in frequency to monthly plus some additional information). This change was approved by Ofgem in May 2020 and implemented shortly after. Whilst historic information (from January 2017 to mid-2020) was subsequently produced (as required by GC0105) there was a circa three and a half year period of hiatus when stakeholders had no visibility of this information.

UNC696V was sent to Ofgem on 22/05/2020, but still has no indicative decision date over a year later.

P390 was raised by EON on 12 August 2019. The BSC process took until May 2020 to recommended approval. Ofgem then took until November 2020 to send it back. Why did Ofgem not raise concerns in the modification meetings or at the Panel and why did it take 6 months to find a problem? Is Ofgem resource constrained? Should Ofgem have engaged earlier?

Ofgem approved P390 in March 2021.

CMP317/327 – there were 84 alternatives to a mod Ofgem wanted but did not provide guidance on.

### Question 19

To what extent do you agree with the scale and type of benefits to industry estimated in the impact assessment?

Strongly agree    Agree    Neither agree nor disagree    Somewhat disagree    Disagree    Not sure

Comments:

Energy UK agrees with the headings against which costs and benefits are assessed. We find it surprising that the current costs of code administration activities are not known or cannot be determined. This baseline is needed against which to assess change, although we do acknowledge that many of the benefits cannot be quantified, so that decisions to proceed will not only be based on the NPV of the change.

We are also uncertain about the cost assessment for Ofgem resource, for example:

- Is additional resource needed?
- Do current staff have the right skills?
- Is the assumption of most staff at current grades appropriate given the skills required for the strategic body?

However, from the costs and benefits which have been quantified there are many uncertainties and the overall cost benefit is negative. It would be inappropriate and misleading to assign any degree of precision to these estimates. This is particularly the case in relation to stakeholder engagement, as this is yet to be defined it cannot be certain that there will be fewer meetings. This is because large scale change will always give rise to further change as foreseen and unforeseen issues need to be addressed after implementation.

There may also be a risk for the code manager / industry, depending on the timeline over which the code managers are able to fulfil their expected role. There may be ongoing

reliance on industry expertise to fully develop proposals which would not be a change from the status quo.

Are there further cost savings to industry that should be included?

Comments:

Any cost savings are highly uncertain, until there is greater clarity on the role of stakeholders in the code processes.

There could be quick wins from minor change like aligning objectives

Energy UK considers the impact assessment should be reconsidered when current CM costs have been identified and roles and responsibilities are better defined, including those of stakeholders.

## Question 20

*This question refers to chapter 8.1 – Context and wider industry developments*

Are there any other wider industry developments we should consider in relation to the implementation timeline?

Yes       No       Not sure

Please provide details of any industry developments you believe should be considered in the implementation timeline and how they could impact on code reform.

Energy UK considers there are quick wins that can be progressed, given the CMA recommendations were in 2016, but these changes will not happen until at least 2024:

- Align objectives across codes
- Allow CA/CMs to designate materially affected parties
- Consider the role of CACOP amendments

We also consider it is necessary to reflect on the original objectives, as the market has changed since the CMA assessment, with net zero being a key focus. This requires a different scale of change and potentially a more collaborative approach to change. It is not clear that these proposals will provide that, but market change to deliver net zero will need to be a priority

It is also not clear how these reforms will help small parties

As discussed above, the BEIS FSO consultation should be considered. The overlap of Code Manager functions and the potential overlap of the IRMB should be considered.

## Question 21

*This question refers to chapter 8 – Implementation approach*

Are there any implementation issues, risks or transition considerations we should take into account?

Comments:

Energy UK has identified the following:

- Risk of expertise in CA / CM being lost
- Does Ofgem have the right resource to licence/tender multiple codes
- Transition risks changes being de-prioritised – this happened with separation of ESO
- Code consolidation is a huge process, requiring line by line assessment of codes, will the new CMs have the capability. Would CMs be conflicted if their code was to merge with others.
- Work is already underway on consolidation of electricity technical codes; it is not clear how this fits with these proposals.
- Quick wins; alignment of code objectives and inclusion of a net zero objective should be considered first to allow more time for more wide-ranging reforms

How do you think these could impact on code reform?

## Question 22

*This question does not refer to any specific chapter.*

We invite respondents' views on whether our proposals may have any potential impact on people who share a protected characteristic (age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation), in different ways from people who do not share them. Please provide any evidence that may be useful to assist with our analysis of policy impacts.

Comments:

None identified

### Question 23

*This question does not refer to any specific chapter. Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.*

Do you have any other comments that might aid the consultation process as a whole?

There needs to be greater recognition that the codes are multi-lateral contracts that code parties have to comply with to participate in the energy market they are not normal commercial contracts. Code parties cannot walk away, without exiting the market whilst CMs can.

Code parties have to implement changes to codes even if they have no say in their development and cannot influence them

Tendering and licencing, if these are adopted are complex time-consuming processes. It is unlikely all can be progressed simultaneously.

Sequencing and timelines for implementing change need more detail, there could be merit in a phased transition rather than a big bang approach

TUPE obligations mean CM may have the same staff as now but new skills are needed.

Further consultation is necessary on the details of stakeholder engagement, but this a big part of the proposals which is currently unclear. There are a lot of changes happening in parallel.

Thank you for your views on this consultation.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BEIS we carry out our research on many different topics and consultations, and your views are valuable to us. Would you be happy for us to contact you again from time to time either for research or about other consultations?

Yes

No