



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

Team: Code Reform – Electricity Systems Team
Department for Business, Energy and Industrial Strategy
Postal address: Code Reform - Electricity Systems Team
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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.

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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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	Respondent type
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input checked="" 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: Generally, we support the proposals for licensing for all code managers which should bring additional accountability and consistency across the industry codes. We have no objection to this proposal.

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:

IT system delivery and code administration and management are two very different activities and accordingly require distinct skillsets and resources. To achieve the most efficient and economic outcome, central system delivery should not be a mandatory part of a Code Manager's function. The Code Manager should, however, remain ultimately accountable. There are clearly many more IT systems developers than there are potential code managers and therefore outsourcing this activity is a sensible approach. We are not convinced that central systems delivery should be fully regulated as this may stifle innovation and competition between IT providers.

Central IT systems are clearly critical to safe and efficient operation of the gas and electricity networks and markets. The systems are complex and in some cases quite old, meaning that managing the systems will require expertise and consistency. Therefore, it is unlikely that industry participants would see, or would want to see, regular change in IT service provision. Regulating the central service providers may appear to provide the desired continuity for market participants, but we believe this could be equally well managed by the Code Manager implementing effective commercial contracts. This would, however, require commercial contract negotiation skills which Code Managers may not currently have available.

Under the UNC, implementation of changes rests solely with the Transporters. Stakeholder involvement in the delivery of change has improved, particularly with the introduction of the DSC committee. There remains, however, significant room for

improvement. For example, changes impacting NGG's Gemini trading system seem disconnected from modification proposal decisions, with little or no transmission shippers/traders involved in the actual implementation timetable. As a result, NGG is incentivised to make changes at the lowest cost, such as bundling changes together. However, this approach risks ignoring the market benefits of earlier delivery of certain changes, for example, those that significantly improve wholesale market efficiency or reduce risks.

We believe that a fully collaborative approach to implementing code change should be the cornerstone of any future code governance reforms. This will benefit systems users and ultimately, customers.

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:

The CMA 2016 review of code governance was conducted before achieving Net Zero became a binding target. Since then, the majority of energy companies have integrated net zero into their corporate strategy. It could be argued, therefore, that the apparent lack of strategic direction in 2016 has now been addressed, to a large extent, by this collective industry target. For example, we are currently seeing code change proposals being raised to facilitate Net Zero innovation.

On balance, we support the introduction of a new strategic function, which could successfully drive large-scale industry change. However, to do so effectively and with full industry support, this function must be accountable and transparent. As a result, we believe that Ofgem is the most appropriate body to undertake this role as it is ultimately accountable to Parliament and its decisions must be fully reasoned and follow established processes.

An alternative approach, which would not necessarily require the creation of a new strategic function, would be to introduce a new statutory duty on Ofgem to facilitate Net Zero targets, expanding beyond the current primary duty of protecting customers. Furthermore, we believe BEIS/Ofgem could act much earlier than the proposed implementation date for governance reforms and introduce a new code objective of facilitating Net Zero across all codes, immediately. In our view, this would address many highlighted concerns about the existing governance process.

We are firmly against the FSO undertaking the strategic function, as it would lack the requisite independence, impartiality and full market view. In our view, the FSO should focus on its primary function, which is to operate a safe and efficient network, thereby facilitating competition between market participants. The FSO clearly has an important role to play in providing advice to Ofgem and Government, but it should not be the final decision maker. The network operators are not familiar with the detailed operation of shipping, supply and generation businesses, and we would not expect that to change with the introduction of an FSO. Therefore, the FSO would only be able to provide a limited, network focused strategic view. We are concerned that this network-centric view could stifle innovation in the commercial wholesale and retail markets.

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:

In the accompanying Impact Assessment, it is noted that:

“Post-code reform we expect modifications to require fewer workgroups due to a more efficient modification process in which empowered code managers or the IRMB will carry out much of the drafting and refining of modifications.”

To achieve this, there will need to be a very significant increase in skillsets and industry knowledge across the Code Managers and the cost of realising this must be acknowledged. Code management is currently is largely an administrative function, which often relies heavily on the experience and learnings of market participants when producing code modification reports. To draft a modification from scratch is a very different skillset and would require thorough and detailed industry knowledge, including understanding the impacts of proposed changes on market participants. If this is not addressed, modification proposals risk being delayed rather than expedited when they are subjected to industry review.

Whilst the current governance arrangements are far from perfect, the process does require that a modification proposal is clearly understood, workable and efficient. This is achieved by industry workgroup development and consultation. Whilst filibustering in the workgroups can occur, often the reason for lengthy development periods is simply because the issue is complex and impacts a broad range of user groups or customers.

It is also our experience, that workgroups (not SCRs) dealing with large or complex issues can sometimes continue longer than necessary due to a lack of early strategic direction or intervention from Ofgem. Providing a steer early on could in many cases, reduce the scope of discussions or more clearly focus development. We note that Ofgem has often been reluctant to do so in the past, or has at least been inconsistent in this regard.

One of the main changes proposed here is for Code Managers to be able to originate a code change, determine its path through the governance process and potentially make a final decision on the proposal. Whilst this may work for simple and straightforward proposals, such as those currently dealt with under self-governance, for significant code changes, this simply places too much power in the hands of a single party. There should be greater separation of powers and responsibilities where there are significant commercial impacts of a decision on affected code signatories. Furthermore, to be able to undertake the role of decision maker, Code Managers will need a significant increase in expertise and resources available to them (including Elexon), the costs of which does not seem to be fully reflected in the Impact Assessment.

We are also uncertain as to whether it is appropriate for Code Managers to prioritise modification proposals, as has been proposed. We believe that Code Managers will be able to provide valuable insights to the prioritisation process, but ultimately such a decision should be made by Ofgem, who could take into account wider considerations including the views of all stakeholders.

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:

The current industry codes are multi-lateral contracts on which businesses are built. As a result, where there is a proposed change to responsibilities and / or costs incurred under the contract then, understandably, impacted market participants will have strong views. If these views are not taken into account, the delivery of obligations under code may become difficult or inefficient. Stakeholders, therefore, have a critical role to play in ensuring that change proposals are workable and effective in practice. For example, our experience of Ofgem led Significant Code Reviews (SCR) is that the initial solution to a problem looks very different to the final, delivered change. In our view, this is not a failing of the governance process, but evidence that ongoing engagement of stakeholders can deliver efficient solutions. It also highlights the difficulty of drafting solutions that may initially seem

good on paper but may not work in practice. Implementing incomplete or ineffective solutions (e.g. a penalty that can be circumvented) simply pushes risks, inefficiencies and costs into the market which ultimately are felt by consumers.

We acknowledge that the detailed model for future stakeholder engagement is not fully worked through and subject to future consultation, but we need to see more detail before offering further comment. It is critical, however, that industry engagement plays a strong role in each part of any revised governance process.

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 existing appeal routes should be retained, but strongly disagree that they should move to the strategic body / Ofgem for major code changes. As noted above, this would only be appropriate for simple, self-governance type changes with minimal commercial impacts.

Gas and electricity are well-established, complex markets and therefore the Competition and Markets Authority (CMA) should continue to fulfil its role as the final appeal body. Moving this role to Ofgem could result in the same body originating change, overseeing (or overruling) the final decision and then reviewing its own decision, on appeal. This model clearly lacks appropriate checks and balances.

We believe the current CMA energy code decision appeal process remains fit for purpose and is an effective check on regulatory decision making. In practice, the appeal process is used infrequently and then only for the most significant decisions, due to the cost and effort involved. We see no reason to move away from this model.

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:

In principle, we do not support the FSO undertaking this role, but any code modification decisions should be, as a minimum, appealable to Ofgem.

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)?

It is not clear why a decision would automatically be deemed as correct simply because a code manager agrees with it. It is important that code parties 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.

Question 9

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

Do you have any thoughts on other potential appeal routes?

Comments:

The CMA should remain as an appeal route for the most significant energy code changes.

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:

It is unclear how Ofgem will manage its role as an independent economic regulator, operating at arm's length from Government and how it will fulfil its role as strategic body, which effectively will be implementing government policy. This could create conflicts of interest and it is unclear how these will be addressed. It is also not clear whether the strategic function would be engaging in stakeholder processes (such as workgroups) or whether that will be Ofgem's role, or if in practice there would be no real difference. Either way, there will need to be close alignment on external messaging to industry and consumers.

As noted above, we believe a much simpler approach would be to review Ofgem's statutory duties and expand them to include Net Zero. This may mitigate the need for a strategic function.

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:

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?

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

Comments:

It is important that the tendering process is fair, transparent and delivers value for money. However, the strategic body must be clear in the purpose of the tender. For example, is the purpose to drive cost reductions or to incentivise innovation? It is also unclear at this stage how many code managers will exist. Tendering for many code managers could become time and cost intensive for Ofgem / the strategic body.

We also believe that given the skills and industry knowledge required, code managers should be appointed for a minimum of 3 years and ideally longer. Organisations seeking to undertake this role should also be able to prove, as part of the tendering process, that they already have the necessary skills and expertise to operate from day 1, or have a plan to achieve this in a short period of time. Code signatories cannot afford to wait while code managers build up resources and knowledge over years.

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

Comments:

In order to attract innovative organisations with the necessary expertise, allowing code managers to make a profit seems reasonable, provided that industry costs are controlled. Regulating code managers could allow them to earn a reasonable rate of return. We note, however, that this approach would necessarily push more costs onto consumers. For example, Elexon and the Joint Office of Gas Transporters are currently operated on a not-for-profit basis and moving away from this approach would almost certainly increase costs to consumers.

We would welcome further detail on how the costs of code managers are to be recovered from code signatories.

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:

Code managers are best placed to manage their own budgets but this should be subject to some level of scrutiny from Ofgem. If there was a single Code Manager with one budget this would be reasonable, but if there are multiple code managers, budget scrutiny could consume significant amounts of time and money for Ofgem. Scrutinising the business plans of fully regulated network businesses is a very different undertaking to scrutinising what we would expect to be a comparatively small budget of a code manager. In order to do this effectively, Ofgem / the strategic body would need a full understanding of the costs involved at a detailed level. A failure to fully understand the resource requirements may mean the strategic body simply pushes for lower operating costs, which may be detrimental to the wider market, if it hampers the code change process. We see evidence of this happening now in the arrangements underpinning the Joint Office of Gas Transporters, where resources have been limited due to Gas Transporters having control of the operating budget.

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:

Strongly disagree. We do not support the FSO undertaking this role.

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: We do not believe the FSO should undertake this activity as it could lead to conflicts of interest or bias in the governance process. Ofgem already has, for the most part, the necessary resources, access to expertise and accountability to undertake this role.

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:

As noted in the Impact Assessment (IA), Elexon has been used as the benchmark for current code management costs. Many energy codes have administrators rather than managers and all operate on a different basis with little consistency in resources or budget. Elexon is considered one of the most expensive code managers currently in operation and therefore does not reflect the “average” cost. The actual cost of current code management / administration is likely much less than portrayed. Using a lower average cost would therefore impact the IA results, perhaps reducing the benefits of a future model.

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:

Case study 2 - Gas Charging

In the IA this case study is summarised as:

“a series of modifications in which there are clear misaligned incentives and objectives between Ofgem and the industry parties proposing modifications”.

We agree that there was misalignment, but from a stakeholder point of view, this was because Ofgem limited its early engagement in the workgroup development phase and only made its detailed views and objectives clear in final decision letters, at the end of the process. In our view, this example highlights the need for Ofgem to engage early with stakeholders and to provide a considered strategic direction at the outset. This would also help address one of the recognised deficiencies in the current code governance process, which is self-interest proposals consuming large amounts of industry time.

We understand that Ofgem does not wish to fetter its discretion in relation to proposals still in development, but we believe there needs to be a more collaborative approach adopted by all parties. This should mean in practice that Ofgem / strategic function can express informal opinion or views to inform code development, but this cannot then be used by stakeholders for legal purposes (e.g. grounds for appeal or challenging decisions). This may help foster a more open and collaborative approach from all involved in the governance process.

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

Comments:

Sub-optimal Outcomes:

- Significant Code Reviews – contrary to the initial intention when implemented, SCRs have not delivered quick results. In addition, they highlight the problems of publishing detailed proposals before engaging with stakeholders. In almost every case, SCRs have lasted at least 2-3 years, rather than the 6 months initially anticipated.

Optimal Outcomes:

- Covid crisis - industry reacted with agility and pragmatism, including Code Panels and stakeholders.

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:

As noted above, the costs of the current governance arrangements are likely over-estimated, which may reduce the benefits. Furthermore, the stakeholder engagement model is not defined so it is unclear how much that will drive costs or how these costs will be recovered for code signatories.

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

We have nothing further to add.

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

There needs to be a clear path to transition between current and future code governance to avoid wasting significant industry time on current reviews of issues such as transmission charging. For this reason, we would expect Ofgem to avoid initiating new SCRs once the new governance arrangements have been finalised.

Question 21

This question refers to chapter 8 – Implementation approach

Are there any implementation issues, risks or transition considerations we should take into account? How do you think these could impact on code reform?

Comments:

The main risk will be potentially losing the extensive knowledge that existing code managers / administrators have built up, both in terms of detailed market knowledge and governance process. If all codes move to a harmonised governance process, however, then knowledge of past governance processes may be less important.

The impact on code reform is that it risks slowing down the process if code managers are not properly resourced and equipped with the requisite knowledge from the outset.

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.

We have nothing to add.

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?

We note that the questions which request a tick box answer lack symmetry. For example, there is no “somewhat agree” or “strongly disagree” options. As a result, there is a lack of balance in the presented options, which may not properly reflect stakeholder views.

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