

Energy Codes Reform Response to Consultation

September 2021 | Version 1.2

DOCUMENT CONTROL

Authorities

Version	Issue Date	Authorisation	Comments
1.2	September 2021		For publication

Change history

Version	Change reference	Description
1.0 – 1.1		Drafts for peer review

Distribution

--

TABLE OF CONTENTS

About ENA	4
Our members and associates.....	4
ENA members	4
ENA associates	5
Glossary	6
Scope of reform	7
Roles and responsibilities	9
Ofgem as strategic body with separate code managers (Option 1).....	11
Code manager approach under option 1	11
Future System Operator as Integrated Rule Making Body (IRMB) (Option 2) .	12
Analysis of institutional governance options.....	13
Implementation approach	14

About ENA

Energy Networks Association (ENA) represents the owners and operators of licenses for the transmission and/or distribution of energy in the UK and Ireland. Our members control and maintain the critical national infrastructure that delivers these vital services into customers' homes and businesses.

ENA's overriding goals are to promote UK and Ireland energy networks ensuring our networks are the safest, most reliable, most efficient and sustainable in the world. We influence decision-makers on issues that are important to our members. These include:

- Regulation and the wider representation in UK, Ireland and the rest of Europe
- Cost-efficient engineering services and related businesses for the benefit of members
- Safety, health and environment across the gas and electricity industries
- The development and deployment of smart technology
- Innovation strategy, reporting and collaboration in GB

As the voice of the energy networks sector, ENA acts as a strategic focus and channel of communication for the industry. We promote interests and good standing of the industry and provide a forum of discussion among company members.

Our members and associates

Membership of Energy Networks Association is open to all owners and operators of energy networks in the UK and Ireland.

- ▶ Companies which operate smaller networks or are licence holders in the islands around the UK and Ireland can be associates of ENA too. This gives them access to the expertise and knowledge available through ENA.
- ▶ Companies and organisations with an interest in the UK transmission and distribution market are now able to directly benefit from the work of ENA through associate status.

ENA members



ENA associates

- Chubu
- EEA
- Guernsey Electricity Ltd
- Heathrow Airport
- Jersey Electricity
- Manx Electricity Authority
- Network Rail
- TEPCO

Glossary

BSC	Balancing and Settlement Code
DCC	Data Communications Company
DNO	Distribution Network Operator
DTN	the Data Transfer Network
DTS	Data Transfer Service
DTSA	Data Transfer Service Agreement (DTSA)
ENA	Energy Networks Association
FSO	Future System Operator
IRMB	Integrated Rule Making Body
REC	Retail Energy Code
RIIO-T2	Revenues = Incentives + Innovation + Outputs Framework for the Transmission regulatory period 2021 - 2026
SEC	Smart Energy Code
SPS	Strategy and Policy Statement
TO	Transmission Owner
Industry	Licensed Gas or Electricity Network operators or owners

Scope of reform

- 1. To what extent do you agree with our proposals on the licensing of a code manager for in-scope engineering standards, and why?*
- 2. 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 may be the subject of future consultation?*

ENA acts as the Distribution Code Administrator and manages the Distribution Code with the support of Distribution Networks Operators (DNOs), Generator representatives and external stakeholder parties. Through its Regulation Manager group, it also monitors and contributes to the management of all gas and electricity Codes impacting on the operation of the networks.

ENA and its members support the objectives of this Energy Code Reform and welcome the ongoing dialogue with BEIS and Ofgem to consider options for improving the existing arrangements, including scope of fundamental reform to meet the increasing pace of technical and commercial changes required as network use develops. ENA agrees with the concept of Code Manager(s), but the role must be clearly defined and communicated to ensure they are established and resourced appropriately. It is essential that further refinement on how Code Manager(s) would act on the advice from industry stakeholder advisor forums is undertaken to prevent them from becoming non-viable and to ensure they are set up correctly to achieve the high-level ambitions and have early support and buy-in from direct industry stakeholders.

Although the consultation does not address directly whether there should be a single Code Manager(s) (although implied in Option 2) or separate Managers for gas and electricity, ENA favours the latter to maintain clarity and delivery focus in both sectors. Responsibility for unified co-ordination and strategic direction between the different sectors would sit with the Strategic Body with the respective Code Managers focusing on executing the requirements. The challenges are considerable for both sectors and gas is likely to face a fundamental change through the emergence of Hydrogen and other Net Zero ambitions, and as such focussed and knowledgeable Code Managers will be critical.

An element of control and management will be required to ensure the Code Manager(s) operates as intended to achieve the required strategic objectives. ENA supports licencing as the most effective model to achieve this as Ofgem will be able to exercise more control than that available through a normal contractual arrangement and would be able to respond to developments more easily.

Discussions around the degree of autonomy and flexibility accorded to the Code Manager(s) will also be required as the role is developed, such as for the modification of any consolidated technical code(s) which would include the electricity Engineering standards. Consultation with all relevant industry bodies, especially those who maintain existing Engineering Standards, will need to be undertaken to determine which Engineering Standards should come under the remit of the relevant Code Manager(s), noting that it may be sensible for several reasons to keep some Engineering Standards separate from a code. It is important to ensure that the Code Manager(s) has the authority to select and set up appropriate stakeholder groups and prioritise certain changes at pace providing that priorities remain in line with those set by the Strategic Body. We would welcome Code Managers for the technical codes having the flexibility to do this for certain changes without having to gain prior approval from the Strategic Body, although we would expect such actions to be highlighted to the Strategic Body within the regular reporting.

Communication between the Strategic Body and Code Manager(s) is essential to agree and set the strategic direction, but the Code Manager(s) should be free to make certain commercial and technical decisions with limited input from the Strategic Body, provided that they were supported by stakeholders and are within clearly defined parameters consistent with the delivery of the strategic objectives. While there is a benefit to such an approach in terms of agility and pace of change, careful consideration should be given to how Code Managers

will be protected from the risks created by taking decisions on commercially impacting changes, and to how Code parties will be protected from the commercial impact of the changes.

The Code Manager's annual strategic plan should reflect the views of relevant stakeholders as well the direction set by the Strategic Body.

There is a case for future central system delivery bodies to be integrated with Code Manager(s), or for central systems to be procured by the accountable Manager(s). However, the majority of existing central system bodies, particularly those which support multiple codes, should be separately licenced in a model similar to the present SEC/DCC (Smart Energy Code / Data Communications Company) split. If it were determined by the Strategic Authority that a future central delivery body would operate more effectively by being independent of Code Managers, then this should also be separately licenced. Having the capability to separate the Code Manager(s) from central system delivery creates more flexibility/control for the Strategic Authority; a failing Code Manager(s) can be changed without affecting systems, Code Managers become less wedded to "their" technical solutions and there is a greater ability to see through to costs noting the cost of change is in systems and process rather than in code administration. It is important that the licencing of central systems delivery bodies does not create regulatory duplication, for example, ensuring the licencing of a Code Manager(s) does not impact the licence conditions of operators.

Regarding the treatment of the Data Transfer Service (DTS) for electricity some of our DNO members would welcome further engagement with BEIS and Ofgem on the benefits and appropriateness of this delivery function and the underpinning IT systems being licensed and weighted against the increased regulatory burden. Our DNO members currently discharge their licence obligation to provide the DTS by procuring, with other DNOs, the Data Transfer Network (DTN) through ElectraLink. They want to retain their current licence obligations to provide this service and continue to be able to select their own provider. The rationale for treating the DTS service different to the other central body delivery functions is because the DTS is managed by a multi-party agreement, the Data Transfer Service Agreement (DTSA), which sits outside any code. The service is provided on a cost recovery basis with standard costs for all Users of the service. New entrants and small parties can become a new User of the service at low cost and any User can raise change requests regarding the DTSA, the Data Transfer Handbook (which includes the schedule of charges) or the DTS itself at any time. New entrants and small parties are also further protected by the rules and obligations governing how the data is transferred between parties being set out in the electricity codes (REC or BSC).

Roles and responsibilities

3. *To what extent do you agree with the proposed roles and responsibilities of the strategic function, as set out above, and why?*
4. *To what extent do you agree with the proposed roles and responsibilities of the code manager function as set out above, and why?*
5. *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 forums, and why?*
6. *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?*
7. *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(s) function would be appealable to Ofgem, with a potential prior review route via an internal body?*
8. *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)?*
9. *Do you have any thoughts on other potential appeal routes?*

ENA believe it is important that the roles of Strategic Body and Code Manager(s) are separate to allow each to concentrate on specific areas; the Strategic Body to gather information, horizon scan on national and international initiatives and the high-level government strategy and to define the strategic objectives, and the Code Manager(s) to develop the delivery plan and focus on managing modifications, consultations and develop communication and engagement with industry and non-industry interested parties. Alignment of the strategy and management function is essential and good communication and working relationships between the parties is essential for the successful delivery of key government targets.

From the information provided in the consultation, the role of Code Manager(s) appears to be broad, and the level of authority will allow it to focus on those change requests with merit and a genuine intention to improve the codes and standards. We welcome the proposal for Code Manager(s) to be able to refuse to accept a change against set criteria, for example where a change is not materially different from another live changes or concerns matters outside the scope of the code. Code Managers should actively support the development and delivery targets of proposals which further the strategic objectives.

Where it is logically possible that a given strategic objective could be delivered through a variety of different solutions, each with different impacts, the Code Manager(s) must be able to gather and accommodate conflicting industry views in order to develop a single well-supported proposal.

While prioritisation, development and delivery of changes are ultimately the responsibility of the Code Manager(s) there should be a requirement for the Code Manager(s) to formally consider the views of forum members, including industry stakeholders, and be bound to set out why a particular decision has been made, especially if the Code Manager(s) is not acting on that advice. This will ensure that all views are heard, and that the Code Manager(s) can demonstrate engagement across all users of the Code with fairness and impartiality. It will also reduce grounds for future appeals where final decisions have not met all stakeholder concerns.

Having the Code Manager(s) reporting to Ofgem as the Strategic Body is similar to the current arrangement and working practices. This will assist in the transfer to any new arrangement as the process is already understood and the working relationships are established.

It is important that Code Managers are overseen by a regulating body. The role of the Strategic Body should be to provide and monitor the strategic direction necessary to achieve government targets but how that direction prompts what code and standard changes are required should remain the remit of the Code Manager(s).

The authority of Ofgem as the Strategic Body to oversee material changes is appropriate, but it should only become involved directly in the management and delivery of changes where the change does not meet, or is contrary to, the strategic direction. It is suggested that the Strategic Body has access to the materials used in the Code change decision in order to support the assessment of appeals.

The Strategic Body should consider consulting and working with the Code Manager(s) to modify the strategy as government policy evolves or alters direction to accommodate changes.

It is noted that there is limited additional funding beyond current levels being made available to resource the Strategic Body. Adequate resourcing will be required to ensure the Strategic Body has the appropriate technical and commercial skill set to be able to support both government and the Code Managers.

While change decisions will always try and consider all stakeholder views it is accepted that not all parties will always agree with all decisions. In developing these new roles, ENA suggests that guidance on the appeals process and suitable reasons for raising an appeal are put in place to avoid unnecessary appeals on minor matters or changes. There may be a need to consider different levels of appeal depending on the complexity of the modification and/or the challenge.

Although not discussed in the consultation document, ENA asks if the introduction of an independent appeals body has been considered. The appeals body should not operate in detriment to the code management process, nor should it introduce unnecessary cost or bureaucracy. Whilst not the view of all ENA members, we would welcome discussion on the relative merits of an independent body, with the capability to reviewing appeals off-line, ensuring the day-to-day management of the Code is not impacted, versus the appeals function resting entirely with the Strategic Body.

Ofgem as strategic body with separate code managers (Option 1)

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

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

The option to reform the code management structure with separate Code Managers working with Ofgem as the Strategic Body is similar to the existing operating model so the new arrangement would be more easily accommodated within management and consultation processes and stakeholder groups, accepting that these stakeholder groups will need to be extended beyond industry to other interested parties as appropriate to the change.

The introduction of Option 1 should engender a closer working relationship between Ofgem and Code Managers and ensure commitments made in industry stakeholder regulatory plans are reflected in, and are supported by, Code changes, and that Codes can be adapted as the requirements and challenges on the networks develop.

ENA agree the use of existing legislation Strategy and Policy Statement (SPS) to manage the Strategic Body as this will help facilitate the implementation of the new code structure by removing the need to develop and approve completely new legislation. However, legislation may still be required to effect changes in, or introduce new, licencing powers.

Code manager approach under option 1

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

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

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

The appointment of Code Managers must be by a thoroughly considered and open process to ensure adequate resources and knowledge of Codes is in place before any existing Code Administrators and Panels are disbanded. The Code Manager(s) must be able to demonstrate efficiency in operation and management, industry knowledge and access to industry stakeholders in order to ensure continued engagement with the main users of the Codes.

There should be individual Code Managers for each sector of codes, for example Technical (Electricity and Gas), Retail and Wholesale; this will enable individual and group stakeholders with core skill sets to participate in developing the Code(s) in which they have specific understanding. Consolidation of complimentary codes should be considered when developing and assigning Code Manager roles. This should be done with close consultation and involvement of industry and stakeholders throughout to ensure the resulting Codes are made easier to understand and access by Users but primarily continue to meet the legal requirements for network operation.

There are mixed views from ENA members to the Code Manager Selection process with some preferring a full competitive tender and others suggesting selection could be based on competitive, merit-based approach where selection is assessed on ability and resources. Whichever process of selection is chosen it should be set up to encourage proposals from both existing and new bodies. While costs based on providing adequate resources should be reviewed it is important that the Code Manager(s) is ultimately selected on their ability to manage and deliver code changes in harmony with stakeholders and the Strategic Body. It will be important to define how to quantify and measure the values sought in a Code Manager(s) and it is suggested that the Codes are run on a not-for-profit basis.

Development of existing Code Administrator bodies to that of a Code Manager(s) role would preserve the experience and knowledge held within the Administrator and may represent a more efficient option than replacement with a completely new organisation. Similarly, relationships and working practices can be preserved, easing the transition and reducing disruption, and minimising unnecessary delays.

The budget to manage the Codes is to be raised via licence fee as it is currently but, if changes are to be funded by industry fees, industry must continue to have the majority influence on changes, particularly where changes impact on the network operator business model or operational management of the networks. We recommend Code Manager costs are treated as pass through costs for licensed code parties under RIIO2, as per the decision for the treatment of DCC charges under the Smart Energy Code.

It is suggested that, with the support of industry stakeholders, the Code Manager(s) and Strategic Body could consider requesting larger groups and companies to part fund modifications where there is a material / commercial benefit for a specific product or process, notwithstanding that proposed modifications must not compromise the operation or safety of the network for commercial benefit.

The Code Manager should be funded by an annual fee for the Code(s) it is responsible for. This fee should be reviewed on an annual basis, reflective of the resources and work plan involved in managing the Code(s) under the Code Manager(s) and should be set to encourage Code Managers to work efficiently by grouping similar modifications into one proposal to the Strategic Body and increasing the agility of changes.

The Strategic Body should be able to monitor annual spend against budget but should also be accountable for overspend should the strategic direction change or require a wider scope of work than planned.

Future System Operator as Integrated Rule Making Body (IRMB) (Option 2)

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

ENA do not agree that the Code Manager and Strategic Body should fall within the remit of a single organisation. While the FSO as the IRMB could be set up to draw on the knowledge necessary to manage the Codes from the Grid Code Review Panel there would be concerns regarding independence, accountability and maintaining objectivity where modification proposals did not align with a single company's internal policies.

Distribution Network Operator experience of the current Grid Code modification process through the Grid Code Review Panel is that it is complicated, slow and dominated by procedure rather than content. There is concern that if the FSO continues to use the same, or at least a similar, process it would be unable to meet the agile change and wider stakeholder involvement targets sought by the Strategic Body and Code Manager proposal.

While ultimately reportable to Ofgem there would be concern that the IRMB could stand behind a strategy and process they are alone responsible for to address appeals. There is also concern that the IRMB would not be able to successfully demonstrate separation from parent company operational and commercial pressures or prove no conflict of interest.

ENA and its members have prepared a separate consultation response to the Proposals for a Future System Operator and this should be considered in conjunction with this response on the proposal to manage codes using the FSO as an IRMB.

It is imperative that any replacement to the panels and processes are seen to be, and act as, supportive and proactive as the needs of customers and network operators alike develop.

Analysis of institutional governance options

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

NB: 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.

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?

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

19. To what extent do you agree with the scale and type of benefits to industry estimated in the impact assessment? Are there further cost savings to industry that should be included?

As indicated, ENA believe Option 1 provides the best solution to reform code governance. Option 1 provides wider access to all stakeholders, clear accountability and improved agility while retaining modification and communication processes similar enough to existing arrangements not to require extensive legislative change, create unnecessary disruption and delays or put off existing Code stakeholders from being involved.

It is felt that the impact assessment makes a number of assumptions, and extensions of previous estimates have been used to quantify the Code Manager costs. As such, ENA disagree that network operators will automatically see a reduction in costs from the reform. There is a suggestion by some members that costs may initially increase as the new structure is resourced and implemented, as experienced with the formation of any new entity, with no guarantee of savings in the future. The Code Manager(s) function will need to be adequately resourced and funded to manage changes from all stakeholders including “any interested party” where the extent of this party’s involvement is yet unknown.

Any replacement code management process will continue to require considerable support by industry, particularly for the technical codes (Electricity and Gas), and this support will require a continued high level of industry resource investment.

All Code Managers must ensure, at the commencement of each code change, that all stakeholders understand the background and reason for the change. Using the Distribution Code management process as an example, the Panel and sub-groups are led by the Administrator, utilising industry experts in developing agreed code modifications. When addressing a particular issue within the Distribution Code or its supporting Annex standards it will only propose one final and considered modification and utilises its good working relationship with Ofgem to discuss more complex changes ahead of submission for approval to minimise the risk of rejection. Understanding, direction, stakeholder involvement and communication are key in ensuring efficient and timely changes. It is suggested that the Code Manager(s) follow a similar approach in the reformed code management structure.

The focus should be on efficiency in delivering the strategic goals.

Implementation approach

20. Are there any other wider industry developments we should consider in relation to the implementation timeline? How do you think these could impact on code reform?

21. Are there any implementation issues, risks, or transition considerations we should take into account? How could these impact code reform?

It is important that codes are developed to be flexible in order to facilitate new and varying uses of the network and it's supporting technologies without always requiring a material change.

Codes should be developed to be written clearly and concisely, accepting that some technical, legal or commercial terminology must remain to ensure formal communication of the compliance requirements.

Although not explored extensively in the consultation document ENA are aware of parallel projects to combine and consolidate technical electricity codes in accordance with National Grid's RIIO-T2 regulatory plan ambitions. These need to be carefully considered in line with the changes proposed here and clarified externally so as to avoid confusion. It is important that any technical electricity code consolidation does not assume to have achieved a simpler customer journey just because a project has combined the text in 2 or more codes into a single electricity technical code. The key to such a code would be the quality of the user guides and customer assistance to navigate what will be a very complex document and ability to easily identify the key steps they need to take. This is far more central to improving the service and clarity for users.

Any replacement code management structure will continue to require considerable support by the Gas and Electricity industry, without which management of the codes will be harder and fractured. It is therefore essential that the Code Manager(s) is supported by industry but also that sufficient funding is made available to appoint expert consultant support for complex and major changes to requirements.

There are a number of standards supporting the codes developed, managed and owned by Code Administrators (for example the Annex 1 and 2 standards supporting Distribution Code). Clarity needs to be provided on the responsibility for these standards should the Code Administrator for these codes not take on the Code Manager role, and how they would be transferred without commercial consequence to the current incumbent.



Energy Networks Association

4 More London Riverside

London SE1 2AU

t. +44 (0)20 7706 5100

w. energynetworks.org

🐦 [@EnergyNetworks](https://twitter.com/EnergyNetworks)

© ENA 2021

Energy Networks Association Limited is a company registered in England & Wales No. 04832301
Registered office: 4 More London Riverside, London, SE1 2AU