



# 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  
Department for Business, Energy and Industrial Strategy  
Abbey 1, 3rd Floor,  
1 Victoria Street  
London  
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### **And**

### **Ofgem**

Team: Industry Code and Licensing Team  
Office of Gas and Electricity Markets  
Postal Address: 10 South Colonnade  
Canary Wharf London  
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Email: [codereform@beis.gov.uk](mailto:codereform@beis.gov.uk) and [industrycodes@ofgem.gov.uk](mailto:industrycodes@ofgem.gov.uk)

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

Name: Mark Duffield

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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    ☐ Disagree    ☐ Strongly Disagree    ☐ Not sure

Comments: The engineering standards are generally highly specialised engineering or technical documents. There are therefore parallels with the Grid Code or Distribution Code and as such we do believe that there is merit in bringing these documents within the scope of a specific code manager role. It may be the case however that the role could be an expansion of existing Grid Code or Distribution Code manager roles however rather than establishing one or more specific code manager roles for the engineering standards given the likely degree of overlap between them.

### 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: System Delivery is a critical role and the timely and efficient delivery of complex system changes is likely to become more important in the future as the energy system becomes more decentralised and complex. Where the current roles of system delivery and code management have been delivered by the same entity – e.g. Elexon – the process generally works well. We think that there is value in examining whether specific licence conditions could be introduced to further strengthen the incentives for efficient and economic systems delivery.

### 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    ☐ Disagree    ☐ Strongly Disagree    ☐ Not sure

Comments: We support the proposals for the Strategic Function as described in the consultation document. Our view is that it is important that an independent strategic decision maker is in place to oversee the evolution of energy market regulation as we move towards the energy system of the future. We would agree that the role envisaged for the Strategic Function would overcome some of the limitations of the existing code governance framework. In particular we support the development of a “Strategic Direction” document that describes in detail how to take forward government energy policy as set out in the government’s Strategy and Policy Statement while also considering wider developments in the energy sector. This will be a critical role for the Strategic Function as it seeks to address some of our perceived shortcomings in the industry led process, which while reasonable at delivering incremental changes, is less than efficient at delivering widespread cross-industry change.

#### 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    ☐ Disagree    ☐ Strongly Disagree    ☐ Not sure

Comments: A well-resourced and expert code manager will be important to facilitate the assessment and implementation of changes to the regulatory framework. It will need to strike the right balance between incremental changes desired by individual industry parties while also seeking to implement the wider “Strategic Direction”. This will be a significant challenge for a code manager and it is important that they are resourced appropriately. It is also critical that they are able to work extremely well with the Strategic Function such that decisions on how to deliver change can be made efficiently and continuously. A key aspect that we would like to see further clarity on is around the role of the code manager in regard to proposed code changes. We note that the code manager might have the ability to refuse to accept a change where it “has no reasonable prospect of being approved”. This is a significant but highly subjective power. It will be absolutely critical that this power is well defined with objective criteria or alternatively it may be necessary to have this power reserved to the Strategic Function. Finally on the role of the code manager on prioritisation. Under current governance industry led panels manage the prioritisation of code amendments. Inevitably this process will disappoint some that feel their amendment should be afforded a higher priority. Prioritisation must take account of a number of objective criteria some of which are held above others when determining which order to assess amendments. A Code Manager, acting in tandem with a Strategic Function may be able to prioritise more effectively. That said where industry expert resources are still being relied upon to assess any change proposal, constraints in the availability of such resources will also still need to be identified and considered somehow.

#### 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    ☐ Disagree    ☐  
Strongly Disagree    ☐ Not sure

Comments: There clearly needs to be a role for industry experts to discuss, assess and comment on proposals. Some of the most knowledgeable individuals on how the energy regulatory framework functions are employed within the industry and retaining access to this expertise is crucial. That said it is important that a wide diversity of views are facilitated by the stakeholder advisory panel. For this reason it is prudent to adopt a “constituency” type appointment process to ensure the widest variety of views are retained. Given the move from code panels to stakeholder advisory forums it will be very important to define the role of the stakeholder advisory forum precisely so that it is clear what its remit is and we look forward to this being the subject of a future consultation.

### 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    ☐ Disagree    ☐  
Strongly Disagree    ☐ Not sure

Comments: No further comment

### 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    ☐ Disagree    ☐  
Strongly Disagree    ☐ Not sure

Comments: No further comment

### 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: We generally agree with the proposals that compliance activities currently undertaken by code panels should move to the Code Manager / Integrated Rule Making Body (IRMB) depending on the governance option taken forward. On appeals we believe that criteria for disputing Strategic Body decisions via either CMA or Judicial Review should be retained rather than having decisions only being able to be appealed via Judicial Review.

### Question 9

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

Do you have any thoughts on other potential appeal routes?

Comments: No

### 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    ☐ Disagree    ☐ Strongly Disagree    ☐ Not sure

Comments: No further comment

### 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    ☐ Disagree    ☐ Strongly Disagree    ☐ Not sure

Comments: We agree with the proposal to combine existing BEIS oversight of Ofgem's activities alongside stakeholder input as representing the most appropriate approach to monitoring and evaluating Ofgem's performance as strategic body.

## 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   ☐ Disagree   ☐  
Strongly Disagree   ☐ Not sure

Comments: We are not convinced that tendering for a code manager is necessarily the right approach. As expressed earlier in the consultation the knowledge skills and experience needed by a code manager is such that it is very likely that the incumbent has a near monopoly of staff that are able to discharge the role. It is possible that competitive tender will only bring about consolidation of code managers, as one is able to outbid incumbents by leveraging economies of scale around administrative tasks while recruiting experts from the defeated incumbent. However this will leave one or two large organisations whose position will become effective monopolies but without the benefits of being able to compare their performance to others. Potentially then a more robust system that delivers greater long term benefits is to preserve a number of licenced code managers whose performance relative to each other can be benchmarked and regulated appropriately.

## 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   ☐ Disagree   ☐  
Strongly Disagree   ☐ Not sure

☐ Not sure

Comments: No further comment

## 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    ☐ Disagree    ☐  
Strongly Disagree    ☐ Not sure

Comments: No further comment

### 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    ☐ Disagree    ☐  
Strongly Disagree    ☐ Not sure

Comments: An organisation other than Ofgem taking on the role of IRMB, whether that be an FSO or otherwise is challenging. The role of an IRMB needs to have a genuine neutral focus on what is best for the consumer ultimately and ideally be free of any conflicts of interest. Such conflicts will almost always arise for an industry party, even an FSO, as that organisation has its own costs of operating which depending on one approach or another will be increased or decreased as appropriate. This must be stripped out from any IRMB however. That organisation should be empowered to decide based purely on the interests of consumers what the best approach is. If that requires lesser or greater resources for the IRMB then that should be highlighted as part of the assessment and implementation of any change, but it should not be a reason in isolation to implement a change or not.

### 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: As noted above, Ofgem is unique in its role to be able to unambiguously focus on the best outcome for the GB consumer and this puts it in the best position to act as strategic body.

*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   ☐ Disagree   ☐  
Strongly Disagree   ☐ Not sure

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

### 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   ☐ Disagree   ☐  
Strongly Disagree   ☐ Not sure

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

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

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

### 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   ☐ Disagree   ☐  
Strongly Disagree   ☐ Not sure

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

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

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

### 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.

Achievement of net zero targets and the timely delivery of any changes arising out of the Offshore Transmission Network Review.

## 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: There are a number of wide ranging reviews ongoing that will ultimately impact upon the energy codes. This includes such reviews as the Offshore Transmission Network Review and Transmission Charging Review. It is vitally important that code changes being delivered by such industry initiatives are not disrupted by a change to the overall governance approach. For example, in the case of the Offshore Transmission Network Review large scale investments to help the UK achieve its net zero targets may be being contingent on the changes to codes. Any delays to the timely implementation of such changes could delay these investments and so it is crucial that changes to governance do not materially delay the progression of “in-flight” code modifications.

How do you think these could impact on code reform?

Comments: As above

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

## 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?

[Click here to enter text.](#)



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