



# 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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Department for Business, Energy and Industrial Strategy  
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### **And**

### **Ofgem**

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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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	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: Our vision under the Energy Codes Reform would be for the consolidation of the existing 12 codes into four consolidated codes covering Retail, Electricity Technical, Gas Technical and Wholesale Energy. We would also welcome the appointment of four Code Managers via competitive tender who are licenced under price control and accountable to Ofgem as the Strategic Body.

We would recommend that the electricity engineering standards would sit with an Electricity Technical Code Manager and the gas engineering standards would sit with a Gas Technical Code Manager. The consolidation of the technical codes need not be treated the same as the consolidation of other commercial codes such as retail and wholesale. This is in keeping with the proposal under the preferred Option 1, to introduce one or two code managers to be responsible for developing the in-scope engineering standards.

### 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: We agree that Code Managers should have licence obligations to co-operate with central system delivery bodies. We recommend that the central system delivery bodies for electricity delivered by Elexon should be appointed by competitive tender and licenced under price control as per the current arrangements for smart metering (and soon to be central switching service) delivered by the DCC. We also recommend these bodies be accountable to Ofgem as the Strategic Body.

Regarding the treatment of the Data Transfer Service (DTS) for electricity we 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. DNOs currently discharge their licence obligation to provide the DTS by procuring with other DNOs the Electralink Data Transfer Network (DTN). We want to retain our current licence obligations to provide this service at relatively low cost to customers through our chosen 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 and 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 to ElectraLink 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).

### 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: Yes. We agree with the proposed roles and responsibilities of the Strategic Function. We agree that the creation of a new separate Strategic Body, as proposed under the preferred Option 1 to steer the strategic direction for the development of codes, should help respond to challenges, such as decarbonisation, in a way that works for customers and the industry. Separation between the Strategic Function and the Code Manager role facilitates open and auditable accountability between the parties.

We would welcome the Strategic Body having an additional responsibility under their 'Oversight and monitoring'. Whereby, the Strategic Body would monitor (and hold powers for enforcement over) the Code Manager's performance to act upon learnings from stakeholder engagement in their annual delivery plans.

### 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: We would welcome Code Managers when producing their annual delivery plans have a licence obligation and performance standards to proactively and innovatively engage with and act on learning's from stakeholder engagement.

Also, we would welcome further engagement with BEIS and Ofgem on the proposals for proposing changes to the codes. If any interested person, including code managers will be able to propose a code change (to align with the approach under the Retail Energy Code) and Code Managers will not be bound by stakeholder advisory forums advice this could result in a much more and potentially uncoordinated change. Whereby, there are exponentially increasing code change costs (far greater than projected in the BEIS and Ofgem impact assessment).

Furthermore, while it is important to ensure that the Code Manager has the authority to select and set up appropriate stakeholder groups and prioritise certain changes at pace, we would welcome Code Managers for the technical codes having the flexibility to do this for certain minor changes under predefined circumstances without necessarily having to report or gain prior approval from the Strategic Body.

Finally, whilst we welcome the proposal for Code Managers to be able to refuse to accept a change against set criteria (such as where a change is not materially different from another live change or concerns matters outside the scope of the code); we do not agree that it should be at the Code Managers discretion that the change has '*no reasonable prospect of being approved*' for a material change. Material changes are for approval or not by Ofgem as the Strategic Body, so it would be inappropriate and outside the Code Managers skill set and accountability to make those decisions.

## 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: In light of the proposal to disband code panels, we are disappointed that Code Managers should not be bound by the advice of the stakeholder advisory forums. We request further refinement on how Code Managers would act on the advice from industry stakeholder advisor forums 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 industry stakeholders. We agree it is crucial code parties and other stakeholders remain involved and engaged in code governance.

As acknowledged in the consultation, current network codes are multilateral contracts between the code signatories (who are regulated on their licence obligations). Whilst, we welcome the amended BEIS and Ofgem position to continue to allow licensees the ability to propose code changes, the proposals outlined in this consultation remove the ability of industry participants to robustly challenge amendments made by non-signatories (who may not have technical knowledge) to what is a technical contract that is enacted through licence obligations by Ofgem to sign and comply with the various codes.

While prioritisation and development of changes are ultimately the responsibility of the Code Manager there should be a requirement for the Code Manager to formally consider the views of forum members and be bound to set out why a particular decision has been made especially if the Code Manager is not acting on that advice. This will ensure that all views are heard, and the Code Manager can be seen to engage across all users of the Code. It will also reduce grounds for future appeals to the Strategic Body and Competition and Markets Authority (CMA) where final decisions may not have met all stakeholder issues and duly considered all technical constraints.

### 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 with the 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.

### 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: We do not agree with the creation of a new strategic function which would be bundled in with the code management organisation as an Integrated Rule Making Body (IRMB) as set out under Option 2. Furthermore, we do not agree with the proposals for the FSO taking on this role. If this option is chosen we do not agree and we can find no justification for 'some' of the decisions made by the code manager function of the IRMB to be reviewed through an internal body first (and why this is different to Option 1), before becoming 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)?

Comments: Yes. Under both options we prefer the combined approach whereby Ofgem's decisions on material code changes are appealable to both judicial review and the CMA.

### Question 9

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

Do you have any thoughts on other potential appeal routes?

Comments: We do not agree it would be cost effective or in the interests of regulatory simplification to create a new independent appeal body. The CMA and judicial reviews are fit for purpose for appeals which are material.

### 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: We agree 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.

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 also require a continued high level of industry resource investment and the code manager to actively listen and take account of the input.

### 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: We agree that the approach should be in line with the existing mechanisms in place between BEIS and Ofgem, whereby Ofgem would inform government of its performance as the strategic body and effectiveness in delivering strategic change via an annual report about its activities and an annual forward work programme on upcoming direction. We would welcome Ofgem reporting in this way and seeking stakeholders' views on its works for the Energy Codes Reforms and the interdependency between all the Significant Code Reviews. Also, when Ofgem is seeking regular stakeholder feedback on the performance of Code Managers we would welcome transparency on how Ofgem acts on this feedback when reporting to the Secretary of State on these matters in its annual report.

## 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: Our preference is for Code Managers to be appointed via competitive tender by the Strategic Body rather than at the discretion of the Strategic Body if this is via tender or direct selection. Your rationale for enabling alternatives to a competitive tender so as to leave open the door for existing code administrators to become code managers, could encourage complacency and deliver the same approach as now with increased costs and discourage a step change towards innovation.

A tender process would set criteria which draws the best from each of the existing code models but also learns lessons to avoid making the same mistakes. We agree then that those contractors appointed would be awarded a licence under price control by Ofgem.

We welcomed the recent Ofgem Code Administrators Performance Survey 2021 to understand better the performance from existing codes and code administrator and delivery body models. We would recommend the results of the survey are used to determine what success will look like under the new framework for example in incentivising cost effectiveness.

We note that the consultation states there could be a strong case for the FSO to become a Code Manager for one or more codes that are clearly in its remit given the strong links to its wider proposed role in supporting the transition to net zero. It should be recognised the ESO as the current code administrators of the Grid Code and Connection and Use of System Code historically score low on net satisfaction in the Ofgem Code Administrator Performance Survey.

## 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: We agree Code Managers should be funded through charges levied on code parties. We propose that these costs are treated as pass through costs under ED2 for licenced code parties as per the ED1 treatment of DCC charges under the SEC.

#### 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: Whilst we agree that Code Managers are accountable to the Strategic Body when setting its budgets, we have some concerns regarding the proposal that the Strategic Body would not necessarily approve the Code Manager budgets. We welcome a future consultation from BEIS and Ofgem on how stakeholders would be consulted on the Code Managers setting budgets and charging methodology as lessons can be learnt (positive and negative) from the approach taken for the Retail Energy Code on stakeholder engagement and the differential treatment of core and additional user charges.

#### 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:** We do not agree with the creation of a new strategic function which would be bundled in with the code management organisation as an Integrated Rule Making Body (IRMB) and where the FSO takes on the role of the IRMB as set out under option 2.

#### 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: Option 1 gives the greatest chance of success for Ofgem as the separate strategic body, to steer the strategic direction for the development of codes, to respond to challenges, such as decarbonisation at least cost, in a way that works for customers.

*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: We are unable to agree or disagree with the impact assessment as the exact costs for the code administration systems are not included and the costs for the latest in-scope central delivery body functions and engineering standards are not included.

#### 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: We have no comments.

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

Comments: We have no comments,

#### 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: Whilst there may be some savings and benefits to industry from no longer being required to participate in code panels and certain modification work groups this would be balanced or outweighed by the request from Code Managers and Strategic Body for information and consultation and the industry's participation on the stakeholder advisory forums and in performance assurance. We anticipate industry being called upon frequently by the Code Managers for technical expert advice on modifications as well as additional industry costs from a broader range of changes.

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

Comments: No, we anticipate increased costs from meeting Code Manager requirements on requests for information and implementing any broader range of code changes.

## 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.

The Strategic Body's decisions may be material regarding network outcomes so Ofgem's price control arrangements for RIIO-ED2 need to be mindful of Ofgem's own decisions as the strategic body. This would include any licence changes that are required including funding any material new activities (or large number of when taken individually small changes that become material in combination) to be undertaken as a result of code changes approved by the strategic body.

We would welcome more detail from BEIS and Ofgem on how industry could recover the costs of delivering the reforms outlined under this SCR such as for a new Electricity Technical Code. We believe Ofgem could enable use of pass through mechanisms (which are currently in use under RIIO-ED1 and proposed under RIIO-ED2 for smart metering) for cost recovery under the RIIO-ED2 price controls and build known costs of supporting the changes into baselines for ED2.

## 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: We have no comments.

How do you think these could impact on code reform?

Comments: We have no comments.

## **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: We have no comments.

## **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 have no comments.

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