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Office of Gas and Electricity Markets

By email to: codereform@beis.gov.uk and industrycodes@ofgem.gov.uk

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Consultation on Reforming the Energy Industry Codes

Thank you for the opportunity to respond to your consultation in relation to the above¹. As a Gas Distribution Network (GDN) our responses are focused around our experience with the relevant gas industry codes – specifically Uniform Network Code (UNC), the Supply Point Administration Agreement (SPAA), the Smart Energy Code (SEC) and the Retail Energy Code (REC), although we have provided wider observations where we are able.

For the purposes of ease of comparison with other respondents, we have structured our response around the questions as posed in your consultation document.

Should you require any further information with regards to our response then please do not hesitate to contact me at Hilary.Chapman@SGN.co.uk

Yours sincerely

Hilary Chapman
Regulation and Codes Manager
SGN

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004005/energy-code-reform-consultation.pdf

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

We support the principle of Code Managers being accountable to the Strategic Body through licencing, although note that such an arrangement needs sufficient flexibility to enable the Code Manager to grow into the evolving requirements and opportunities.

We support the ambition of the centralisation of control and coordination of standards and understand the principle of including the engineering standards within licencing, due to their customer impact. However, due to the scope of knowledge their inclusion would necessitate at a Code Manager level, we would caution against their inclusion at this time.

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?

We support licencing the central system delivery bodies, and note this model is already in use with DCC in relation to switching activities. There are benefits to the wider application of this approach, building competition into service delivery and creating opportunities for organisations to combine at a contracting level, which could result in a more consolidated and coherent approach to system change and management.

However, a wider review of industry licences will be required to ensure consistency and avoid duplication – for example if Xoserve as Central Data Service Provider (CDSP) were to become licenced, this would necessitate removal of the equivalent licence condition² currently placed upon Gas Transporters.

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

We agree with the proposed roles and responsibilities.

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

We agree with the proposed roles and responsibilities.

We recognise the benefit of Code Managers being responsible for proactively delivering code changes and anticipate this may resolve many of the current challenges faced by industry when trying to coordinate and prioritise change. We recommend that Code Managers should be monitored against objective and transparent delivery targets.

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?

We support the involvement of stakeholders in change development and in particular consider it advantageous to devolve change decision-making away from industry participants where commercial interests may be of influence. Furthermore, we welcome the engagement of a wide range of stakeholders, for example by encouraging involvement from parties beyond those which are code signatories.

² Standard Gas Transporter Licence Condition, Section B Condition 11 - Agency

However, such an approach does require careful consideration at a practical level, for example a distinction will be required between material or commercially-impacting changes vs non-material, low-level changes, with such distinction driving different and proportionate change development and consultation processes. Consideration will also be required as to how to manage contentious proposals and how stakeholders can constructively raise objections, particularly given the removal of the ability for alternate proposals to be raised. Furthermore, certain industry codes, for example UNC, are contractual agreements and therefore sufficient legal protections, for signatories but also Code Managers, will be required, particularly given the diminished influence of the former on changes made to the contract to which they are party.

Given the above, the change development process will require sufficient definition to ensure that decisions are well-considered and can withstand challenge. This will require clear demonstration of the consideration of stakeholder feedback and clear demonstration of customer, social and environmental impacts, in particular where different demographics or geographies are impacted differently.

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?

If the purpose of the Strategic Direction, Code Manager and the Delivery Plan is to align the Code Manager and Strategic Body more closely, then in theory there should be very few circumstances in which a Code Manager's decision requires overruling. However, we acknowledge that not every circumstance can be predicted and therefore we support the proposals, but would expect there to be clear criteria under which the Strategic Body overrules a Code Manager's decision.

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 function would be appealable to Ofgem, with a potential prior review route via an internal body?

We note that the decision-making role and monitoring compliance detail is to be consulted upon separately so are unable to comment at this time.

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)?

We support a combination of judicial review and CMA appeals as we consider each process has a different purpose – the judicial review process is focussed upon the process followed, however the CMA process is more specialised and considers whether a policy is founded on evidence and whether there are any errors in the basis on which the decision has been made. Therefore, both processes are required.

9. Do you have any thoughts on other potential appeal routes?

Given the removal of industry panels and relative reduction in code signatories' influence, a lower level appeals process is also required to challenge decisions for which the judicial review or CMA routes are not appropriate or proportionate.

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

The consultation document articulates Ofgem already has at least some of the "relevant objectives, powers and duties" and "skills and capabilities required". While this may be the case, formally taking on the Strategic Body role will create a significantly higher expectation and operational burden (as acknowledged by the increased operational costs highlighted in the impact assessment), therefore we consider it to be a considerable stretch in scope and role. As this is likely to require additional resources,

in the very least to build resilience alongside those already in place, we would pause to consider whether a separate organisation or ring-fenced department would be appropriate. Creation of a separate entity, supported by informed experts, would facilitate a greater sense of independence and impartiality, providing the opportunity for more accountability for delivery.

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

We support the proposed monitoring and evaluation between BEIS and Ofgem, in addition to seeking stakeholder feedback. We would expect the monitoring to include objective and transparent Key Performance Indicators, aligned with those applied to the Code Manager.

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

We recognise that a key benefit of tendering is the drive towards competitive costs. However, we would question whether many of the requisite values of a Code Manager can be accurately quantified in a bid or tender evaluation process – for example, it is very difficult to define and cost a robust 'critical friend' function, however such activities are seen in several of the Code Administrators and are immensely valuable to the overall successful operation of a change process.

Selection, rather than tendering, may therefore be a better process to appoint Code Managers. This also creates the opportunity to be more agile and create a glide path for Code Administrators to work towards becoming Code Managers where appropriate, therefore retaining the wealth of existing knowledge and experience within the former organisations.

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

We support the principle of the Code Manager being funded by Code Parties and agree that this is more flexible than the use of licence fees.

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

We agree, although the setting of annual budgets should include stakeholder engagement and consultation.

Regular reviews of performance against budget should be conducted, in order to measure the effectiveness and efficiency of the Code Manager and to inform the setting of future budgets. We suggest this information is included in an annual report to the Strategic Body and industry.

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

We agree with Option 1 as the preferred option, as we consider Ofgem better placed to act as the Strategic Body rather than the FSO taking on the role of IRMB. In particular Option 2 represents a relatively higher stretch in scope and risks a perceived prioritisation of electricity over gas.

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?

We note that the estimated costs are based upon operational data provided by Elexon. Although this provides a good starting point, we are conscious this represents a sample size of one organisation against which several extrapolations and assumptions are then applied. We also note that the Code Manager function itself is at present only initially defined and is likely to develop and change over time.

As such, it is difficult to quantify or agree/disagree with estimated costs and these should be treated with caution.

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?

We acknowledge the existing difficulties in prioritising and coordinating industry change, however do not necessarily agree that this is entirely demonstrated by the selected case studies.

The gas case study effectively highlights the difficulty of progressing change when there are material commercial impacts, which in this circumstance resulted in numerous alternative proposals, leading to a protracted and complex development process. However, under the existing code arrangements, the Gas Transmission Charging Review could have been managed as a Significant Code Review (SCR) which would likely have improved coordination and reduced much of the contention associated with the changes. As such, the current arrangements could have sufficiently overcome many of the practical barriers articulated within this case study. Other barriers articulated in this case study depend on the future capabilities of the Code Manager – for example the issue of non-compliant proposals would be influenced by whether the Code Manager is able to provide or procure legal guidance – and as such cannot be determined at this time.

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 per our response to question 17, we note the difficulties in building an accurate cost estimate at this time.

Specifically in relation to the estimated savings associated with workgroup participation, we would question whether these savings will materialise – while savings may occur for organisations no longer resourcing industry panels, the ambition for a wider range of stakeholder engagement may result in incremental costs being incurred across a greater range of organisations, and as such any anticipated saving may be diminished.

We do not agree that savings will necessarily be created through a reduced consultation burden, as active Code Parties will likely still seek to engage in the consultation process, particularly as consultation may become even more important under the new arrangements, given the relatively diminished influence in the change development stage.

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?

While the timing of significant governance changes is always likely to be challenging, implementation of Code Reform should take account of the existing industry change horizon and government priorities. In particular, industry is currently focussed upon delivery of Net Zero ambitions, and therefore consideration should be given to whether Code Reform constitutes a helpful step or a distraction.

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

As above. Net Zero will itself necessitate new regulatory models and coordinated central system delivery, and as such could provide useful lessons to inform Code Reform.