



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
SW1H 0ET

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Ofgem

Team: Industry Code and Licensing Team
Office of Gas and Electricity Markets
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Canary Wharf London
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Email: codereform@beis.gov.uk and 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

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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:

We agree and support the proposals for inclusion of in-scope engineering standards, including SQSS, in the scope of the Energy Codes Review. The engineering standards and their subsidiary documents play a pivotal role in the design and operation of the system, which will be integral to achieving net zero ambitions and facilitating innovation.

We don't believe they should be treated differently to that of the Codes Administration Code of Practice (CACOP) and don't believe they require to be ring-fenced. Given the direct and indirect links to Grid or Distribution Codes requirements, we believe it would be more beneficial to consolidate and/or incorporate these standards into other code frameworks rather than maintaining them as separately administered standards.

We note the proposal relates mainly to 'electricity in-scope engineering standards' - which may reinforce the need to have separate code managers for gas and electricity as such standards will not be relevant in gas. Although, in principle, this may be a useful function so that regulatory, commercial, and engineering issues can be considered together.

In relation to gas standards, there is currently a proposal, subject to UK Government consultation, to move the UK gas quality specification out of GS(M)R and into a new IGEM standard, with an amended GS(M)R 'pointing' UK gas transporters to the specification in that new standard which gas conveyed in their networks must comply with. The rationale for decoupling the specification from GS(M)R is the expectation that the specification will require amendment more frequently in the future than has been the case in the past and that an industry change process is preferable to a parliamentary one to achieve this.

The working assumption to date has been that IGEM would manage this change process in a similar way to all the other technical standards that it owns, maintains, and periodically reviews. However, given its importance technically and commercially and the potentially conflicting interests from different industry stakeholders, we question whether what is proposed will be sufficiently robust and also whether Government accountability could and should be delegated to an industry association.

We therefore suggest that consideration be given to whether this proposed standard should be included within the scope of these proposals because of its direct effect at the interface between network licensees and their upstream and downstream customers on the gas network and because – if implemented – it will also impact delivery of the strategic

direction, given that the evolution of this standard will be a key enabler in facilitating hydrogen injection.

The proposal also suggests the Future System Operator (FSO) would be heavily involved in the engineering standards if it was not the code manager (CM) but in parallel with this consultation BEIS / Ofgem is seeking views on an FSO, so there are interactions between the consultations that make it difficult to comment on two inter-related and moving issues. Irrespective of the outcome, it will be imperative to ensure the relevant body has the skills, knowledge and expertise to fulfil this task.

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 central system delivery function plays an important role in the current framework and in future development of the system. We believe the integration of central system delivery bodies and code managers through either of the proposed models would work. However, if they are not integrated then a licensed central system delivery body is likely to be the most robust model.

We agree with the concept of Code Managers, but the role must be clearly defined and communicated. It is essential that industry is consulted in greater detail about the roles and responsibilities both of the Code Manager(s) and Strategic Body, before the Code Manager sets out their code change delivery plans, in order to ensure they are established and resourced appropriately.

We believe Central System Delivery Bodies, where they are not or cannot be directly affiliated to a Code Manager (e.g. Elexon and data agents facilitating BSC processes), should be separately licensed and overseen in a similar manner to Code Managers.

An element of oversight will be required to ensure the Code Manager(s) operates as intended to achieve the required strategic objectives.

Question 3

This question refers to chapter 3.1 – Setting the strategic direction, chapter 3.2.4 - Detailed roles and responsibilities of the strategic body, and chapter 3.2.7 – How would our proposals differ under option 2?

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

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

Comments:

The scope of the Strategic function is sensible and should serve to direct code change closer to government policy, which is a deficiency of the current model.

We support the need for more strategic direction within the code development process: a forward looking, policy-guided approach to managing the code frameworks which separates decision making from the industry, should be a key outcome for this review. Separation would deliver the most efficient and effective solution and our preference is for Ofgem to fulfil the role of the Strategic Body to oversee changes.

We feel the Strategic Body should focus on gathering information, horizon scanning national and international initiatives and the high-level government strategy. The Code Manager should focus on effective and timely delivery of code modifications, consultations and develop two-way communication routes for industry and non-industry interested parties.

The alignment of the strategy and management function is essential and good engagement and communication with industry processes and parties will key to ensure timely and efficient governance of code changes for the successful delivery of key government targets.

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 broadly agree with the scope of the Code Manager. The power for the Code Managers to reject certain modifications with justification is a beneficial power, effectively enhancing the current role of Industry Modification Panels for self-governance modifications which provides efficiency. However, an effective and efficient appeals process is important and required alongside the proposed reforms.

We welcome the acknowledgement that code changes that are not directly related to the strategic direction should be able to progress and in principle support such proposals being prioritised against a relevant set of criteria.

We can see merit in the proposal that any interested person – in addition to those parties that are signatories to a particular code – should be able to propose changes. This has sometimes been a barrier to legitimate change proposals coming forward, with parties either having to demonstrate that they are materially affected, arrange with a code party to raise a proposal on its behalf, or electing to accede to a Code to become eligible.

Further legal consideration may be needed to give effect to this proposal, given that parties who are not signatories to a contract would not normally be permitted to propose changes to it. The proposed triage process for code change proposals should help manage any spurious proposals if this reform were to be introduced.

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

We welcome that the proposals recognise that stakeholders play a central role in supporting codes decision making and that it is crucial that they continue to do so. However, much more detail is required to explain how the strategic direction will be set with sufficient opportunities for stakeholders to feed into it. We believe there is a strong need for stakeholder engagement to inform the strategic direction and the engagement must be with relevant parties, to ensure expert opinions are gathered at the right times.

The proposals for stakeholder engagement require a lot more definition to give reassurance that this does not end up being discretionary. The term ‘advisory forums’ does feel limited in their ability to engage directly to influence strategic direction or code change delivery. In addition, we believe more detail is needed on:

- The role of the stakeholder advisory forums
- Composition of forums
- How participants are identified
- The legal standing of forums
- How the forums agree the advice to be provided
- How the code manager will demonstrate it has given advice ‘due regard’
- The relationship with working groups, which is where most of the detailed development work takes place

Whilst we understand the proposal to disband code panels generally, there are specific instances where existing Code Panels provide robust and effective scrutiny by key

stakeholders of code delivery activities. Consideration should be given to the how to integrate best practice from of existing Code Panel business into the revised model.

Question 6

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

In relation to option 1, where Ofgem would be the strategic body, to what extent do you agree with our proposals on how **decisions by the code manager** would be overseen by the strategic body with, as a minimum, existing appeal routes retained and moved to the strategic body

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

Comments:

We agree that compliance with licence conditions should remain an issue for Ofgem. If Ofgem will ultimately be the Strategic Body this approach is sensible and provides helpful continuity from the existing code change delivery approach.

However, it will be important to set out a clear framework or criteria by which the Strategic Body can over-turn Code Manager decisions or industry parties can raise appeals, to ensure the status of the Code Manager is not undermined and an effective code change process is implemented.

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 agree that relevant decisions taken by Code Managers should be appealable to Ofgem, however it is important to avoid the process becoming bureaucratic or time-consuming. Ofgem should ensure there are clear timelines for appeals and specify the timeline within Energy Code guidelines, so to that it is transparent to all parties. Although, we do not see the need for another body to be involved prior to such an appeal being submitted.

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 agree that relevant decisions by the Code Manager should be appealable to Ofgem. However, we do see the need for a swift and decisive higher-level involvement if Ofgem's decision caused significant concerns with parties. Overall, we do not see how the role of Ofgem should change under either model – the only difference is that Ofgem would not be part of the IRMB.

Question 9

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

Do you have any thoughts on other potential appeal routes?

Comments:

Decisions by a Code Manager on process routes and prioritisation should be appealable to Ofgem and decisions on material changes to codes should be made by Ofgem and be appealable to a third party, e.g. judicial review, in addition, any process must be accessible to all parties, and transparent during the appeal and post any decision.

It is also important to note that while change and decisions will always try and consider all stakeholder views, it is accepted that not all parties will always agree with all decisions. It will be important to ensure there is adequate 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.

Therefore, while we agree that appeal rights are vital to drive the right behaviours by both the Code Manager and Strategic body, consideration should be given to ensure a swift and decisive higher-level third-party appeal mechanism.

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 with the operating and accountability model structure for Ofgem as the strategic body. The creation of a strategic direction which is clearly communicated and understood by industry, in order to meet the net zero challenge, having a clear pathway will be critical and help guide industry evolution.

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 believe the proposals on these matters are quite light touch. Consideration needs to be given to the role of industry experts in this process. We would also welcome more information on the role of BEIS and their rights to take enforcement action on any failures of the Strategic Body.

Ofgem could consider publishing a report setting out their strategic objectives and code changes that had been implemented to give effect to them. This should also include timeliness measures, such as implementation dates in order to demonstrate the effectiveness of the reforms. This is a key aspect of transparency which will give all parties confidence in Ofgem's role.

It will be important to seek stakeholder views on the performance of the strategic body and of code managers, to be carried out by a separate organisation rather than the organisation itself, to ensure impartial reporting.

Question 12

This question refers to chapter 5.2 - Establishing code managers.

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

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

Comments:

We believe BEIS should set a more rigid framework for the Strategic Body to appoint Code Managers. If BEIS/Ofgem consider there is a risk that a singular approach to appointing Code Managers may not succeed they should provide the Strategic Body a range of options to appoint them (including Code Managers of last resort).

If there is a requirement for one participant to do this work on behalf of the whole industry then it could be beneficial to introduce an element of 'tendering' for this work, on a periodic basis. Clearly defined objectives should be set out for those 'bidding' for this work to ensure they are fit for purpose and ensure the right balance between the commercial impact on participants and actual benefits to consumer.

We would oppose a tendering process which drives the wrong outcomes. The lowest cost option does not always deliver the most effective outcomes for industry and the tendering process needs to be cognisant of that to ensure appropriate parties are appointed. The Strategic Body should seek input from relevant industry experts as part of the tender activity – perhaps to help consider preferred bidders, or as part of a 'selection committee' to appoint them.

Consideration should be given to consulting industry on incumbent parties on the opportunity to continue their code administrator roles, in an expanded code manager capacity - to ensure some useful continuity if the industry believes their performance levels are appropriate.

The Joint Office (JO) is currently funded by transporters for the next five years - we think the allowances and funding model would need to be reviewed if the scope of the role the JO currently provides was to change.

The funding model must be agile rather than restrictive, the costs of funding will always be less than the benefits of getting it right for consumers. An option could be for transporters to pay the initial costs but on a pass-through basis so they can recover that cost from the wider industry through their transportation charges.

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:

Adequate resourcing will be required to ensure the Strategic Body and the Code Managers have the appropriate technical and commercial skill set to perform their respective roles and to be more agile and process changes more quickly. It is likely that any appointed entities who have incumbent roles in code development today (e.g. Ofgem and ESO), would need to evolve to undertake the new roles envisaged by this consultation, increasing their staffing levels and/or subject matter expertise as a consequence.

Overall, we agree with the proposed funding model, as it seems more flexible than license fees. It will be important that any new bodies have the necessary capabilities and resource to ensure that the stated benefits are fully realised in the most practical manner. Some element of Code Manager funding could be from 'party accession' or 'participation' fees, like those that are charged by Elexon for BSC. If licencing is the preferred model to regulate the activities of code managers/central delivery bodies, then some element of price control arrangements used for the network companies may be a suitable model to set budgets and to manage performance.

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:

We do not believe that the strategic body should be accountable for code manager budgets. While we agree it is right that code manager budgets are submitted for review, particularly in the context of a licencing/price control model, code managers should have the right to determine the budget they believe is reasonable to discharge their duties (within reason) and the strategic body should have the right to review and challenge this,

but their scope to set or veto it should be limited. The budgets must be agile to respond to market needs, rather than restrictive.

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:

Whilst a potential FSO could take on this role, we believe that an FSO should focus on developing capabilities and responsibility for whole system planning and that Ofgem would be better placed to take on code reform. Option 2 also limits a useful separation of duties and the level of oversight as afforded by option 1.

An FSO would need to be resourced appropriately to accommodate option 2. We believe option 1 delivers this coverage with minimal additional resource burden, without relying on the independence and expertise of an entity whose remit is subject to a separate on-going consultation.

Question 16

This question refers to chapter 7.1 - Options analysis

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

☒ Option 1, where Ofgem is designated as the strategic body with the power to licence separate code managers

☐ Option 2, where the FSO takes on the role of an IRMB, which combines the strategic and code manager functions

☐ Not sure

Comments:

We support the need for more strategic direction within the code development process: a forward looking, policy-guided approach to managing the code frameworks which separates decision making from the industry, should be a key outcome for this review. In the absence of creating a formal body, we therefore believe that Ofgem (Option 1) would

be best placed to lead this, maintaining a strategic focus, and ensuring alignment with broader changes across licences and the wider industry.

The right composition of this new group is vital to ensure that it has the expertise it needs, that decisions are aligned with policy drivers, and that no one dominant view stifles progress.

Whilst a potential FSO could take on this role, we believe that an FSO should focus on developing capabilities and responsibility for whole system planning and that Ofgem would be better placed to take on code reform.

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:

None identified

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:

Overall, and particularly in relation to case study 2, we believe that a barrier facing code changes is complexity and a lack of strategic direction. A simpler process and a clear strategic direction could have given Ofgem the confidence to be bolder when setting out positions in the code change process. For example, during case study 2, Ofgem could have acted on some of the issues at an earlier point if they were more confident with a strategic direction.

We are also of the opinion that the volume of modifications is a significant barrier. It makes it too complicated for assessment, prioritisation and implementation of code changes. This is particularly true for commercial modifications under CUSC, for example, where industry parties can raise numerous modifications via Open Governance, which by default

creates a barrier for smaller parties, as this work is time consuming and often complicated.

The limited scope for Panels or Code Administrators to intervene to dismiss modifications which are not aligned to broader strategic requirements has not been considered and could be a lower cost alternative. Ultimately addressing the volume of on-going modifications, their strategic direction (or lack thereof), and the accessibility of this to all industry parties needs to be the primary focus of this review. There is a need for clear guidance on topics to make it more efficient and to clarify the legal case early on of modifications to avoid them progressing if they could be non-complaint.

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:

The key factor is an effective and transparent process, not just the cost. Facilitating efficient and effective change should be the overall aim and objective.

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.

Comments:

The ESO are due to publish a Grid Code digitisation consultation imminently, looking at developing a 'Whole System Code' as well as making the existing Grid Code more accessible digitally. It is unclear whether this is part of the ECR, or an allowable early pilot, but clarifying this would be helpful to ensure the outcomes are complimentary for further consideration of accessibility reforms for the codes as part of this 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? How do you think these could impact on code reform?

Comments:

Any transition moving from one model to another will likely be disruptive, considerations need to be made to ensure there is no pause in change. There is also an overlap with the FSO consultation therefore, Ofgem must ensure there is alignment between these to deliver a coherent result.

BEIS/Ofgem should also consider moratoriums on new code modifications being raised by industry. It would be helpful to coincide the appointment of Code Managers with the commencement of price control periods to avoid uncertainty for organisations seeking to provide this service.

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:

None identified

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?

None identified

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