

Consultation on the Design and Delivery of the Energy Code Reform

This response is on behalf of Mutual Energy Ltd., a Northern Ireland-based company who own the Moyle electricity Interconnector between NI and Scotland, as well as the gas interconnector between NI and Scotland, and much of the onshore gas transmission network in Northern Ireland.

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

No answer.

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?

No answer.

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 that there is an issue with regards to a lack of co-ordination between codes meaning that they are often unnecessarily complex and being dominated by large players, shutting out smaller companies and innovators. We therefore see value in having a single entity overseeing all codes and ensuring that they work in unison.

However, we do not see that codes are the appropriate place for more general implementation of government policy. Codes primarily relate to the practical day-to-day management of the energy system and markets. They are essentially multi-party contracts between industry participants which relate to expected minimum standards of service and managing cashflows and settlements. Whilst codes should be mindful of government policy and compliant with legislation, they should not be directly led by it.

We would also have some concerns specifically regarding Ofgem's role as a strategic function. Putting explicit requirements on Ofgem to deliver government policy risks undermining Ofgem's independence. This creates uncertainty for investors as the risk of adverse regulatory events could increase over the longer term. This could ultimately be counterproductive to net zero, as investors will worry that short-term political pressures over consumer cost will factor into decision making and put their long-term returns at risk.

Mutual Energy is also unique in that we are a primarily Northern Ireland-based business who are licensed by Ofgem via gas and electricity interconnector licences. Our concern with Ofgem taking on a strategic role would be that Ofgem don't have the appropriate remit or incentives for implementing UK-wide government policy on net zero, as they are limited to protecting the interests of GB consumers only. Whilst there is no evidence to demonstrate that this would be the case, there is the potential risk that policy decisions would be made that are not in the interests of all consumers in the UK. At the very least if Ofgem were to take on the strategic function role, they should have a duty to consult with the Northern Ireland Utility Regulator where decisions could impact Northern Ireland consumers.

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 most of the proposed roles and responsibilities of the code manager function. Notwithstanding issues highlighted in our response to question 3 regarding the strategic plan being too influenced by short-term political goals, having an accountability mechanism such as delivery plans would lead to more efficient code management.

In terms of proposing and prioritising code changes, the code managers must be adequately resourced such that code changes proposed by industry and other stakeholders are able to be progressed. Such proposed changes might not be related to strategic directions but could be important to the efficient, safe and secure operation of markets and energy systems. In this case too much of a focus on government-defined strategic priorities could lead to important issues not being addressed within the codes.

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 do not see a significant role for stakeholders under the proposals outlined. The reforms would remove stakeholder influence almost entirely, with the main remaining role being responding to consultation.

We think this approach increases the risk of unintended consequences resulting from decisions. Industry has a depth of understanding and expertise which neither the regulator nor the government have in terms of managing the energy market and system. It would not necessarily be efficient for the regulator or government to have that level of expertise and understanding, however it should feed into decision-making more formally.

Perhaps a more stakeholder-inclusive approach might be for code managers to determine materiality, decide whether to approve changes and move proposed changes through the code change process, and then stakeholder panels have something more akin to an expert input and ultimately ratification role.

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?

We agree that retaining existing routes of appeal is necessary. We also feel retaining a formal role for stakeholders, perhaps via a ratification role, would reduce the likelihood and frequency of an appeals mechanism being used.

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?

No answer.

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 believe that all decisions made by Ofgem should be appealable to the CMA. Relying solely on judicial review as a means for appeal would create unnecessary barriers to appeal for all but the largest stakeholders.

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

No answer.

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

No answer.

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

No answer.

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

There is a risk that by favouring tendering and selecting based primarily on cost, lower quality service will be preferred over a higher quality, but more costly service. Alternatively, bidders with other interests might bid artificially low tender prices in order to gain strategic benefit from managing the code. Robust firewalls would need to be put in place to mitigate perceived conflicts of interest.

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

No answer.

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

No answer.

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

No answer.

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

No answer.

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?

No answer.

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?

No answer.

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?

No answer.

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?

We feel that moving to an integrated system approach is the best option in the long-term to deliver net zero most efficiently for consumers. We are responding to the consultation regarding establishing a whole system Future System Operator alongside this one and note that it may be appropriate to consider whether there would be further benefit from merging the gas and electricity codes in the future. This would have implications for code reform and implementation.

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

No answer.

22. We invite respondent's 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 believe, 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.

No answer.

23. Do you have any other comments that might aid the consultation process as a whole?

No answer.