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28<sup>th</sup> September 2021

Dear BEIS and Ofgem

### **Consultation on the Design and Delivery of the Energy Code Reform**

SSE welcomes the opportunity to respond to the Joint BEIS and Ofgem consultation on reforming the Energy Industry Codes.

Please note that this response is provided on behalf of SSE Group (SSE)<sup>1</sup>, and there will be a separate response from our network business SSEN Transmission.

#### *About SSE*

SSE plc is a UK-listed, FTSE-100 company and provider of low-carbon energy infrastructure. Our purpose is to provide energy needed today while building a better world of energy for tomorrow. Headquartered in Perth, SSE is a UK-listed energy company with operations and investments across the UK and Ireland.

SSE is primarily a developer, operator and owner of low-carbon energy assets and businesses, with a strategic focus on regulated electricity networks and renewable energy. Our purpose is to provide energy needed today while building a better world of energy for tomorrow, and our strategy is based on creating value for shareholders and society in a low-carbon world.

SSE is proud to be a Principal Partner of COP26 and its business strategy is firmly geared towards enabling the net zero transition for the whole energy system in the UK and Ireland. In November 2020, SSE joined the 'Race to Zero' campaign by committing to reaching net-zero emissions by 2050 at the latest and setting a relevant Science Based Target.

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<sup>1</sup> SSE Group is formed of core SSE Renewables, SSEN Transmission and Distribution networks businesses, and complementary businesses SSE Thermal, SSE Energy Solutions, SSE Enterprise, and SSE Airtricity.

### *Summary of response*

SSE agrees that there is merit in reviewing the Energy Codes arrangements to ensure that they are fit for purpose and enable the whole energy system to meet decarbonisation targets. We welcome BEIS and Ofgem setting out the next steps following from the 2019 consultation.<sup>2</sup>

SSE's view is that urgent changes are required to strengthen the role of Ofgem to focus on the delivery of net zero. With the pending publication of the long-awaited Strategy and Policy Statement (SPS) consultation, we expect the roles and responsibilities of Ofgem in relation to the delivery of government energy policy to be clarified. Any change to Ofgem's remit or role will have a bearing on the design and delivery of code governance. Against this context we are not convinced that creating a separate "strategic body" is required or necessary if Ofgem's roles and responsibilities are clarified and strengthened.

The primary function of the Industry Codes in our view is to set out the detailed rulebook required to describe processes on a periodic basis in order to achieve an efficient and equitable outcome, underpinning the commercial and physical operation of the energy market. We acknowledge that they are complex documents, but this reflects the complexity of the commodities and the networks through which they are delivered to end consumers; and the incremental nature of change over several years since the last major reform of rules and systems.

SSE agrees that there is a case to improve the current Energy Codes arrangements but disagrees that the proposals in the consultation are inherently better.

- The recent direction of travel through three successive Code Governance Reviews undertaken by Ofgem has increased the level of industry self-governance. The proposals seem to be a sudden reversal of this without a clear rationale.
- We have significant concerns about the changes being made to stakeholder engagement. Additional clarity is needed for the stakeholder advisory forums and what checks and balances are in place to ensure code managers take these into account, particularly where they depart from advice/recommendation received. There is a risk of inefficient/impractical decisions being made if stakeholders are not appropriately engaged and the advisory panels are not sufficiently expert.
- The direction of travel from Ofgem at this time suggests a desire for projects to be industry led such as Market Wide Half Hourly Settlement and the Ofgem Switching Programme which has had a very high level of industry input. This is entirely appropriate given the impact that these projects will have on all industry participants and ultimately customers. There is a risk that by reducing the input from industry, parties are left disenfranchised and less willing to put collective resource into projects such as the above. This may lead to inefficient or damaging changes which are not in the best interests of the market or consumers.
- We note that the consultation on a Future System Operator (FSO) is still underway, and its outcome would have a bearing on whether an Integrated Rule Making Body (IRMB)

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<sup>2</sup> [Reforming the energy industry codes - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/reforming-the-energy-industry-codes)

would be suitable. We have commented in detail in our response, however, would like to reiterate our view that we do not think that the FSO should be both strategic body and code manager:

- o The controls required to guard against conflict of interest would be difficult to manage and monitor.
  - o The code manager functions are distinctly separate and will require an enormous and diverse resource to manage. Each of the codes requires different sets of skills and expertise, which is particularly evident between the commercial (BSC) and technical codes (STC).
- If Code Managers are to be introduced, they could be licensed, however there remains a lack of clarity on how they could be held accountable due to the link with the role of Ofgem as outlined above. Whilst we note that further consultation on the detail is envisaged it is important at this point that all potential models to change the codes are considered, three of which we detail in our response. The funding arrangements for Code Managers also need to be carefully considered, to ensure that they are cost-effective, Code Managers (or other body depending on the business model chosen) should be held to account for meeting their obligations and duties; the risks and costs of enforcement for non-compliance should not be borne by industry.
- There has been insufficient time to determine if the Retail Energy Code (REC) direction of travel is a positive transition for the industry with regard to change requests from non-code parties. We would propose that additional checks and balances such as a higher level of impact assessment on modification proposals from non-code parties needs to be in place as they do not carry the risk associated with any changes.

We welcome the opportunity to rationalise and reduce complexity where possible, but this should not be at the expense of clarity of obligations, or by simply moving obligations from one document to another, as this does little to reduce the stated burden driving the case for change.

In doing this the governance underpinning the Codes should not pick winners (and by implication losers), but instead should provide a level playing field for all to be able to participate and compete in a fair and transparent manner. Effort should be focussed to ensure that current Industry Codes achieve this.

Several quick wins could be achieved now towards achieving this objective. For instance:

- o ensuring that code objectives reference net zero delivery;
- o requirement on code administrators/managers to produce a delivery plan (if not already) and coordinate;
- o the increased commitment/involvement of appropriate Ofgem personnel at all stages of the code modification process; and
- o the creation of a strategic plan by Ofgem with regard to codes.

Our detailed response to each question asked within the consultation document is attached. SSE is committed to playing its part to improve codes governance to deliver the right outcomes for all market participants.

We would be pleased to discuss our response in more detail and participate in any relevant fora on this topic.

Yours sincerely



**Katherine Marshall**

Director of Markets Regulation and Group Compliance

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

- We note that these proposals have not been consulted on previously and that the joint government-Ofgem review considered electricity only.
- Whilst we agree that there may be merit in a single party being responsible for coordinating changes to the engineering standards across the sector, they must have the appropriate skills and knowledge. We are uncertain as to whether a code manager would be the best body to have this oversight.
- We are strongly in favour that System Quality and Standards of Supply (SQSS) is included within the scope of code reform. In terms of the governance structure, we could see how the code manager role could work in theory for this but the key will be that code managers have the right level of expertise and can understand the complexity of the issues they are leading on.

### 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:

- To deliver net zero, clear delineation of roles, responsibilities and accountabilities is required. SSE's view is that urgent changes are required to strengthen the role of Ofgem to focus on enabling the delivery of net zero. With the pending publication of the long-awaited Strategy and Policy Statement (SPS) consultation, we expect the roles and responsibilities of Ofgem in relation to the delivery of government energy policy to be clarified. Any change to Ofgem's remit or role will have a bearing on the design and delivery of code governance. We caution that there must be a sensible balance struck between the need to set out the current day needs, roles and responsibilities to support

industry arrangements; and the forward-looking needs to meet broader energy policy objectives.

- Central systems are critical to the effective functioning of the energy markets with all industry actors interfacing with them. Central system delivery bodies are an integral part of the industry change process and our initial view is that there would be benefits in alignment and transparency. Central system delivery bodies should be held to account for the delivery of these systems and should be adequately funded to implement changes that have been agreed via the code modification process.
- One way of achieving this is through licensing although it is not the only option and this needs to be further explored once there is more clarity about the roles and responsibilities of the Code Managers. If Code Managers are to be licensed the same outcomes could be achieved by requiring them to procure the central system delivery body. This approach could be adopted for other central system delivery service provision, for instance the Data Transfer Service requirements on the DNOs under SLC37. There is, however, a risk that if this activity is also subject to Ofgem oversight this could be over-burdensome due to the number of licences required.

### 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:

#### Overview

- As set out in our cover letter and our response to question 2 above, it is not possible to confirm our agreement with the roles and responsibilities of the strategic function until the higher levels of governance have been confirmed in primary legislation and via a SPS. This will have bearing on any changes to code governance. In addition, the consultation is also open on the FSO and our strong view is that a full picture is required to have a considered view. What might seem suitable today may not be if the roles, responsibilities and accountabilities change.
- The requirement for a strategic direction was originally proposed in the CMA market enquiry, alongside a recommendation that government needed to provide Ofgem with

clear policy direction via a Strategic Policy Statement. For Ofgem to play this integral role, its duties and responsibilities set out in legislation must also be amended. As Ofgem's statutory duties do not give Ofgem a strict requirement to carry out its activities to enable legally binding net zero targets, they must be strengthened to explicitly reference the targets and require it to set out how it will measure its progress as a facilitator of net zero.

- It follows that this has the effect of recasting Ofgem's role in relation to the codes and its decision-making. Against this context we are not convinced that creating a separate "strategic body" is required or necessary if Ofgem's roles and responsibilities are clarified and strengthened.
- Nonetheless, we agree that roles and responsibilities of all parties need to be clear and that strategic direction is required to ensure that net zero ambitions and whole system perspectives are taken into account as part of prioritising and implementing code modifications. Given the industry codes set out the detailed commercial and operational framework underpinning the effective functioning of the energy market, it is vital that this is stable to ensure all market participants have confidence.
- If it is determined that a separate strategic body is still required, we agree that it should be Ofgem and that this should be set out clearly in both the enabling legislation and the Strategic Policy Statement.
- At this stage we are not clear how directional the strategic body is supposed to be – we would expect Ofgem to set out as part of its forward work programme what is required in relation to codes and that Ofgem would report on and be accountable for its performance.
- With regard to who decides on approving material code changes, this should remain with Ofgem, underpinned by its amended statutory duties.
- It is important that the strategic body has the correct resource with the capabilities and expertise to decide on strategic direction. This does not necessarily mean simply more people; it may take the form of dedicated specialists.
- For now, a quick win would be to unify the objectives across the codes and include one specific to net zero – we believe that this could be achieved rapidly and would have immediate benefits.

#### *Oversight and monitoring*

- It is vital that the strategic body takes a hands-on approach to codes to ensure that they are kept informed of the progress of changes. We have observed that Ofgem as the decision-making body has become less actively involved in the earlier stages of the codes process.
- Only expressing a view after the final report has been submitted has in the past led to wasted effort and resource by code administrators/industry participants.

#### *Holding code managers accountable via code manager licences*



- We believe several models of ownership and accountability may be suitable for code managers, which we detail in question 4. Licencing by Ofgem is one model, however not for profit approaches should also be considered.
- Code Managers (or other body depending on the business model chosen) should be held to account for meeting their obligations and duties; any consequences arising from lack of compliance should not be borne by industry.
- Budget oversight is key; however, code parties should also be consulted to ensure maximum value can be achieved from industry input.

### *Delivering code changes*

- If the strategic body is given powers to directly implement change as proposed, it is vital that checks and balances are present including a requirement in keeping with better regulation and Nolan principles to consult and engage with industry.
- The proposed ability for the strategic body to make change without consultation is of concern. The legislation in relation to the circumstances where this can be done should be narrow and clear to avoid ambiguity. We believe the default should be that the strategic body should always consult unless substantive consultation has already taken place.
- The right of parties to appeal decisions by Code Managers and/or Ofgem (including as strategic body) should be preserved.
- The ability to make unilateral decisions is currently available to government in emergency situations, however cost recovery mechanisms are built into the codes. There is a concern that the strategic body will be able to make changes with no ability for code parties to recover costs so the legislation must also be clear in relation to how parties will be able to do this.
- There is a danger that the strategic body may make a change which it believes will resolve a problem, but will in fact cause problems that were unforeseen, which may have been caught if the changes were put through appropriate consultation with industry. This may be mitigated through having appropriate expertise in the strategic body; however, the risk remains when decisions are made unilaterally, especially under time duress.
- With the introduction of a strategic plan, we believe that this may replace the need for the current SCR process and its use should be reconsidered.

### *Option 2*

- We do not believe that an FSO as proposed in the FSO consultation should be the strategic function due to the complexities in conflict of interest of part of an organisation publicly holding another to account. The strategic function should be Ofgem.
- In the meantime, a quick win would be to unify the objectives across the codes and include a specific Net Zero – objective. We believe that this could be achieved pretty rapidly and would have immediate benefits.



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

- There are aspects of the proposed Code Manager roles and responsibilities which we disagree with. We also consider that the proposals are insufficiently developed for us to be able to provide informed comments. As set out in our response to question 3, we need to understand the full systems governance picture.
- Regarding ownership we have identified 3 potential models for code managers:
  1. For profit, licenced by Ofgem, held to account similar to monopoly companies like networks with price controls. This option will require a suitable level of monitoring to ensure that companies are following appropriate obligations set out within those licences to avoid conflict of interest.
  2. Not for profit similar to Elexon. Although this model is tried and tested through Elexon, it is important to recognise that under current systems there are checks and balances to keep the code administrator in hand if any changes are proposed. The ability for code managers to make changes without regard to stakeholder input is a concern and may be abused. This model (unless well managed) affords unlimited liability to code parties with no mitigation and uncertainty about cost recovery.
  3. Not for profit with obligations, similar to the ombudsman. The body would be designated by the regulator/strategic body (Ofgem), and be held to account by legislation similar to the [Alternative Dispute Resolution for Consumer Disputes Regulations 2015](#). This legislation sets out a number of requirements and principles to be followed to ensure the entity can be held to account for its decisions, while working impartially, separate from industry and in the best interests of consumers, whilst maintaining the knowledge and expertise required for the technical roles.
- Different models may be suitable for different codes. It may be that option 3 is the most viable for the commercial codes, whilst option 1 may be more suitable for the technical codes.

*Delivery plans*

- We agree that requiring code managers to develop and publish a delivery plan consistent with the strategic direction would be welcome and that this should be subject to consultation with stakeholders.
- We support a consolidated plan for the delivery plans where there are multiple code managers, however there is a concern that this process may become overly complicated and time-consuming due to the amount of governance it would require. The plan should provide sufficient detail and timescales to give signals to industry but give code managers the ability to determine optionality to allow for change.
- We would expect that progress of the plans would be monitored closely by the strategic body (Ofgem), given that it would be an obligation, but that flexibility is provided for when changes outside the plan are required. Any amendments to the plan should also be transparently consulted on.

#### *Proposing/prioritising code changes*

- It is important that the process in relation to any interested persons raising modifications is balanced fairly and any decisions on the materiality of changes are made transparently. Code managers should be empowered to refuse changes where they do not believe it will be of benefit in the context of the strategic delivery plan/net zero delivery objective or where they do not believe it will be approved, however the majority of stakeholders may disagree with that position. It is therefore important that decisions made are clearly articulated, explained, and only done with evidence-based cost/benefit analysis. Clear appeal routes also need to be present where we believe the decisions fall short.
- There has been insufficient time to determine if the Retail Energy Code (REC) direction of travel is a positive transition for the industry with regard to change requests from non-code parties. We would propose that additional checks and balances such as a higher level of impact assessment on modification proposals from non-code parties need to be in place as they do not carry the risk associated with any changes.
- Oversight and input that Ofgem should provide should be improved as part of any reform. Direction from Ofgem at the early stages of code development could reduce any wasted resource, however it is important that those involved in the process are empowered and have enough expertise to provide direction when it is most meaningful to avoid wasted resource.
- Although there may be benefit to consumers for any interested person to raise code changes, extra scrutiny should be afforded to taking forward mod proposals from out with the industry code parties. We suggest this could be achieved by a requirement for demonstrate how the proposed change fits with the strategic direction and through the use of a detailed impact assessment, followed by engagement with industry. This will allow those impacted to provide insight into the effects the changes would have. An example of this is P379 where costs were proven to outweigh benefits, however industry costs had already been sunk by this point.

- There is also a risk of vexatious input which would cause resource to be wasted, particularly from parties who bear no risk to the changes. Failing some form of charge for raising modifications for non-code parties, the triage process must be appropriate to combat this risk. It is not sufficient to assume that all parties will do the right thing. However, the option for code managers to dismiss input must require adequate explanation so that they can be held accountable. This will be a difficult balance to strike.
- With regard to the code manager raising changes itself, we agree it should primarily do this where it can show that it is directly applicable to the strategic direction. The proposed position of power provided to code managers in the modification process poses a risk that changes may be implemented by the code manager that directly (or indirectly) benefit them. The obligation set on code managers must be sufficient that any potential conflicts of interest are addressed.
- Although not noted in the consultation, the current ability to suggest alternative modifications must remain to allow industry to consider all possible options. The loss of this route may result in sub-optimal outcomes. Examples of where alternatives have been used successfully were UNC621 and 678, where several alternatives were put forward and one taken through to completion.

#### *Managing the code change process*

- We would agree that code managers as proposed would administer the code change process.

#### *Cross code coordination*

- We would agree that cross-code coordination should be obligated with input from cross-code stakeholder groups.
- The strategic body should also have oversight of this, however this oversight and the powers they are provided should be set out in legislation to allow for appeals where the strategic body makes decisions which are determined to not be in the best interests of consumers.

#### *Decision-making*

- The disbandment of industry code panels is of significant concern to SSE in the absence of further detail about the roles of stakeholders and more clarity about the establishment of the repurposed Code Managers.
- One of the benefits of the current framework is that industry brings a significant level of expertise and understanding about the sector into the codes change process. Generally, representatives are also present from Ofgem and consumer groups to provide a balanced view.

- Although the consultation notes that the code manager would be held accountable to the strategic body, this increases the chance of appeal to any of the decisions made due to those impacted by the decisions not feeling their input has been heard. We understand that this is to be balanced by stakeholder advisory forums, however there are concerns that this will be a one-way sounding board.
- It is curious that it may be read in the proposal that it is a benefit that stakeholders would no longer be responsible for code change decisions and so less able to influence the progress of changes that may not align with their corporate interests. In the current process a party would need to convince a majority of panel members that their view is right, however under the proposals a party will only need to convince one body (the code manager). This increases the need for fully transparent decision-making processes.
- The relationship between the code manager and strategic body must be clear, and governance in place to ensure that due process is followed. All decision making must be anchored in statutory duties or obligations rather than relying on judgement.
- We are aware of modifications which, had they not been contained by the current framework and held to scrutiny by stakeholders, may have not been in the interest of stakeholders or consumers. The framework must ensure the code managers can be held to account.

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

- We strongly disagree with dampening the roles and responsibilities of stakeholders as noted in our response to decision-making under question 4
- The proposal recognises that stakeholder groups play a central role in supporting code modifications and codes decision-making and that it is crucial that they continue to do so. We agree with this view, but the proposals are vague about how this will be achieved in practice.
- It is vital at this stage that there is an open and transparent exploration of options to ensure that alternative solutions are not discounted this early in the process.
- It is noted that some organisations find it difficult to engage with code governance, however these organisations do not always shoulder the same level of commercial or

regulatory risk. Although there is benefit to consumers for diverse parties to be involved, the understanding of the practicalities and therefore cost of amending current systems to measure the impact on changes can best be gained by the market participants. By removing the avenue of the panels, it may take longer for changes that are not suitable (or suitable) to be identified, wasting time and effort.

- One solution to this is to retain the panels as decision making bodies, ensuring that industry still has a voice. Although the expectation to require by obligation that code managers work collaboratively is welcome, there is little clarity as to how influential these forums would actually be, and they may be seen as an empty voice.

### *Stakeholder advisory forums*

- More detail is required on:
  - o The role of the stakeholder advisory forums
  - o Composition of forums
  - o How participants are identified
  - o The legal standing of forums
  - o How the forums agree the advice to be provided
  - o How the code manager will demonstrate it has given advice 'due regard'
  - o The relationship with working groups, which is where most of the detailed development work takes place
- If the Code Manager was to depart from a recommendation of the stakeholder advisory forum, it should automatically be made subject to oversight by Ofgem ahead of that decision being confirmed.

### *Informing stakeholders of developments*

- This should be a priority for code managers. The current modification tracker used by the code administrators lacks in that it is not real time and has been unreliable. Ensuring stakeholders are kept up to date at all stages of the process is vital to ensure the best input can be provided.
- We agree that a range of ways to update stakeholders including through emails, a website and an app would be best, and that it should be possible for as many updates to be provided as a stakeholder requires.

### *Working groups*

- We agree with the retention of working groups as this is where most of the detailed development work takes place. If there are any changes which disenfranchise or stop input from stakeholders or the feeling gained that voices are not being heard, less attendance would be expected from industry. This may lead to negative outcomes where a modification such as P379 'Multiple Suppliers through Meter Splitting' is taken forward without being challenged.

### *Appeals of decisions made by code managers*

- It is vital that stakeholders are kept up to date and are able to discuss and appeal decisions made by the code managers where there is merit to doing so, to highlight where errors have been made.

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

- As it stands it is unclear how code managers will make their decision, while it is currently clear how panels make theirs currently (generally via a vote).
- With regards to the strategic body taking the powers to oversee the code change process, it is unclear what this will add to Ofgem's current abilities in the process. If the strategic body was given the power to overrule code manager decisions, it must be done in a transparent way. Would there also be a way to appeal the overruling by code parties or would that need to be done by the code manager?
- We would expect the options for appeal to be open to further consultation, a sample of decisions we think should be appealable are:
  - o Where a code manager accepts a code mod from a party outside the industry which has not undergone full scrutiny (unless this is built into the obligations, in which case we would expect Ofgem to investigate).
  - o When a code manager refuses to accept a code mod from a party within the industry.
  - o When a code manager departs from a recommendation of a stakeholder advisory forum.
- It is important as well that this right of appeal is genuine and not nominal. We consider the current appeal process in place is suitable and could be adapted to fit in with any new obligations set on code managers.
- We welcome the statement that future arrangements should also include mechanisms that encourage, or require, stakeholders to resolve disagreements early in the process to facilitate their speedy resolution and expect the decision body to also have involvement, so that they are fully aware of each change through all steps of the process.

- As the code manager could be licensed with Ofgem as enforcer we would expect Ofgem to consider compliance in the same way as it does with regard to other obligations.

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

- As above, we do not believe it would be appropriate for both code manager and strategic functions proposed within the FSO consultation to be held within the same entity.
- Any and all appeals should be required to go to Ofgem to avoid any perceived or actual conflict of interest. The addition of an internal body may simply add time to the appeal unless the internal body could overturn the decision by the code manager.
- Given the process and resource implications of conducting appeals we do not believe that spurious appeals would be made however we believe the number of appeals would be directly related to industry confidence in decisions being well thought out and evidence based.

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

- The preservation of fundamental appeal rights is essential to a robust, effective and fair regulatory regime. The current system of code modification appeals supports this objective, with the 12-week process already stream-lined and efficient. It also acknowledges the complexity of the code modification process.
- The current system therefore respects parties' rights of defence, but also incentivises robust decision-making based on reliable evidence with sound legal and economic reasoning, resulting in decisions that can withstand challenge.



- Code modifications can have long-term and significant impacts on a business's commercial conduct. It is therefore essential that there is an effective appeal mechanism, so parties have the opportunity to put their case to an independent adjudicator and hold regulators to account.
- The introduction of a Judicial Review (JR)-standard would lead to a reduction in both the rights of defence and incentives, therefore appeal routes to both the CMA and by JR should be available to industry.
- As noted in question 7, appeals of this nature are not frequent nor pursued lightly, understanding the resource that these require from all parties.

#### Option 2

- Under option 2 we would agree that Ofgem could be the appeal body for decisions made by the code manager function and that Ofgem would continue to make decisions on the approval of changes of a material impact.

#### Question 9

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

Do you have any thoughts on other potential appeal routes?

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

- We believe the current code modification appeal system to be appropriate.

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

- Ofgem in its role as decision maker for material changes has familiarity, and some of the skills and capabilities to fulfil the role as a strategic body. As noted in the consultation it would be important that Ofgem is resourced to be able to fulfil this role, as well as all of its other functions. As noted previously, a net zero statutory duty coupled with the SPS should be used to ensure that Ofgem can be held accountable for its decisions.
- If Ofgem is decided as a codes strategic body, clarity is required on how it will act in each of these roles: the role of the regulator and the role of the strategic body. Each role is distinct.
- We have raised the point in the House of Lords inquiry into the role of Ofgem, that Ofgem is expected to play an increased role to support the delivery of Government policy objectives including the preferred regulator for heat and more responsibilities for CCS and hydrogen. We recognise that internal transformation has been an area of focus

for Ofgem more recently which may put it in a better place to support in the role as strategic body and to have much needed increased participation at early stages of the modification process.

- In all aspects, including as strategic body, Ofgem must uphold the better regulation principles of transparency, consistency, proportionality, targeting, accountability.

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

- Ofgem's performance should be monitored and evaluated as the strategic body on a regular basis through its current annual reporting structures cognisant of its statutory duties. As above, Ofgem's strategic plan for codes should be set out as part of or alongside its FWP.
- More broadly, Ofgem should be reporting on its activities to Parliament on a regular basis as part of its ongoing requirement within its Forward Work Programme to set out how it intends to enable net zero and measure its progress so that it can be held to account by its stakeholders. When a SPS has been issued, we would expect each year for the status update on the progress of items in the SPS to include how Ofgem has performed in its role as the strategic body. The plan should also set out how engagement should be conducted with code managers and industry,
- In addition, other stakeholders including industry and consumer groups should be provided with opportunities to feedback on Ofgem's performance, particularly at the start of the new structure.
- One minor way of gauging performance could be the number of appeals which are recorded on decisions made by the code manager or the 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    ☐ Somewhat disagree  
☐ Disagree    ☒ Not sure

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

### *Accountability*

- It is important that the overarching governance framework is put in place before the selection of code managers is considered. If the tender is to be run by the strategic body, then the formation of the strategic body would need to be well established.

### *Selection*

- We would agree that competitive tendering by the strategic body would be the most sensible approach, with the decision put out to consultation before implementation. It is critical to ensure that each code manager has the skills and expertise required to meet its obligations and is sufficiently independent and that decisions are not made solely on the basis cost.
- We do not believe it would be appropriate for the proposed FSO or any other single body to be appointed directly as code manager for all codes. Although the FSO would likely maintain the skills and capabilities of the ESO, extra resource would be required in order to cover the diverse array of codes.
- It is important that the most qualified party for the code manager role is selected, with the expertise and industry knowledge required to fulfil the demands of the role. This may mean that the suitable party is an existing licensee, which would require appropriate safeguards are put in place to mitigate conflicts of interest. There may be merit in selecting code managers for each sector of codes to reduce administrative burden. Not all codes have the same requirements so not all code managers will be the same, with some more technology based and others more commercial.

### *Alternative options*

- If the strategic body was to choose a code manager in a different method than tendering, we would agree that the evidence must be robust that not tendering would deliver a better outcome to consumers or if there is no other suitable body.
- We agree that this avoidance of tendering should be legislated to require the Secretary of State's consent.

### *Transition*

- With regard to the transition away from code administrators to managers, all impacts must be planned and considered before go-live to ensure activities underway are not disrupted.

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

- We would agree that code managers should be funded through charges levied on code parties.
- Code managers' primary focus should be the delivery of their delivery plan, which is where the funding from code parties should be directed. Any additional services should not come at additional cost to code parties. Non-code parties should be charged for additional services, however the funding for these should not make up the primary budget for completing the role of the code manager. These additional services should also be priced competitively if they are the only one who can provide this service and a set price or methodology should be set out in the obligations.
- With the differences in the codes, further consultation is required on how each will be funded, particularly where one code manager is responsible for several codes. We would expect the UNC to continue to be managed separately from Xoserve. We believe that Xoserve is outside the scope of the review and so will continue to be funded as it is currently under the Data Services Contract. The funding model used for the REC would seem a good model to be considered for the funding of other codes.
- The funding of central system bodies should also be considered.
- As noted above, consideration should be given to how enforcement is carried out in relation to code managers, on the basis that industry would be funding them. This may depend on the model chosen and could be built into the obligations to highlight how enforcement would directly affect code managers.

#### 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 would agree that Ofgem should have ultimate oversight of budgets to ensure funding is at the right level to meet strategic direction.
- We assume that this oversight would take the form similar to that of monopoly networks in that they will set out their budgets as part of the delivery plan and be required to stick to them as far as is possible.

- Code parties (as the ones paying for the code managers) should be allowed a level of scrutiny, and we agree with the assessment that it is essential for stakeholders to be consulted. It is important that the input is requested in plenty of time to allow for it to be reviewed and factored into the budgeting process. In our experience feedback on budgets has not been given due regard, reducing the desire to provide input.

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

- We strongly disagree that an FSO would be appropriate for the role of the IRMB. This would result in a single organisation with too much control over the direction of the codes as well as its other responsibilities.
- There is also a risk that it is not agile and gets stuck trying to manoeuvre the limits imposed by the need to show separation in its decisions.
- There is also a risk that an FSO's core activities are detracted from.
- At this time the most suitable option is Option 1 with Ofgem as the strategic body.
- With the consultation on an FSO still underway, it is difficult to see the full picture of what the governance and relationship with BEIS, Ofgem and other industry parties will look like.

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

- We agree that Ofgem has experience overseeing the sectors covered by the codes and could provide strategic direction using this knowledge. Its ability to hold code managers' decisions to account is similar to its current remit today with code administrators, so it

would be a good fit as the strategic body. This should be bolstered by changes to its statutory duties to include Net Zero and clarified within a SPS.

- As noted in question 4, rather than licencing there may be other options for ownership, monitoring and governance of the code managers. This could include private ownership with licences, or not for profit organisations similar to Elexon, or the ombudsman.
- We agree that there would be benefit in strategy setting, licensing and codes oversight being overseen by Ofgem, and it may make it more responsive and agile when delivering policies. However, it is important that the support that industry can provide and the impact that code managers decisions can have on industry is not overlooked, and Ofgem should still be held to account for any decisions that are made.
- We would however strongly disagree as above with the changes to stakeholder participation, so objective 3 in that respect would not be met. As noted above, there is a need to recognise the sufficient commercial and operational implications of the codes for all parties.
- We agree that Ofgem as the strategic body may reduce complexities so that market participants know who to engage with on code related issues, however it would be vital that Ofgem becomes more hands on and involved with all stages of the modification process so that informed and evidence based decisions are made.
- If change is to be made, provided it was well thought out and was supported by stakeholders, there would be benefit in early implementation, so we would support Option 1 over 2 in this instance. As in our response to the FSO consultation, we believe that the FSO should focus on its primary functions and any additional responsibilities should not detract from this.
- Clarity should be provided on how gas codes would be treated (if the same). There seems to be a lack of regard in the consultations to the different landscapes.
- With regard to code managers, there are concerns that if code administrators were to change that there would be a loss of knowledge. We would expect that the expertise that these administrators had amassed would be transferred or utilised correctly or there is a risk the reforms would be highly sub-optimal.

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

- It is unclear why this question is solely for the estimated costs for the new code manager function rather than also the strategic body.
- With regard to the strategic body, the method for calculating the cost makes sense, however regard should be taken for resourcing the necessary specialists required to make sure that Ofgem is effective in its role as the strategic body. Assumptions cannot be made that the grade profile mirrors Ofgem as a whole in this respect due to the highly technical nature of the codes.
- With regard to the code manager it is not suitable to use the estimated costs of one code administrator (Elexon) and say that the same costs could be used for each of the codes, as each have their own challenges and expertise requirements. The estimated costs do not seem to have taken into account the time and cost of implementation of new code managers which could be significant.
- No information can be found on the costs of the central systems in the impact assessment.

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

- Case study 1 does highlight the barrier being lack of strategic direction and signalling to industry. The assessment that "The current system of constrained self-regulation of the industry codes is likely to inhibit change when modifications are not in the financial interests of larger parties, despite being in the interest of consumers and the market as a whole." does not factor in that having some level of self-regulation provides consistency and continuity to the system. As noted previously, the direction of travel from Ofgem at this time suggests a desire for projects to be industry led such as Market Wide Half Hourly Settlement and the Ofgem Switching Programme which has had a very high level of industry input. This is entirely appropriate given the impact that these projects will have on all industry participants and ultimately customers. There is a risk that by reducing the input from industry, parties are left disenfranchised and less willing to put collective resource into projects such as the above. This may lead to inefficient or damaging changes which are not in the best interests of the market or consumers.



- In case study 2, the impact assessment is heavily dependent on Ofgem's view of the issue. The industry view is that Ofgem's representatives were not clear and that they believed their role was not to influence the decisions but only to determine. If Ofgem had been involved at all aspects of the process and provided guidance, this may have resulted in fewer proposals being deemed non-compliant, and large amounts of resource (including Ofgem's) wasted. In our view, the case study does indicate a major barrier in the current system, which has been Ofgem's lack of engagement at all levels of the change process.

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.](#)

- UNC696V's final report was sent to Ofgem in May 2020 however over a year later there has been no update as to whether Ofgem is taking action and when it is likely to make a decision.
- P390 was raised by E.ON on 12 August 2019. The BSC process took until May 2020 to recommend approval to Ofgem, and then Ofgem took until November 2020 to send it back. Concerns could have been raised by Ofgem representatives in mod meetings or the Panel rather than after the final report had been published. P390 was subsequently approved in March 2021, 10 months after the Final Report was initially submitted.
- We have experience of code administrators going off at tangents - the ask of unrelated data from DNOs shows both a lack of expertise and an insensitivity to the costs of these requests. For example, request have been made asking for DNO complaints data at an MPAN level which infringes GDPR without any apparent justification and takes no account of the fact that metrics are already provided to Ofgem. It is important that code managers have the expertise and industry knowledge to ensure this does not happen.

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

- It is alarming to see that both the low and high net benefits of option are deemed to be negative, which highlights a lack of clarity over which issue we are trying to resolve. At this stage the impact assessment is not complete due to lack of data around benefits and so should not be relied on as justification for change.
- One proposed benefit is that there will be reduced costs of reading and responding to consultations, with fewer consultations suggested that are subsequently rejected. This is at odds with the proposal that anyone will be able to propose a modification at no cost and may suggest that these will be disregarded. We welcome the opportunity to input to

consultations as engaged stakeholders and to share our expertise on matters. The second benefit of industry saving due to reduced costs of workgroups participation is also inaccurate, as workgroups are where the flesh of proposals are discussed, and the reduced input from industry may lead to undesirable outcomes.

- The introduction of a strategic body with the current code administrators may meet the same non-monetised benefits as highlighted in both options.

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

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

- We do not believe that the proposals will provide cost savings.

## 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 current House of Lords inquiry into the role of Ofgem with regard to net zero should be considered, particularly with regard to Ofgem's resource. If any amendments are made to the duties of Ofgem, we would expect this to be taken into account. This extends to the development of any SPS that is created following BEIS consultation expected at the end of the year. .
- As indicated previously and in the consultation, Option 2 is heavily dependent on the result of the FSO consultation, and we would expect both consultations to be taken side by side to ensure the right decision was made. Any change in the remit of the ESO will impact the current arrangements and may impact future arrangements.

## 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:

- The risks highlighted in the IA are delays, uncertainty to industry participants and the current period of transformation. We would agree that these are material risks, which have not really been quantified, particularly the uncertainty to industry participants.
- Several quick wins could be achieved now. For instance:
  - o ensuring that code objectives reference net zero delivery
  - o requirement on code administrators/managers to produce a delivery plan (if not already)
  - o the increased commitment/involvement of appropriate Ofgem personnel at all stages of the code modification process
  - o the creation of a strategic plan by Ofgem
- If any decision was made to combine codes, in our experience with the REC it was a long and time-consuming process. It must be determined if an undertaking such as this would be of net benefit and the IA is light on detail. There may be benefit in simplifying the codes to plain English where possible, taking into account the necessarily technical nature of the documents.
- The CACOP was supposed to align consultations and quoracy. The development of such a code and aligned practices must be agreed between all involved parties however in our experience it has not done so. We have found that its development, over time, has lacked meaningful involvement with stakeholders and, as a result, it has tended to be too narrowly focused on what the Code Administrators themselves wish, collectively (and by consensus), to want. This has resulted in a less stakeholder centrist document. For the CACOP or an alignment document to be meaningful, those signed up to it should have active involvement in its development.
- The impact the proposed changes would have on current code administrators should not be discounted and will provide a lot of uncertainty to those parties.
- There is a concern about prioritisation of change and potential for disruption as new arrangements are put in place. As noted in question 16, it is vital that the knowledge and experience currently within the code administrators is not lost.

How do you think these could impact on code reform?

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

- The question has been answered in the 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.](#)

- We have not identified any impacts that would affect the above.

### Question 23

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

- Several quick wins could be achieved now. For instance:
  - ensuring that code objectives reference net zero delivery;
  - requirement on code administrators/managers to produce a delivery plan (if not already);
  - the increased commitment/involvement of appropriate Ofgem personnel at all stages of the code modification process; and
  - the creation of a strategic plan by Ofgem with regard to codes
- The wording of the questions is slightly positive leaning, with positive options up to “Strongly agree”, while negative only goes down to “disagree”. This may not give a balanced picture of respondents’ views.
- Throughout the consultation there is a lack of consideration to the different landscape that gas sits in and we believe that this needs to be addressed by BEIS and Ofgem.
- Two options have been presented however Option 2 is not currently viable as it is dependent on the outcome of the separate FSO consultation, which suggests an inherent bias towards Option 1.
- We do consider there is a real risk that the consultation and proposals have been framed with too much emphasis towards the position as was in 2016. The energy market has significantly changed since then.

- Once the responses have been received from this consultation with extra evidence provided, we believe it would be pertinent for the impact assessment to be redone to show a more representative analysis of the costs/benefits.
- One of the complications of code governance is that they are multi-lateral commercial contract, but all market participants are obliged to be party to them and therefore cannot opt-out.
- It is vital that there is a clear timeline with defined tasks if either of the proposals are to be taken forward with consideration given to the broader context of industry change underway where the code governance framework is critical.

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