

1st February 2023

Ofgem
10 South Colonnade
Canary Wharf
London
E14 4PU

By email only to industrycodes@ofgem.gov.uk

Call for Input Response: Energy Code Reform

We support the Government and Ofgem's intent to reform the energy industry codes to help facilitate a transition to net zero. The future will bring significant changes in the sector, including the end of methane gas networks, the development of new hydrogen and heat ones and the expansion of flexibility and smart electricity networks. Having a governance framework that can meet the needs of these changes is therefore welcome.

We understand the preference within this consultation to focus on the consolidation of codes in a vertical manner, aligning governance with key activities in the retail, electricity and gas markets. This should aid in the evolution of the market and provide a framework for the future potential inclusion of heat and hydrogen regulation. Therefore, we support the proposed approach to code consolidation.

It wasn't clear from the consultation, or the associated report from Cornwall, whether the benefits from code consolidation were mostly derived from merging documentation or whether they were in fact mostly delivered by rationalising the number of code managers.

Much of the perceived issues with the industry codes concerns how parties and stakeholders engage with them and in especially their change mechanism. In this context it might therefore be valid to examine the option of a single licenced code manager entity overseeing the different vertically consolidated industry code documents, as this might provide the optimal solution.

This could have separate specialist teams focused on the technical aspects of the different codes. But would provide a single point of communication for stakeholders and a single common change process. This would provide the benefit of removing the need for parties to engage with multiple entities and avoid the issues of managing cross code working that currently creates significant issues in developing changes to the industry codes.

The purpose of the Stakeholder Forum also needs further consideration. It wasn't clear from the consultation whether the purpose of these groups was to help develop new change proposals or to provide a formal guidance to the code manager in their decision making process.

We believe that there will always be the need for working groups to develop new change proposals. These should be flexible in their constitution and evolve to meet the needs of the specific area of governance. Attendance at these groups should not be constrained. Understanding a broad perspective of the implications from a proposal is always useful. We do not believe that this activity should be classified as the proposed new Stakeholder Forum.

Where we do see a gap in the proposals is with regards to the process for appealing decisions on change. This is one of the core functions of the current modification panels and should form a key activity for the new Stakeholder Forum.

A recommendation from the Stakeholder Forum that is not aligned with the decision of the Code Manager should act as the trigger for the right of appeal. This would provide legitimacy to the aspiration that Code Managers should have due regard to the decision of the Stakeholder Forum.

The constituency of the Stakeholder Forum and its Terms of Reference can therefore be more specific. To include the requirement for constituency representatives, including those from independent network operators.

We would appreciate further dialogue with Ofgem and BEIS regarding the decision making and appeal process for industry code change in the future. The commercial implications for industry code parties from change can be significant and there needs to be appropriate checks and balances in place.

Responses to specific consultation questions:

Design Principles

Q1: Do you agree with the design principles proposed to frame our assessment of code consolidation options? If 'no', please explain why.

- 1) Making it easier for market participants to engage with and understand the codes***
- 2) Enabling the codes to be agile and adaptable to future market arrangements***
- 3) Facilitating the delivery of strategic change and being compatible with new code governance arrangements***
- 4) Supporting the ongoing operation of central systems***

Yes, these seem a reasonable set of design principles and reflect the concerns that have been raised with the industry codes in the past, in particular the CMA Market Investigation findings from 2016.

We note that the principles do not include any measures concerned with delivering tangible benefits during the transition and consolidation phase. Considering the timescales for reforms set out in the Energy Bill potentially extend beyond seven years, this seems a missed opportunity. A solution might be to include a principle about the delivering change to support the transition to net zero.

Code Consolidation

Q2: What are your views on the high-level options for code consolidation we have described ('no consolidation', 'vertical' & 'horizontal')? We welcome input on the possible benefits/disbenefits of each option.

Preferred options:

The options for code consolidation but forward in the Cornwall report seem comprehensive. The most radical, and therefore discounted proposal, to combine all codes perhaps could have been explored more to understand the potential that this option presented.

Most of the criticism levelled about the industry codes has been based on the complexity with engaging with the codes, rather than the detail contained within them.

The key advantage of the totally centralised option would be to introduce a single code manager. A single entity would be able to harmonise engagement channels and processes for new entrants and small organisations. Helping them to navigate what aspects of the industry codes are relevant to them.

The options explored within the consultation, be that vertical, horizontal or no change will all leave a level of duplication and multiplicity of code managers. This will perpetuate the complexity for organisations in understanding how to engage with industry codes and the need for enduring cross code working.

Exploring options for consolidating the number of code managers should be looked at separately to the option for rationalisation of the number of actual code documents.

This may provide a better set of outcomes when tested against the design principles.

Q3: Do you agree with our initial preference to explore vertical code consolidation options and, if so, do you have any observations on the potential models set out in Cornwall Insight's April 2022 report?

We agree that the option to explore the vertical consolidation of electricity and gas wholesale and technical codes would appear the best approach. The horizontal consolidation of retail orientated codes is also logical. This split aligns the codes with the market structure and best allows for their future development.

For example, a new heat code could be introduced into this model fairly easily. With a technical heat network code being separate from gas and electricity, to reflect the specific requirements. The retail aspects of the heat market could be merged with the existing customer orientated energy codes (the REC and SEC) as there will be common issues relating to the consumer experience.

We welcome specific views on the following:

• Whether the UNC and IGT UNC should be consolidated;

This seems to be a logical development. It would need the appointment of a new independent licenced code manager to lead the required work as none of the current code administrators have the scope or resource to deliver what would be needed.

• If/how to consolidate the electricity codes;

We disagree with Cornwall's Analysis of Option 4B. A single electricity code would be easier for parties to engage with compared to multiple codes.

Multiple codes make changes more challenging to deliver. It requires undertaking cross code impact assessments, working with different code managers and different governance process, all of which are likely to be as difficult in the future (options 1A and 1B) as they are now.

We do recognise that this would be a significant task to complete and therefore consider that options 1A and 1B might be steppingstones to the final delivery of option 4B. It would be good to consider the eventual end goal for electricity code consolidation from the start of activities and plan accordingly.

To facilitate this a single electricity code manager could be appointed from the outset; gradually taking on responsibilities from Elexon, Electralink, the ENA, as well as the FSO, who at present administer the existing electricity industry codes.

• ***Whether the REC and SEC should remain separate; and/or merged***

The SEC should be merged with the REC to create one single retail code. This would present several benefits:

- 1) It would remove the inefficiencies in cross code working that is currently experienced when progressing changes to these codes.
- 2) It would create a single retail facing code that would be easier for parties to engage with.
- 3) It would provide the central resource that RECCo currently has to develop strategic initiatives to the code, something that SECCo currently lacks.
- 4) It would create the basis for a retail code that could be expanded in the future to include other utilities, such as heat, where common consumer facing issues are likely to be encountered.
- 5) The code administrator function for both the REC and SEC is currently undertaken by the same service provider company. This should facilitate the merger of the two codes.

• ***Whether the consolidation of any codes should be prioritised, and if so, why.***

If the vertical consolidation model is chosen, then specific plans would need to be developed for the different fuels.

Consolidating each of the gas, electricity and retail codes would have specific challenges. Working through the details of the individual plans should drive out what areas can and should be prioritised.

Implementation

Q4: Do you agree with our preferred implementation approach (Option 2 to have Common contractual framework and governance arrangements)?

Yes, experience from the recent retail code consolidation industry exercise (involving the consolidation of the MRA, SPAA, GDAA, MCoP, MOCOPA and SMICoP) demonstrated that the core governance arrangements of all codes are similar and could be consolidated quite easily. This would allow for the appointment of new code managers who could then undertake the task of assessing what aspects of the codes would be better merged or harmonised.

If so, do you have any additional observations on what we should consider when further developing this approach, including which code provisions should be considered within the scope of governance arrangements?

The code provisions that most impact the ability of parties to engage with a code are those that involve joining, leaving or engaging with the changes being made to a code. These areas should be harmonised as a priority.

The appointment of a common code manager would facilitate the engagement process with parties and wider stakeholders and help deliver against the design principles.

The plans for consolidating codes and appointing new licenced code managers is proposed to occur over a prolonged period. This exercise should not preclude in anyway the evolution of the industry by stifling or preventing developments. This would be counter to the policy objective of these reforms which aim to facilitate the rapid transition to net zero energy system.

Code Manager Licencing

Q5: Are any of the contents we have identified for the licence conditions unnecessary, or, would be more effectively covered outside of the licence (eg in the codes)?

The only aspect of the licence condition that seemed potential unnecessary might be Data Handling. This may need to be an area where flexibility in approach is needed depending upon specific services or processes. It may therefore be a better approach to include this within the code itself.

Q6: Are there any additional areas that should be subject to licence rules?

There are none that we can think of at this stage.

Q7: Do you agree with our indicative prioritisation for policy development, and do you identify any specific dependencies that you think we should factor into our policy considerations?

Yes

Q8: Are there any issues that we should take into account when considering moving the current 'code owner' licence provisions to the new code manager licence (such as unintended consequences)?

This seems a sensible approach, the 'code owner' in the current licences was developed to ensure someone was responsible for the establishment of a code and to ensure its successful delivery. The new arrangements should make this requirement superfluous as this obligation would move to the new Code Manager licensee and Ofgem.

The only aspect that would need to be considered in the planning was timing to ensure that there was no risk of uncertainty for parties.

Stakeholder Forums

Q9: What do you think the stakeholder advisory forums' key roles and/or functions should be, and what areas (other than code change) should the forum(s) potentially have a role in?

The key roles of the Code Modification Panel's from a party's perspective are:

- Decision making on self-governance modifications. Change which is more technical in nature and does not have significant impact on the market or consumers.
- Recommendations on a modification by a panel provide an industry perspective to Ofgem when determining on a change.
- Decisions by Ofgem on a modification that are not aligned with the recommendations by a Panel can be appealed to the CMA.

The structure and make-up of the modification panels are therefore carefully considered and defined in each code to ensure that a wide range of industry views are considered, and the decisions of the Panel have value.

There are also working groups within each current industry code governance arrangement that allow new proposals for change to be debated. These vary by name and structure, but all share common attributes in that they are intended to be as open as possible and are designed to help with the development of a new change proposal, rather than deciding on whether it should be adopted.

The description of the role of Stakeholder Advisory Forum the in the Call for Input seemed to be a mixture of both these existing groups functions. A place for debate and development of change but also somewhere defined views needed to be considered by the Code Manager when deciding on whether to proceed with a new change.

Our suggestion would be to give the Stakeholder Forum a defined role in the change process. To provide a formal view on a change by the various constituencies of parties to a code. This would define the perspective on a change that the code manager would be required to give due regard to when making its decision. It could also form the basis of the right that parties might have to appeal a decision by the code manager on a change.

Q10: What options/issues should be considered in terms of constituting the stakeholder advisory forum(s), in terms of membership and securing appropriate representation?

If the role of the Stakeholder Forum is defined as described in our response to the previous question then it would be logical to ensure that all constituencies to a code are represented on the forum.

Individuals could be nominated onto the group by constituents based on their understanding of the implications of a code change on the commercial and operational activities of the organisations.

Q11: Are there any lessons learnt (either good or bad) from the current code arrangements that should be considered?

The recently introduced REC shows that multiple panels looking at specific aspects of the code change process works well in engaging the relevant experts, this is especially useful for technical aspects of a code.

A similar approach in the future where specific 'Stakeholder Forum' are established for different aspects of consolidated codes would be a good idea. It would work in conjunction with the concept of having vertically consolidated codes, managed by the same code manager, but having multiple technical schedules covering different aspects of the market.