

Industry Codes Team
Ofgem
10 South Colonnade
Canary Wharf
London
E14 4PU

1 February 2023

Dear Team,

ENERGY CODE REFORM: CALL FOR INPUT

We welcome the opportunity to respond to this call for input on energy code reform.

ScottishPower is a major UK energy company with renewable generation, retail supply and networks businesses; we are a leading developer of wind power in the UK, and part of the Iberdrola Group, the world's leading renewables developer and a global leader in tackling climate change. ScottishPower is the UK's first 100% green vertically integrated energy utility, generating 100% renewable electricity with over 2.8 GW installed wind generation across the UK with a significant level of prospective renewable capacity in our investment pipeline. SP Energy Networks (SPEN) owns and operates the electricity distribution networks in the Central Belt and South of Scotland which serves two million customers, and in North Wales, Merseyside, Cheshire, and North Shropshire which serves one and a half million customers. SPEN also owns and maintains the electricity transmission network in Central and South Scotland. Our retail business is committed to supporting our 4.5 million plus gas and electricity retail customers to make greener choices as part of the journey to Net Zero.

Our answers to the consultation questions are in Annex 1. We would highlight the following key points.

Priorities for energy code governance reforms

We believe the area that is most likely to deliver material benefits is improved cross code coordination, and we consider this would be best facilitated by Ofgem in its prospective role as Strategic Body. Effective cross code coordination would enable timely and agile implementation of key policy objectives and key industry reforms where they impact on more than one industry code. As such, we believe establishing the role and operation of the Strategic Body should take priority over any other code governance reforms including those subjects to this call for input. When considering any other code governance reforms, Ofgem should ensure they do not undermine or impede key policy objectives such as achieving Net Zero and establishing the future system operator (FSO). In this

context, outside of the strategic Body and Strategic Direction, we do not consider any other code reforms merit prioritisation in the short and medium term.

Code consolidation

Following the recent establishment of the Retail Energy Code (REC) we see limited scope and benefits in further code consolidation, save for the Uniform Network Code (UNC) and Independent Gas Transporter (IGT) UNC. We disagree with the fundamental approach underlying Cornwall Insight's proposed options of bolting together existing codes in their entirety, eg the Connection and Use of System Code (CUSC) and the Grid Code. In our view, bringing together codes which govern activities which are not directly related and concern different groups of code users will result in consolidated codes that are less accessible and more cumbersome.

We would want to see the inclusion of an additional design principle to guide any consolidation: preserving essential elements of current code functionality. This principle is important as it demands a thorough and in-depth understanding of all current code provisions and the historic development that has led to their current form. Our recent experience of the establishment of the Retail Energy Code (REC) was that the absence of such a principle saw consolidation in that case lead to instances of the seemingly arbitrary deletion of important code provisions, which invariably had to be reversed sometime later to avert/address the loss of functionality of key industry processes and systems. Such outcomes are unacceptable and to mitigate this, responsibility should sit with Code Managers (CMs) as a licence obligation, or with Ofgem as the Strategic Body in cases where consolidation is initiated ahead of CMs being appointed.

Code Managers

We remain unconvinced of the benefits of replacing code administrators and code panels with a single Code Manager. Notwithstanding the risk of conflicts of interest, we believe code managers will lack the required technical knowledge and expertise to be solely responsible for the management of code modification proposals and recommendations to Ofgem. By default, the required expertise sits with code parties being users of the code and associated systems and as a consequence they have the best understanding of how reforms can be implemented in an optimal way for industry and all stakeholders. As a result, we believe having a single Code Manager would lead to poorly developed modification proposals and less effective performance assurance etc. At present only the REC has a Code Manager and, as the REC only came into effect towards the end of 2021, we do not think there has been sufficient time in which to fully evaluate the REC CM performance to ensure learnings can be duly incorporated into the enduring licensing regime.

We believe most of the problems cited in relation to industry codes could be readily addressed by more effective cross code coordination, perhaps facilitated by the Strategic Body. This could be supported by initiatives aimed at code simplification and improving accessibility, initiatives that could be managed by the current code administrators. In this context we would expect any additional Code Managers to be strictly reserved for codes where it can be shown they are essential to addressing demonstrable and intractable problems with the current arrangements.

Stakeholder Advisory Forums

As we highlighted in our response to the BEIS/Ofgem July 2021 consultation, we disagree with the abolition of code panels and the transfer of their decision making rights to Code Managers. We remain of the view that the Government has not provided any

justification for why code panels should be abolished. Notwithstanding this, should Ofgem proceed with establishing Stakeholder Advisory Forums (SAFs) to replace code panels we think the SAF scope and constitution should be based on current code panels and supporting working/issues groups, which have generally proven effective in terms of providing required expertise and scrutiny.

I trust you will find our comments helpful; however, should you wish to discuss any aspect of our response, please do not hesitate to contact me or my colleague Haren Thillainathan (hthillainathan@scottishpower.com).

Yours sincerely,



Richard Sweet
Director of Regulatory Policy

ENERGY CODE REFORM: CALL FOR INPUT - SCOTTISHPOWER RESPONSE

Code Consolidation

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

Yes, we agree with Ofgem's proposed design principles namely:

- 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; and
- 4) Supporting the ongoing operation of central systems.

However, we believe Ofgem should adopt an additional fifth design principle to guide any consolidation:

- 5) Preserving essential elements of current code functionality.

Code consolidation should be done in a way which preserves a thorough and in-depth understanding of all current code provisions and the historic development that has led to their current form. Recent experience in establishing the REC demonstrates why this is an essential design principle. In our view responsibility for this should be embedded in the regulatory framework of the Strategic Body and Code Manager (CM) licence obligations. It is important that Ofgem and CMs engage industry to ensure they have the sufficient knowledge and expertise to discharge this responsibility and knowledge transfer is assured where new parties are appointed as CMs.

Our understanding of principle 3 is that code consolidation should not undermine policy objectives and priorities such as those included in future Ofgem strategic directions or government Strategic Policy Statements (SPS). As such, we would expect that any code consolidation is implemented with minimum disruption to industry so as not to risk key policy objectives, such as achieving Net Zero and establishing the Future System Operator (FSO). The code consolidation involved in the creation of the Retail Energy Code (REC) via a Significant Code Review (SCR) proved to be a considerable undertaking and drew heavily on the resources of Ofgem, industry and other stakeholders over a number of years. In this context we recommend Ofgem give careful consideration to the merits of any future code consolidation and associated timescales.

We believe that, save for the Uniform Network Code (UNC) and Independent Gas Transporter (IGT) UNC, code consolidation will have limited scope to better achieve principles 2 and 3 above, relative to improved and effective cross code coordination undertaken by Ofgem in its role as Strategic Body. In this context, we would prioritise establishing the Strategic Body and its operation over code consolidation and other energy code reforms. Specifically, we see the key activities involved in cross code coordination comprising:

- establishing the terms of reference for the Strategic Body (SB) including key roles and responsibilities, governance arrangements and recruitment of required industry expertise and resources;
- the SB producing a workplan covering "no regrets" initiatives, working with existing code administrators to simplify the key industry codes and improve their accessibility;

- ahead of the first Strategic Direction, producing a list of key cross code policy areas, (eg offshore transmission, energy storage etc) and associated live or soon-to-be-live cross code modifications, identified in consultation with stakeholders; and
- the SB managing and progressing the priority cross code modifications and reporting on performance in this area; in undertaking this activity, the SB would be accountable for ensuring timely progress of modifications in all impacted industry codes.

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.

No consolidation

The current industry landscape includes the recently established REC, which achieved significant code consolidation and reduced fragmentation. The recent code consolidation into the REC is not reflected in either the consultation or Cornwall's report which portrays the current code landscape as being untapped in terms of the benefits of code consolidation. In our view, having established the REC and with the exception of the UNC and IGT UNC, there are limited benefits and scope to further achieve the design principles, from further code consolidation.

We agree with Cornwall's assessment that, absent further consolidation, code administrator initiatives such as code text simplification and rationalisation, alignment of certain governance arrangements etc will deliver material benefits in relation to the design principles. As noted in our response to Question 1 we believe significant benefits in the current code landscape, will be further delivered by more effective cross code coordination through the operation of the Strategic Body.

Vertical consolidation

We agree that this approach has more scope to deliver benefits relative to horizontal consolidation of wholesale or network codes. That said, as noted in our response to Question 3, with the exception of the UNC and IGT UNC we don't believe the proposed consolidation options will better achieve the design principles.

Horizontal consolidation

We agree with Ofgem's assessment that outside the current retail codes (REC & SEC) there are very limited benefits to be derived from having dual fuel codes for wholesale or network arrangements.

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 welcome specific views on the following:

- Whether the UNC and IGTUNC should be consolidated;
- If/how to consolidate the electricity codes;
- Whether the REC and SEC should remain separate; and/or
- Whether the consolidation of any codes should be prioritised, and if so, why.

UNC/IGT UNC

We agree that vertical consolidation should be explored solely in relation to the UNC and IGT UNC. There are obvious benefits of bringing these codes together as they generally concern the same activities and processes and more or less have the same users (gas shippers, suppliers and transporters). We would suggest that the consolidated code should align to the current UNC structure and bespoke IGT provisions should only be retained by exception where justified.

Electricity codes

We don't believe Cornwall's proposed network variant or technical variants in relation to the electricity codes will deliver any benefits in relation to the design principles. Fundamentally, we fail to see how bringing together whole codes that govern disparate activities and groups of code users will result in better rather than worse code accessibility and agility. In this context, we see limited or more likely disbenefits in the proposed network variant (1a) which proposes merging the CUSC and Grid Code in parallel to merging the DCUSA and Distribution Code. We find even less rationale behind the proposed technical variant (1B) which proposes merging the STC, SQSS, Grid Code and Distribution Codes. It is notable that Cornwall have not quantified or identified specific benefits arising from these proposed code consolidations.

We think that both the SO-TO Code (STC) and SQSS must remain standalone as they govern critical industry arrangements which have little or no synergies with other industry codes and should not be put at risk from code consolidation. We also consider that there is little or no scope to consolidate the Grid Code and Distribution Code with each other or any other code, as recently demonstrated in the failed ESO consolidation initiative (see our response to Question 11).

REC & SEC

We agree these codes should not be subject to any further code consolidation.

Prioritisation of code consolidation

As noted above, the only area of further consolidation we support as having merit is the UNC and IGT UNC. That said, we would prioritise other code reforms ahead of this consolidation, notably establishing the Strategic Body and its operations in delivering effective cross code coordination. Based on the experience of creating the REC and the resources involved, the timing of the UNC/IGT UNC consolidation should take account of other industry reforms and change programmes which will draw on the resources of stakeholders required to deliver the consolidation and therefore, in our view, this should not be an immediate priority.

How to deliver code consolidation

Q4: Do you agree with our preferred implementation approach (Option 2)? 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? If not, please provide details.

As noted in our response to Question 3, we only see benefits of code consolidation in relation to the UNC and IGT UNC. In this context, we think there would be benefits of Ofgem going beyond its preferred Option 2 (establishing a common contractual framework and governance arrangements) to include rationalisation of duplicated or redundant provisions, ie Option 3. We believe that that IGT UNC contains several bespoke and legacy provisions that are

superfluous and inefficient and if aligned with the UNC would not be justified in their continuation.

Alternatively, we suggest Ofgem could pursue Option 2 with a commitment to undertake a rationalisation exercise once the contractual and governance arrangements have been established.

Code Manager Licensing

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)?

As a broad approach we would recommend any code manager licence is focussed on:

- the establishment, appointment renewal and termination of code managers by Ofgem/Strategic Body;
- the Code Manager's conduct in carrying out its role, eg financial resilience, conflicts of interest etc;
- the required interactions between the Code Manager and the Strategic Body, eg facilitating the strategic direction etc;
- core accountabilities such as maintaining functionality of current codes when considering any consolidation (see our response to Question 6).

We believe that with the exception of the above areas, code governance (and arrangements that impact code users) should be set out in the relevant code and *inter alia* would include:

- activities and processes within scope of the code;
- code modification process;
- performance on timely and efficient progressing and implementing code modifications;
- dispute resolution;
- the role and governance of stakeholder advisory forums (SAFs);
- performance assurance;
- budget setting and charging methodology for costs to users;
- tendering or contracting for code services and delivery systems (following the initial appointment of the code manager);
- code manager data handling.

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

Yes, as noted in our response to Question 1, we believe any appointed CMs should have responsibility for ensuring no loss of functionality when implementing code consolidation. We believe this should be manifest as a licence obligation. In practice to discharge this obligation CMs would be required to have a comprehensive and in-depth understanding of all provisions in their code and to assure knowledge transfer to any other party appointed as CM.

In addition, we think CMs should have an obligation in relation to satisfactory performance on progressing and implementing code modifications in a timely and efficient manner, which should be set out with other obligations in the code (see our response to Question 5).

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?

We agree with the indicated priorities which appear to be:

- Conflicts of interest
- Corporate and financial controls
- Production and update of the delivery plan
- Complying with the delivery plan and strategic direction
- Supporting, engaging and consulting stakeholders, and decision-making
- Budgets relating to code manager Funding
- Incentives and any links to revenues
- Charging methodology for code manager costs

In line with our response to Question 5 while we agree with the above priorities, we believe the first four should be included in the code manager licence and the latter four should be set out in the relevant code provisions.

Further in line with our response to Question 6 we would add an additional priority being CM responsibility for no loss of functionality from the current code requiring an immediate build-up of the required in-depth knowledge and expertise regarding all provisions of the relevant code.

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)?

We don't have any immediate observations though we think the best approach would be to determine the required structure of the code manager licence and then determine how the current code owner licence provisions map to this.

Stakeholder Advisory Forum

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?

We disagree with the abolition of code panels and the incorporation of their decision making rights into the code manager role. When considering the design, role and responsibilities of SAFs it is important where possible to incorporate the strengths of current code panels, namely:

- Corporate memory, industry expertise and overview inherent in panel membership. There may be limited incentives for similar industry representatives to put themselves forward and reflect this in SAF membership if the feedback from the SAF is only noted at the discretion of CMs.
- the appointment process of panel members typically set out key requirements i.e., knowledge, experience and expertise from candidates, this ensures panels are effective. It is important to assure a similar quality in SAF membership to facilitate effective code governance
- The current code panels are effective for the scope of the codes they govern. This would suggest SAFs should map to current codes, there is a genuine risk that consolidating codes to cover a wider scope of industry will lead to expertise becoming

fragmented and more remote within a larger “super code”. Conversely it will become more difficult to find members with the required overview and breadth of knowledge required for effective governance of a “super code”.

In relation to scope we would suggest that stakeholder advisory forums (SAFs) should mirror current code panels as these are proven to be areas industry expertise can be very helpful as an advisory input. In this context we would include the following areas to the SAF scope alongside modification proposals:

- Performance assurance
- Code manager budget and charges
- The code forward workplan.

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

As noted in our response to Question 9 the key to an effective SAF membership is to ensure the role and impact of the SAF provides sufficient incentives to encourage a similar quality of representation inherent in current code panels.

Furthermore, we think the SAF design should be based on current code panels with a “central or primary SAF to discuss overall progress of modification proposals and other code operations and this would be supported by additional SAFs or working groups focussed on specific issues or areas of expertise. We note this model seems to align with the government’s and Ofgem’s views outlined in section 6. The SAF has to balance representation against being at an optimal size that facilitates effective discussion and debate. A SAF which included every code user would in effect result in “town hall” meetings which are unlikely to be helpful to the code manager instead as suggested in the consultation the SAF should include representatives of classes of code parties plus certain non-code parties. Consideration would have to be given to the process for electing or selecting code party representatives and the process for creating constituting additional/supporting SAFS.

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

The REC is the most obvious example to evaluate lessons learned. As it has incorporated all of the reforms in scope of this call for input. Given its recent creation we would recommend more time is given to allow for a robust evaluation of its performance and potential problems. Notwithstanding it is undeniable the time and resource involved in the associated code consolidation undertaken through the significant code review (SCR) was considerable and should serve as a cautionary note when considering any further code consolidation. In addition to the resource involved there was significant disruption to industry from various provisions being deleted without explanation and had to be subsequently reversed given the impact on key processes and systems.

ScottishPower
February 2023