



Making a positive difference  
for energy consumers

To: All interested parties

Email: [FSO@ofgem.gov.uk](mailto:FSO@ofgem.gov.uk)

Date: 18 October 2023

## **Decision letter for Ofgem's Call for Volunteers – FSO Codes Change Programme**

Dear colleagues,

We would like to express our sincere thanks to members of industry who responded to our Call for Volunteers<sup>1</sup>, and especially those who put forward nominations to participate in the Cross-Code Workgroup (CCWG) to develop the industry code changes required for the establishment of the Future System Operator (FSO).

We received nominations for all constituencies set out in the document, in addition to the role of CCWG Chair. We completed a sift process to vet and confirm members. Our decision is as follows.

Confirmed members of the CCWG (not including nominated alternates):

- Alan Creighton – Industry, Northern Powergrid
- Anne Walmsley – Project Management Office (PMO), Ofgem
- Carly Malcolm – Senior Responsible Officer (SRO), Ofgem
- Chris Welby – Chair, Independent
- Christopher McCann – Code Admin, Energy Networks Association (ENA)
- Dave Turpin – Industry, Xoserve
- David Mitchell – Industry, Scotia Gas Networks (SGN)
- Dylan Townsend – Code Admin, Electralink
- Ipshita Sen – PMO, Department for Energy Security and Net Zero (the Department)
- Gareth Evans – Industry, I&C Shippers and Suppliers (ICoSS) Group
- Garth Graham – Industry, Scottish and Southern Energy (SSE)

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<sup>1</sup> Our 2 August 2023 Call for Volunteers – FSO Codes Change Programme can be accessed here: <https://www.ofgem.gov.uk/publications/call-volunteers-fso-codes-change-programme>

- Kristian Marr – SRO, Ofgem
- Lawrence Jones – Project Partner, Elexon
- Mark Dunk – Code Admin, ENA
- Nicholas Brown – Project Partner, Elexon
- Phil Lucas – Project Partner, National Gas Transmission (NGT)
- Richard Woodward – Industry, National Grid Electricity Transmission (NGET)
- Rob Wilson – Project Partner, National Grid Electricity System Operator (NG ESO)
- Steve Quinn – Industry, National Grid Electricity Distribution (NGED)
- Suzanne Law – Industry, Scottish and Southern Energy Networks (SSEN) Transmission

On 3 October 2023, we hosted a pre-meeting of the CCWG for the relevant parties to discuss expectations for the workgroup, the forward workplan, and answer any questions.

## **Response to industry feedback**

We received **eight non-confidential industry stakeholder responses to the questions set out in our Call for Volunteers**, including system and network operators, technology companies and service providers. Many responses addressed not only the specific questions we posed, but also provided feedback on other pertinent aspects of the code change programme. Below we respond to stakeholder feedback organised by category.

### Scope

1. Some respondents requested clarification regarding the kinds of code changes the FSO CCWG would consider, and how confidence in the package of initial code change proposals had been assessed.

### Ofgem response

Annex 1 to our Call for Volunteers sets out code modifications we have identified as: (i) required for a functioning FSO at its designation, and (ii) modifications which we would like to take the opportunity to complete as part of the transition to the FSO to keep the codes current and coherent with other parts of the regulatory framework (e.g., the FSO's new licence conditions). The latter group includes (for example) the removal of legacy conditions, such as the Seven Year Statement, as well as revising the methodology for the CUSC credit cover calculation. The proposed modifications to support this latter group would still be subject to a case-by-case assessment of complexity and the volume of consequential modifications to ensure CCWG objectives are completed within the FSO

project timeline. A fuller set of launch artefacts to enable the development of code change proposals for both the “institutional” and “Enablers of Day 1 Roles” packages will be provided to CCWG members in the lead up to the first CCWG session.

Ofgem and the Department worked with Project Partners<sup>2</sup> and policy to identify, develop and assess the concrete code change proposals we present to the CCWG, and have gained the necessary assurance that the proposals for the institutional package reflect the goals and intentions of the overarching regulatory framework described in the Energy Bill<sup>3</sup>. We will work alongside CCWG members and with the Department to provide continued assurance and guidance to ensure that future code change proposals emanating from the CCWG are also reflective of policy intent and are within scope of the Energy Bill powers.

### Roles and responsibilities

1. One respondent requested clarification as to the roles and responsibilities of CCWG parties set out in our Call for Volunteers document.
2. Some industry stakeholders requested more information as to who within the CCWG would be responsible for drafting and assuring legal text, as well as how drafting responsibilities would be allocated.
3. Several parties enquired as to whether the CCWG is intended to be an enduring body, and if so, how these principles would be set out.
4. One industry party questioned whether there was potential for conflict of interest with NG ESO leading the development of code changes for the FSO.

### Ofgem response

Summary roles for CCWG membership are as follows:

- The Senior Responsible Officer (SRO) for the CCWG will be an Ofgem official (acting on behalf of the Authority) responsible for mediating and moderating matters relating to the output of the CCWG. The SRO is responsible for delivering the package of code modifications to enable FSO Day 1, and will be supported by the CCWG Secretariat and Project Management Office;
- The CCWG Chair will moderate and facilitate the workgroup discussions, driving the development of solutions;

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<sup>2</sup> NGESO, NGT and Elexon.

<sup>3</sup> The Energy Bill (as amended) that was introduced to Parliament in July 2022, and will set the overarching legislative framework for the FSO. Cross-references to the Energy Bill in this document refer to the latest amended version of the Bill at the time of publication (version amended in the Public Bill Committee, dated 11 July 2023 and available at <https://bills.parliament.uk/bills/3311>)

- Code Administrators will conduct business-as-usual assessments where appropriate (outside existing formal code governance processes) and facilitate sub-workgroups and informal consultations;
- CCWG members will represent their stakeholder group and/or code objectives and refer code modifications within the scope of the FSO Codes Change Programme (FSO CCP) to the group.

At each CCWG session, the Secretariat, in agreement with CCWG members, will assign legal drafting tasks to individual group members. We expect these individuals to develop proposed code modification solutions and proposed draft legal text based on discussions at workgroup-level, and in agreement with their legal advisor. We therefore request that each CCWG member be ready to provide legal assurance for any code modification proposal that member puts forward to the group. All code drafting will be subject to final approval and decision by the Relevant Authority<sup>4</sup>.

Per section 166(1) and (3) of the Energy Bill, a Relevant Authority may modify a Relevant Document<sup>5</sup> using its powers under the Energy Bill (once enacted) only "in preparation for the designation of a person [as the FSO] under section 159(1), or in connection with or in consequence of the designation of a person under that provision." This power to modify Relevant Documents is subject to a three-year sunset period following first designation of the FSO (under section 166(6)). That is, either Ofgem or the Department may modify codes for a three-year period following the FSO creation, and before it.

We envisage that the CCWG will develop code change proposals to reflect only those new roles and duties expected to apply from FSO Day 1. In time it is expected that the FSO may take on a greater leadership role in some areas, and as such, that further modifications to the codes may be required to facilitate any additional responsibilities.

While the CCWG Terms of Reference does not set out the intention and requirement for the workgroup to endure beyond designation, we do not rule out the option to convene further CCWG sessions to continue this work.

NG ESO is a key Project Partner in the CCWG and is best placed to lead on developing many of the code change proposals required for the establishment of the FSO. We are confident that the individuals comprising CCWG membership are sufficiently knowledgeable and representative of the wider industry to provide the appropriate degree of challenge

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<sup>4</sup> Means the Secretary of State of the Department or the Gas and Electricity Markets Authority (GEMA), per section 166(7) and section 167(9) of the Energy Bill. Additionally, under section 166(5) the Secretary of State may direct GEMA to exercise the section 166(1)(c) modification power.

<sup>5</sup> A Relevant Document is defined by section 166(7) of the Energy Bill to mean a document required to be maintained in accordance with the conditions of a relevant licence, e.g., such as industry codes.

with regard to any, and all, proposals presented to the workgroup by Project Partners. This mitigates the risk of undue influence of any one party.

#### Code change area / managing change-on-change

1. One industry party suggested that baselining issues associated with the final implementation of code changes could be minimised by careful scheduling (as with the changes arising from 2019 legal separation of NGET and NGESO) and suggested that consideration should be given to the timing of other substantial change packages, in addition to the possibility of a short moratorium on other changes.
2. Several industry stakeholders requested clarity as to how the work of the CCWG would align with wider policy development and reform programme including the Centralised Strategic Network Programme (CSNP), Energy Code Governance Reform, and Review of Energy Market Arrangements (REMA).
3. One stakeholder suggested that it may be useful to use the CCWG to test the alignment of objectives across all codes, as under Energy Code Governance Reform.
4. One stakeholder noted that NGT have a programme to update the Gemini system<sup>6</sup> which will involve a code freeze and suggested that this might affect information flows required from Gemini to the FSO.
5. Another respondent urged that careful consideration should be given to governance reform and consolidation proposals that may disrupt the effective role that the System Operator – Transmission Owner Code (STC) and Security and Quality of Supply Standard code (SQSS) and their panels play in ensuring the safety and reliability of networks.
6. One respondent asked whether the CCWG would consider information requirements for Regional System Planners (RSPs).
7. One stakeholder noted that the FSO is intended to be partly responsible for managing and enabling the roll-out of Hydrogen, as well as current existing gases, which may result in a new Hydrogen Code, and suggested that the CCWG should consider the impact of related developments on industry codes.

#### Ofgem response

We are mindful that careful and deliberate scheduling will be required to avoid baselining issues associated with the implementation of FSO-related code modification proposals stemming from the CCWG. This does not preclude the possibility of introducing a short

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<sup>6</sup> The Gemini System is a suite of online applications for managing the transportation of gas through the National Transmission System (NTS) in Great Britain. These are used for Capacity Management (Entry and Exit Capacity), Capacity Trading, Commercial Balancing, and Invoicing (Capacity and Energy Balancing).

moratorium on other code changes as the implementation date approaches. We have requested that Code Administrator representatives to the CCWG provide us with regular updates regarding the pipeline of BAU industry code changes throughout workgroup and implementation phases of the FSO CCP, highlighting any areas of concern.

Regarding the interaction of the FSO CCP with other significant areas of work with code impacts, we are actively monitoring the progress of developments across:

- i) Elexon ownership transfer;
- ii) CSNP;
- iii) Energy Code Governance Reform;
- iv) REMA.

**We do not envisage significant overlap or dependencies between these areas and the FSO CCP**, except where there are dependencies associated with the delivery of code changes to facilitate the Elexon ownership transfer. We note that code modifications to enable the changes to Elexon ownership will not be developed under the FSO CCP unless transitional arrangements are required<sup>7</sup>. A decision by Ofgem and the Department will be made in due course as to whether this workstream will be decoupled from the FSO CCP.

We also expect code changes to be required to facilitate the new roles and duties the FSO may take on to deliver CSNP, potentially including for Day 1. Ofgem ran a consultation on the framework for identifying and assessing transmission investment options for CSNP on 28 July – 25 August 2023<sup>8</sup>, containing more information on the expected code impacts stemming from this work. Related code changes are being developed according to a separate timeline and work programme as necessary, and we will continue to engage with the relevant parties to understand any implications and dependencies for the FSO CCP.

We remain mindful of the central importance of ensuring system safety, security and reliability. We are confident that CCWG members, including network licensees, are well-placed to facilitate robust impact assessments for any code change proposals originating in the CCWG that may disrupt the effective role that the STC and SQSS codes and their Panels play in ensuring the safety and reliability of networks.

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<sup>7</sup> In July 2022, the Department and Ofgem published a consultation on the Future of Elexon Ownership, which can be accessed here: <https://www.gov.uk/government/consultations/the-future-ownership-of-elexon> A temporary fallback option of public ownership was presented in the case of the industry ownership option being chosen, but where implementation of it could cause a delay to the establishment of the FSO. NG ESO's licence contains references to Elexon as a subsidiary which will require changes to licence conditions and definitions that mention EMR, the BSC and affiliates of the FSO. Until a policy decision is taken, code modifications for transitional arrangements will need to be considered.

<sup>8</sup> The consultation on Centralised Strategic Network Plan: Consultation on framework for identifying and assessing transmission investment options can be accessed here: <https://www.ofgem.gov.uk/publications/centralised-strategic-network-plan-consultation-framework-identifying-and-assessing-transmission-investment-options>

We will engage with CCWG membership, including representatives from NGT and Xoserve to better understand the impact of the work on the Gemini System, for the FSO CCP.

Ofgem has begun developing strategic network planning roles for the FSO and for the Electricity Transmission sector<sup>9</sup>, and we anticipate similar roles in Gas Transmission. We have consulted on potentially giving the FSO an active role in the Electricity Distribution sector<sup>10</sup> and will consider a potential role in Gas Distribution in consideration of the Government's overarching hydrogen strategy.

Further, we ran a consultation on the future of local energy institutions and governance on 1 March – 10 May<sup>11</sup>, which included the proposal to introduce Regional System Planners (RSPs) to ensure accountability for regional energy system planning. The consultation also proposed to assign a market facilitation function to a single entity, in addition to keeping real time operations within the distribution network operators (DNOs). We do not expect that any code changes will be required to facilitate new roles and duties for RSPs for Day 1 of the FSO, but will continue to engage with the relevant parties to understand any dependencies.

Similarly, while the policy direction set out in the documents above suggests new roles and duties for the FSO across hydrogen (and existing gases), the development of these roles and any corresponding code changes, are expected to be developed only in the period following FSO Day 1.

### Energy Bill Powers

1. One respondent requested clarification regarding the need for Ofgem and the Department to enact temporary modifications to industry codes and licences to support the implementation process.

### Ofgem response

Ofgem and the Department intend to use provisions of the Energy Bill (once enacted), to consult on and subsequently amend the licensing regime and industry codes, as required

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<sup>9</sup> Our Decision on the initial findings of our Electricity Transmission Network Planning Review can be accessed here: <https://www.ofgem.gov.uk/publications/decision-initial-findings-our-electricity-transmission-network-planning-review>

<sup>10</sup> The consultation on frameworks for future systems and network regulation: enabling an energy system for the future can be accessed here: <https://www.ofgem.gov.uk/publications/consultation-frameworks-future-systems-and-network-regulation-enabling-energy-system-future>

<sup>11</sup> The consultation on the future of local energy institutions and governance can be accessed here: <https://www.ofgem.gov.uk/publications/consultation-future-local-energy-institutions-and-governance>

for the establishment of the FSO (described in the Energy Bill as the Independent System Operator and Planner or ISOP). We may also decide to use existing powers, or Energy Bill powers, to enact temporary modifications to industry codes and licences. Any such temporary modifications to industry codes and licences would be designed to support the implementation process and facilitate cooperation, and provide a mechanism for industry to gain greater clarity on the process, what adjustments may need to be made and when these need to be completed, including the process outlined in our Call for Volunteers document. We do not intend to enact any temporary modifications to industry licences and codes with respect to the above at this time. This remains subject to ongoing consideration and may change.

### Consultation / readiness and assurance

1. Several stakeholders requested more information as to how Code Panels would be kept up to date with the progress of code change proposals, including whether an implementation recommendation would be sought from the relevant Panel, and generally, how readiness and assurance would be tested with the wider industry.
2. One respondent suggested that requiring Code Administrators to hold informal consultations on the package of code change proposals emerging from the CCWG for their respective code may be excessive given time constraints, given that there is a requirement under the Energy Bill for the Relevant Authority to hold a formal Energy Bill consultation.
3. Another respondent sought clarification as to the difference between the standard code consultation process and the 'informal' Code Administrator consultation process highlighted in the Call for Volunteers.
4. One stakeholder recommended that a mapping exercise be carried out looking at the new and revised draft FSO licences to confirm that suitable framework arrangements are identified and a timescale for development confirmed.

### Ofgem response

Code Administrators form a key constituency within the CCWG. Where appropriate, they are expected to conduct business-as-usual impact assessments for any code change proposals developed by the CCWG (outside existing formal code governance processes) and facilitate sub-workgroups and informal consultations. They are also expected to assist the SRO in keeping Code Panels notified with regard to any progress made within the CCWG and may hold informal consultations on final code modification proposals for their respective code. Authority representatives from Ofgem will also receive regular updates from the SRO to feed into discussions at Code Panels.



Because the FSO CCP workstream sits outside of normal code governance processes, we will not seek a formal implementation recommendation from Code Panels. We expect Code Administrators and wider CCWG membership to provide the Relevant Authority with sufficient readiness and assurance guarantees for the code change proposals they develop via engagement with industry stakeholders throughout the course of the FSO CCP.

The informal Code Administrator consultations built into our original project plan were intended to provide an additional level of assurance and opportunity for industry challenge on the code change proposals developed by the CCWG. We have taken into account the feedback from industry and while we agree that requiring all Code Administrators to hold informal consultations on the package of proposed code changes developed by the CCWG may be excessive given time constraints, we may consider such informal consultation on a case-by-case basis, taking into account code impact, the nature and complexity of the potential change. Stakeholders will have the opportunity to formally provide views on any of the final proposed code modifications presented by the Relevant Authority within its formal Energy Bill consultation<sup>12</sup>.

To provide additional assurance that the solutions developed within the CCWG give effect to FSO policy established in licence, we agree that it may be useful to carry out a mapping exercise to assess new and revised FSO licences and confirm development timescales to ensure the CCWG has the necessary information and inputs to carry out its work.

### **Update to Policy Journey**

The purpose of the CCWG is to develop proposals for the industry code changes required for the establishment of the FSO. In our Call for Volunteers published on 2 August 2023, we stated that these proposed code changes, would be based on:

- An overarching regulatory framework described by Part 5 (“Independent System Operator and Planner”) of the Energy Bill<sup>13</sup>;
- The corresponding licence framework described by:
  - draft licence conditions to be published in an Ofgem informal FSO licences consultation in September 2023,

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<sup>12</sup> Per section 167(1) and (2) of the Energy Bill, the Relevant Authority must consult on the final proposed code modifications before making a modification under section 166 of the Energy Bill. The proposed modifications consulted on will be informed by the final package of code change proposals developed by the CCWG, but are subject to an assessment and decision by the Relevant Authority on the appropriateness of implementing any of the proposed code modifications using the relevant Energy Bill powers.

<sup>13</sup> The most current version of the Energy Bill 336 2022-23 can be accessed here: <https://bills.parliament.uk/bills/3311>

- FSO price control and regulatory finance draft policy, as well as the proposed consequential modifications to wider licences required for coherence published in a separate consultation, and
- any transitional licencing arrangements as a consequence of the Elexon ownership decision, with draft conditions to be published in September 2023;

Since its publication:

- The Energy Bill has moved to its final stages in the parliamentary process, having traversed both houses.
- Between 5 September and 5 October 2023, we consulted on the proposed new electricity supply and generation licence conditions to implement new ownership arrangements for Elexon<sup>14</sup>.
- On 19 September 2023, we opened a non-statutory / informal consultation on the two proposed draft new licences that the FSO is expected to hold<sup>15</sup>.

## Next Steps

The inaugural session of the CCWG will be held on 19 October 2023, where we expect it to begin work on the institutional package of changes set out in Annex 1 of our Call for Volunteers. We expect the CCWG to meet bi-monthly thereafter, and to focus on the development of code change proposals to facilitate FSO Day 1 roles and duties.

We will publish regular updates on the progress of the CCWG, as well as the project timeline, as appropriate.

We would like to thank you again for your continued engagement. If you have any questions regarding the information contained in this letter, please contact Kristian Marr ([kristian.marr@ofgem.gov.uk](mailto:kristian.marr@ofgem.gov.uk)) or Carly Malcolm ([carly.malcolm@ofgem.gov.uk](mailto:carly.malcolm@ofgem.gov.uk)). Please send a copy of your feedback to [FSO@ofgem.gov.uk](mailto:FSO@ofgem.gov.uk).

Yours sincerely,

**Kristian Marr**

Head of Future System Operation – Institutions for Net Zero

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<sup>14</sup> The initial consultation on new electricity supply and generation licence conditions to implement new ownership arrangements for Elexon can be accessed here: <https://www.ofgem.gov.uk/publications/consultation-supply-and-generation-licence-conditions-implement-new-ownership-arrangements-elexon>

<sup>15</sup> The Future System Operator Draft Licences Consultation can be accessed here: <https://www.ofgem.gov.uk/publications/future-system-operator-fso-draft-licences-consultation>