

By email only: industrycodes@ofgem.gov.uk

23 April 2024

RECCo response to Ofgem consultation on the implementation of code reform

We welcome the opportunity to respond to this Call for Input. Our non-confidential response represents the views of the Retail Energy Code Company Ltd (RECCo) and is based on our role as operator of the Retail Energy Code (REC).

RECCo is a not-for-profit, corporate vehicle ensuring the proper, effective, and efficient implementation and ongoing management of the REC arrangements. We seek to promote trust, innovation, and competition, whilst maintaining focus on positive consumer outcomes. We are committed to ensuring that RECCo is an “intelligent customer”, ensuring efficacy and value-for-money of the services we procure and manage on behalf of REC Parties, including those service providers which constitute the REC Code Manager service.

We support Ofgem and the Government’s ambition for code reform and will work with them to ensure smooth and effective implementation. Here is a summary of the key points made in our response:

- Code managers are best placed to determine how to deliver the service. Therefore, we support licence conditions that are not unnecessarily prescriptive. We consider for example the proposed budget requirements to be unduly onerous given the size of the code manager budgets. We also consider that code parties should have the right of appeal to Ofgem of a code manager’s budget as they are ultimately paying the costs. This right is currently available under the REC to both Parties and interested stakeholders, and it would seem to be a diminution of participative governance to remove it.
- We suggest there should be flexibility in the way code managers engage with stakeholders. We support the creation of a stakeholder advisory forum but consider that code managers should decide on what other expert and issues groups to facilitate engagement and obtain governance and technical expertise.
- There are a number of initiatives currently being consulted on within Ofgem which are likely to have an impact on the REC such as the potential separation of switching services and ensuring that REC charges are included in supplier operating costs in the default tariff cap (price cap). It would be helpful if all the initiatives impacting on REC could be considered holistically as the REC transitions to the new governance model.

We would welcome the opportunity to discuss our response with you in further detail.

Yours sincerely,

Jon Dixon
Director, Strategy and Development

Appendix 1: Consultation questions and answers

Q1. Do you agree that we should recommend to the Secretary of State that the 11 industry codes listed (including the SQSS) should be designated as “qualifying documents” for the purposes of using our transitional powers in the Energy Act 2023 to deliver energy code reform?
Yes. The transformation of the energy system should be taken forward on a truly holistic ‘whole-of-system’ basis, which ensures changes are effective and efficient for the whole, and ultimately for consumers, rather than potentially distribute cost and risk from one area of the value chain to another. In order to achieve this, it will be vital that all aspects of industry governance can respond accordingly. This need extends beyond the industry codes themselves but recognising the scope of this consultation and this particular question, we agree that all eleven of the listed codes should be included.
Q2. Do you agree that we should recommend to the Secretary of State that the 5 central systems listed (including the Central Switching Service) should be designated as “qualifying central systems” for the purposes of using our transitional powers in the Energy Act 2023 to deliver energy code reform?
<p>We note Ofgem's recommendation that the Central Switching Service (CSS) should be designated as a qualifying central system to ensure it is subject to enhanced oversight and improved coordination between central systems and code managers. We suggest that Ofgem recommends the Central Registration Service rather than the CSS as the qualifying system as this will ensure that the Switching Operator and the Certificate Authority are included within the central system.</p> <p>It may also be prudent to consider whether the scope of systems to be designated should be defined on some other basis, for instance a description of the functionality they provide rather than who currently provides them or by what such system is currently known. While the energy industry has in the past tended to operate large monolithic systems architecture with lots of integrated functionality, the general trend is now towards a microservices architecture. While such a decentralised approach will offer many benefits such as greater flexibility and overall system resilience, it will also require more dynamic and flexible governance. In contrast, regulation may find it difficult to keep up with even incremental change and if not designed appropriately, could inadvertently stymie beneficial change and innovation. It may therefore be prudent to designate the central systems by some appropriate descriptor of the role they play in the market, such as being a central provider of natural monopoly information services pursuant to a code or licence, rather than to designate an existing system or provider.</p>
Q3. Do you agree with the monetised costs and benefits set out in the accompanying draft impact assessment (i.e., the quantitative analysis)? Please specify if you think there is any further evidence that we should consider.
We have no comment on the costs and benefits of the code consolidation impact assessment.
Q4. Do you agree with the hard-to-monetise costs and benefits set out in the draft impact assessment (i.e., the qualitative analysis)? Please specify if you think there is any further evidence that we should consider.
We have no comment on the costs and benefits of the code consolidation impact assessment.
Q5. Do you agree with our preferred option to consolidate the CUSC and DCUSA to form a unified electricity commercial code?
Consolidating commercial codes may not be straightforward as they involve the interests of different parties, i.e., National Grid under CUSC and the Distribution Networks under DCUSA. While there may be scope for closer and more effective working between them, Ofgem must be cognisant of these commercial interests and not inadvertently damage the attractiveness of the sector to investors. This is particularly important at a time when huge amounts of new investment is needed in order to deliver the system transformation that the proposed governance changes are intended to facilitate.

We also consider that there may be lessons from Retail Code Consolidation. While a summary description of that project was to replace the gas Supply Point Administration Agreement (SPAA) and electricity Master Registration Agreement (MRA) with the dual-fuel REC, in practice it was not quite that simple. The project did not simply merge existing codes. While the bulk of provisions from those legacy codes were migrated to the REC, they were assessed on a case-by-case basis, taking into consideration factors such as interdependencies (i.e. inputs to or from) other industry processes, the actors who fulfilled roles and responsibilities associated with the delivery of processes, and how best to ensure they happened. As part of Retail Code Consolidation, the governance of some processes actually moved to other codes such as the BSC, while those clearly weighted towards retail functions moved in the opposite direction.

We therefore consider that future codes should be shaped by the appropriate clustering of relevant processes and procedures, rather than simply joining any two or more existing documents. All industry code provisions will therefore find their most appropriate home to ensure their effective delivery, rather than simply be lifted and shifted.

Q6. Do you agree with our preferred option to consolidate the Grid Code, STC, SQSS and Distribution Code to form a unified electricity technical code?

We agree that there is merit in consolidating the technical codes. It is unclear in the code reform proposals whether the NESO would be considered as a code manager, and it would be helpful to have clarity on this as we consider that the NESO could be the most appropriate code manager of the unified technical code.

Q7. Do you agree with our preferred option to consolidate the UNC and IGT UNC to form a new unified gas network code?

We agree that there is merit in consolidating the existing gas codes. We note that the IGT UNC already incorporates much of the UNC provisions by reference.

However, there may be provisions in the IGT UNC which are unsuitable for migration to the unified gas network code. For instance, metering arrangements were previously unbundled from the main Network Code¹, in order to facilitate more effective competition in metering services. It would therefore seem inappropriate to move the extant IGT UNC metering provisions into any consolidated code, and consideration should be given to whether they would more appropriately be incorporated into the REC which already governs many other aspects of metering services.

Q8. Do you agree with our proposals to rationalise the identified code provisions as part of any consolidation exercise?

We agree with the proposal to rationalise code provisions where appropriate.

From RECCo's experience of code consolidation we consider that there are a couple of key issues to consider:

- Firstly, an assessment of the benefits of rationalisation and the desired outcomes should be undertaken as there may be merit in keeping codes separate under a common contractual framework and rationalisation may not always achieve tangible benefits.
- Secondly, a review should be conducted as part of rationalisation to determine whether there are provisions in the codes that best sit within the consolidated code or elsewhere. For example, as set out in our response to Q7, there are provisions in the IGT UNC that might be better placed in the REC, rather than in the unified gas network code. It would be a good opportunity for a more

¹ As part of the Review of Gas Metering Arrangements, prior to the creation of the Uniform Network Code

structured review of where provisions sit within the wider code landscape and a clearer delineation between the codes.
Q9. Do you agree with our proposal to publish the first SDS for all codes next year (before code managers are in place)?
<p>We agree that introducing the first SDS from 2025 ahead of any code manager appointments would be helpful. While the licence framework will not be in place to require code managers to have delivery plans in place, we consider it would be beneficial to engage with Ofgem to agree the form and content of the SDS. It should also be possible to make some progress towards delivering the SDS even in advance of any obligation to do so. We are keen to engage in this process and to discuss with Ofgem how best we can support it.</p> <p>We would like to have a better understanding of how prescriptive the SDS will be. We consider that the licence requirements for the SDS as well as for other licence conditions should set out the high-level principles but should leave the lower-level detail on how the requirements are met to the code managers in order to determine the best approach.</p>
Q10. Do you have views on the proposed SDS process?
<p>We welcome engagement throughout the development and implementation phases and would like to work closely with Ofgem to develop an effective SDS.</p> <p>We consider that the delivery of the SDS and code manager budget-setting processes are very much interlinked, with the former influencing and potentially being dependent the latter. The joint consultation sets out a detailed approach to budget setting and it would be helpful to understand the approach to setting the SDS to ensure that, for example, stakeholder engagement across the two processes is not duplicative or inconsistent. We would also like to better understand the content of the SDS and how it interlinks with the delivery of the RECCo Forward Work Plan for the same reasons.</p>
Q11. Do you agree with our proposal that a principles-based standard condition for gas and electricity licensees would support the development and delivery of code modifications related to the SDS?
<p>We agree with the proposal to include a duty to cooperate with the SDS in all gas and electricity licence types and also for a similar obligation on the relevant code. We note that a similar obligation already exists on all licensees to cooperate with the Authority in the delivery of a Significant Code Review. An SDS would appear to be a broadly equivalent intervention to an SCR and as such comparable obligations seems appropriate.</p>
Q12. Do you agree with our preferred option for how a Stakeholder Advisory Forum should be constituted?
<p>We note the three options proposed by Ofgem. We consider that there is merit in a fixed membership of the SAF, and like the BSC, the REC has appointed remunerated individuals to bring particular insight and provide independent challenge and rigour to the REC Change Panel. However, we note from our experience that having stakeholder involved in the sort of decisions traditionally associated with a change panel is not of itself sufficient to ensure that stakeholders are fully engaged in the development of code modifications. We also consider that there is simply too much change being progressed by the industry at any one time for a single SAF to cover adequately. Therefore, we think that code managers should retain the flexibility to create as required open forums such as the REC Issues Group that enables any stakeholders to raise issues, as well as issue specific SAFs and expert and technical.</p> <p>In addition, we note Ofgem's preferred approach of requiring stakeholder and independent parties to act impartially. We think Ofgem should give more consideration to how it will ensure that stakeholders act</p>

impartially as in practise we note that it is difficult for stakeholders not to represent the views of their company or whatever constituency of interested parties that were involved in their appointment.

Q13. What are your views on i) a requirement to assess the greenhouse gas impact of code modifications with updated guidance, or, ii) introducing a 'net zero' code objective?

Given that the overarching aim of the Code Reforms was to better facilitate the transformation and decarbonisation of GB energy industry's decarbonisation, it seems appropriate that net zero should be in scope.

We note that Ofgem now has a statutory net zero duty and to the extent that modification proposals are sent to it for approval, will have to take that duty into account when determining whether to accept those proposals. It therefore seems appropriate that, to the extent that a change will be submitted to Ofgem and determined in part by reference to its net zero duty, that the code manager undertakes relevant analysis and forms its own opinion based on the same criteria. However, not every code modification will have a net zero impact and its relevance may vary greatly from code to code. For instance, we consider that this is more likely to be a common consideration for upstream technical changes than at a retail level.

We also note that Ofgem's wider duties, such as to undertake environmental impact assessments usually have a materiality threshold, in that case being applicable only where there would be a *significant* impact. In order to avoid nugatory effort and inefficient cost, it would similarly be appropriate for any obligation on code managers to consider the net zero impacts of a change to be subject to a materiality threshold, or conversely exempted if the code manager reasonably believes any impact to be immaterial to the outcome of the proposal. We agree that any new obligation should be accompanied by appropriate guidance, not least to ensure consistency of approach across codes and by different decision-making bodies in the event of escalation.

Q14. Do you agree with our proposal to extend and harmonise the ability of code panels to prioritise the assessment of code modification proposals?

We consider that there could be merit in harmonising prioritisation, consistent with the existing RECCo prioritisation criteria. However, we would recommend a pragmatic approach that ensures that variations in the codes can be taken into account through the objectives – i.e., whilst consistency would be desirable, there may be code-specific constraints that need to be taken into account which do not apply elsewhere.

We also consider that there may be an opportunity to provide genuine cross-code prioritisation. While efforts in this regard have been attempted in the past, for instance through the Code Administration Code of Practice (CACoP), the Gas Central Service Change Horizon² and the REC Code Roadmap, these individual efforts have not yet managed to deliver a genuinely transparent, appropriately prioritised and manageable pipeline of change for Code Parties, who are often the common denominator and potential single point of delay or failure, or at least the point where the competing challenges of multiple change pipelines is most acutely felt.

Since the implementation of the REC, the Cross-Code Steering Group seems to have improved the extent of communication between code bodies and consideration of any multi-code issues that may arise in relation to a given proposal. It may be timely to consider whether a similar cross-code approach should be taken to the prioritisation of change, consistent with the whole-of-system approach being advocated elsewhere.

² See: <https://www.gasgovernance.co.uk/GCSCHT>

Q15. Do you agree with our proposal to adopt a phased approach to transitioning codes to the new governance model?
<p>Yes, we consider that a phased approach be necessary in order to make the work manageable to whatever teams will be involved, not just from Ofgem and government, but any legal support appointed to undertake the drafting, and indeed stakeholders involved in review and quality assurance. This will also reduce the disruptive impact on industry change programmes. However, it will also be important to ensure that the sequencing is correct, in order that all of the relevant touchpoints of the revised governance are considered in the round. For instance, Code Reform should have regard not only to large Ofgem instigated programmes such as MHHS, but the development of any new licence obligations or wider regulatory initiatives.</p>
Q16. Do you identify any strategic or operational considerations that might inform the transition sequence?
<p>We consider that the potential transfer of CSS to RECCo from the DCC review and any licencing arrangements resulting from the transfer should be considered alongside the creation of the code manager licence.</p> <p>The price protection policy team is due to consult on the inclusion of Elexon and Xoserve costs as operating costs for the purposes of a cost pass through in the price cap. We consider that it is important that REC code manager costs are also treated as operating costs for this purpose and that this approach is implemented alongside the appointment of the code manager.</p>
Q17. What are your views on our proposed transition sequencing?
<p>We support the proposal for REC to be in phase 1 of the transition sequence.</p>
Q18. Do you have any other comments on how Ofgem should approach the implementation and transition process?
<p>As set out in Q16.</p>