

# Decision

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## Decision on code manager selection

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On 28 November 2024, we published our consultation on code manager selection. The consultation sought responses to our approach to selecting code managers, a new type of licensed role created by the Energy Act 2023. We gathered views from 29 organisations with an interest in energy code governance.

This document considers those responses and details our decisions on our code manager selection policy.

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## **Executive summary**

The Energy Act 2023<sup>1</sup> sets out a package of reform to the governance of the energy industry codes. Under new powers created by the Act, Ofgem<sup>2</sup> will be responsible for selecting code managers, on either a competitive or non-competitive basis, leading to the potential grant of a code manager licence.

In November 2024, we published a consultation on our approach to code manager selection, including the processes that we would follow and the criteria that we would apply when selecting on a competitive or non-competitive basis. This document summarises respondent views on the content of that consultation and details our decisions.

### Overview of the code manager selection process

We have decided to select code managers using a three-stage selection process, consisting of an initial eligibility assessment, a licensing assessment and an implementation and assurance process.

We have decided to consider speed of delivery and value for money when determining which selection route to follow. These considerations have led us to pursue a non-competitive selection for the Balancing and Settlement Code and the Retail Energy Code. We will base our selection route decisions for the three consolidated codes on information gathered during a public expression of interest process. We will defer our decision on how to select a code manager for the Smart Energy Code, with an update expected in due course.

We have also decided to grant enduring code manager licences.

### Eligibility assessment

We have decided to proceed with the proposed eligibility assessment process and criteria, which consist of verifying candidates' basic information and suitability to hold a licence, confirming candidates' intention to comply with conflict-of-interest requirements and considering candidates' past experience.

### Licensing assessment

We have decided to proceed with the proposed licensing criteria, which will be applied to both the competitive and non-competitive licensing assessments.

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<sup>1</sup> [Energy Act 2023](#)

<sup>2</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work.

### Competitive licensing assessment

We have decided to proceed with the proposed competitive process, consisting of a single-stage competition where candidates would be scored, applying weighting and minimum scores as appropriate.

We have also decided to proceed with the proposed approach to the necessary enabling regulations, which we intend to lay in parliament later this year.

We have also decided to apply two additional criteria, “innovation” and “facilitating the move to net zero and clean energy”, to both types of licensing assessment rather than solely to the competitive assessment.

### Implementation and assurance

We have not provided a decision on the design of the implementation and assurance process for code managers in this document. Instead, we have used the responses to our consultation to inform more detailed proposals on this process, which are addressed in our second implementation consultation on energy code reform.<sup>3</sup>

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<sup>3</sup> [Energy code reform: second implementation consultation | Ofgem](#)

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# 1.Introduction

## Background

- 1.1 The Energy Act 2023 sets out a major package of reform to the governance of the energy industry codes, including new powers and responsibilities for Ofgem. Energy code reform aims to ensure that the codes can respond to the evolving sector, enabling change to be delivered more efficiently and effectively in the interests of consumers, and to facilitate the transition to net zero.
- 1.2 Under the new framework, we will select and license new code managers, each of which will be responsible for code governance. Code managers will be responsible for the governance of their respective designated code, which they will be obliged to do in an independent and impartial manner. They will also be responsible for facilitating the development of the codes in line with the policy priorities in our annual Strategic Direction Statement (SDS).
- 1.3 The Code Manager Selection Regulations 2024 came into force in November 2024.<sup>4</sup> Through the powers accorded by the Act, we will determine whether to select a code manager on either a competitive or non-competitive basis in accordance with the Regulations. In some cases, we may seek expressions of interest before making our determination. The regulations further allow us to outline the processes that we will follow and the criteria that we will apply, when selecting code managers on a non-competitive basis.
- 1.4 In this document, we describe our decisions on the process for selecting code managers, including how we will approach our decision on whether to select them using a competitive or non-competitive process.
- 1.5 Alongside this document, we have published an updated version of our guidance on code manager selection. The changes that have been made to the guidance are detailed in an appendix to this decision document.

## Related publications

- 1.6 This document explains our policy decisions on the proposals in our consultation on code manager selection, published in November 2024. Stakeholder responses to that consultation have informed our decisions.
- 1.6 Documents relating to this area of work include:

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<sup>4</sup> [The Code Manager Selection Regulations 2024](#)

- Energy code reform: second implementation consultation ([ofgem.gov.uk](https://www.ofgem.gov.uk)) – April 2025
- Consultation on the preliminary Strategic Direction Statement and governance arrangements for industry codes ([ofgem.gov.uk](https://www.ofgem.gov.uk)) – January 2025
- The Code Manager Selection Regulations 2024 ([legislation.gov.uk](https://www.legislation.gov.uk))
- Energy Code Reform: Government response to consultation on code manager licensing and secondary legislation ([publishing.service.gov.uk](https://www.publishing.service.gov.uk)) – October 2024
- Implementation of energy code reform: decision ([ofgem.gov.uk](https://www.ofgem.gov.uk)) – August 2024
- Energy Act 2023 ([legislation.gov.uk](https://www.legislation.gov.uk))
- Call for Input: Energy Code Governance Reform ([ofgem.gov.uk](https://www.ofgem.gov.uk)) – December 2022
- Government response to the consultation on Energy Code Reform ([publishing.service.gov.uk](https://www.publishing.service.gov.uk)) – April 2022
- Design and Delivery of the Energy Code Reform: consultation ([publishing.service.gov.uk](https://www.publishing.service.gov.uk)) – July 2021

## **Our decision-making process**

- 1.7 We received 29 responses from a range of stakeholders in response to our consultation. We also engaged with stakeholders through attending code panel meetings, holding a webinar on the consultation, and engaging with interested parties via bilateral meetings.
- 1.8 We carefully considered all responses raised by stakeholders, even where they are not specifically mentioned in this decision document. We have published all non-confidential responses on our website.
- 1.9 In this document, we refer to various policy decisions that we have taken on code manager selection. These decisions are in accordance with the Energy Act 2023 and are underpinned by the requirements of the Code Manager Selection Regulations 2024, including the requirement to determine and publish a statement of the criteria that we will follow in deciding whether to select a candidate as a code manager<sup>5</sup> – and are further detailed in our accompanying guidance on code manager selection.

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<sup>5</sup> See Regulation 5(3) of [The Code Manager Selection Regulations 2024](https://www.legislation.gov.uk)



### Next steps

- 1.10 Alongside the November 2024 consultation, we commenced our selection process for the Balancing and Settlement Code (BSC) and the Retail Energy Code (REC), by inviting the incumbent code administrators, Elexon and the Retail Energy Code Company (RECCo) respectively, to express their interest in the relevant role and participate in an eligibility assessment process.
- 1.11 On 10 March 2025, we published two separate determinations setting out that those bodies had met our eligibility requirements and that we intended to proceed with a non-competitive selection route for those codes.<sup>6</sup> If, following our licensing assessment process, we conclude that a code manager licence should be granted to either of both of them, we will publish respective proposals to grant a code manager licence, which will be subject to stakeholder representations.
- 1.12 Further details on our proposals about the timing of code manager selection exercises for the remaining four codes, alongside a plan for how Ofgem intends to approach the transition and implementation process for energy code reform, was published in our second implementation consultation in March 2025.<sup>7</sup> After considering the responses to this consultation, we intend to publish decisions on the timing of next steps for future code manager selection exercises in due course.
- 1.13 We intend to make regulations for the competitive selection of code managers, under section 189 of the 2023 Act. The Department for Energy Security and Net Zero will lay these regulations in parliament later this year on our behalf.
- 1.14 We also plan to consult on draft guidance and criteria on the competitive process in due course. Following consultation, we expect that guidance would be finalised at the launch of a competitive process.

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<sup>6</sup> See [Determination of the basis of selection of a code manager for the Balancing and Settlement Code | Ofgem](#) and [Determination of the basis of selection of a code manager for the Retail Energy Code | Ofgem](#)

<sup>7</sup> [Energy code reform: second implementation consultation | Ofgem](#)

## **2. Overview of the code manager selection process**

### **Section summary**

This section sets out a summary of responses and our decision to:

- i) conduct a three-stage selection process, consisting of an initial eligibility assessment, a licensing assessment, and an implementation and assurance process
- ii) determine whether to select code managers on a competitive or non-competitive basis, based on considerations of speed of delivery and value for money
- iii) grant enduring code manager licences.

### **Background**

- 2.1 The Code Manager Selection Regulations 2024 contain requirements for us to follow when selecting code managers. These requirements relate to our choice of selection route, our assessment of potential conflicts of interest and our process for selecting code managers on a non-competitive basis.
- 2.2 In our consultation, we proposed a three-stage selection process, consisting of an eligibility assessment, licensing assessment, and implementation and assurance process. We consulted on how we would decide whether to select candidates on a competitive versus non-competitive basis for each code, and on the duration of code manager licences.

### **Consultation position**

- 2.3 We sought views from stakeholders on three elements of our approach to selecting code managers. These were our three-stage selection process, how we would propose to decide between competitive versus non-competitive selection, and the duration of the code manager licence.
- 2.4 Firstly, we sought views on proposals for a three-stage code manager selection process, comprised of:
  - an initial eligibility assessment to determine whether candidates meet the minimum requirements for the role,
  - a licensing assessment, where their detailed proposals on how they would fulfil the role would be considered, and

- an implementation and assurance process, during which candidates would be expected to acquire the resources to carry out the functions of the role and make any necessary governance changes.
- 2.5 Our view was that this approach would ensure a transparent, effective and proportionate selection process.
- 2.6 Secondly, we sought views on our proposal to base our selection route decisions on two key considerations of speed of delivery and value for money. We further proposed, based on these two considerations, to select code managers for each code in the following manner:
- to invite the incumbent code administrator for the Balancing and Settlement Code (BSC) (Elexon) and code manager for the Retail Energy Code (REC) (RECCo) to express their interest in becoming code manager candidates for their respective codes under the new regime, in anticipation of considering their selection on a non-competitive basis,
  - to base our selection route decision for the three consolidated codes on information gathered during a public expression of interest process, and
  - to defer our decision on how to select a code manager for the Smart Energy Code (SEC).
- 2.7 Finally, we sought views on our proposal to grant enduring code manager licences. We proposed that the grant of an enduring licence would provide the long-term certainty needed for code managers to fulfil their strategic role and avoid the cost and disruption of facilitating repeated selection processes.

## **Summary of consultation responses**

Q1. Do you agree with our proposed, three-stage process for assessing code manager candidates?

- 2.8 A large majority of respondents agreed with the proposed three-stage process. Respondents in favour of the proposals said that this process was a sensible approach which allowed consistency with other operating models in the industry and a couple noted that it would provide certainty to the industry and the candidate. It was also noted that this process should reduce unnecessary time and cost by ensuring that only the right candidates progress to each stage and that the best code manager can be selected.
- 2.9 A couple of respondents raised concerns around potential disruption to business as usual during a period of transition, particularly if the current code

administrator is not selected. They further suggested that this should be minimised to reduce the risk of losing expertise or having a negative effect on the incumbent code administrator's performance. They noted, however, that allowing a period of implementation was sensible and could limit wasted costs incurred by candidates.

- 2.10 A couple of other respondents raised concerns that conflicts of interest needed to be more rigorously addressed at the eligibility stage, given the unique and critical strategic role that code managers will play. They remarked that the code manager standard licence conditions (SLCs) should more clearly define exactly what other activities and investments could be permissible or contain provisions placing mitigation requirements on licensees and that this should be monitored regularly and transparently.
- 2.11 A few asked for further detail to be provided on the how stakeholders would be kept informed of the process, and on timeframes for stakeholder input into the selection of candidates, such as the time allowed for stakeholder representations to a proposal to grant a licence and how those representations would be considered.

Q2. Do you agree with how we have proposed to make our selection route decisions, in line with our considerations of speed of delivery and value for money?

- 2.12 The majority of respondents to this question agreed with our proposal. Of those that agreed, a few noted that speed is crucial to avoiding increased costs and ensuring a smooth transition. A couple highlighted the importance of facilitating non-competitive appointments where possible, as the direct selection of experienced organisations is an efficient approach. A few added that non-competitive selection was more likely to achieve value for money in light of the SLC requiring the code manager to conduct the role on a not-for-profit basis. They expressed concerns around how not-for-profit entities would be able to raise funds and participate in a competition.
- 2.13 A few respondents disagreed with our proposal, particularly the proposal that the creation of Special Purpose Vehicles (SPVs) should be a fallback option only where there are no eligible responses to a call for expressions of interest. Their view was that an SPV should be more actively considered, such as where stakeholders do not agree with the selected candidate. A couple noted that creating an SPV and drawing on the expertise of current code administrators (both profit and not-for-profit) could be a preferable outcome to multiple not-for-profits competing for a service. Another respondent made the opposite point, that

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Ofgem should engage in dialogue with incumbents that do not express interest before considering creating an SPV.

Q3. Do you agree with our proposal to grant code manager licences on an enduring basis?

- 2.14 There was a mix of responses to this question. Overall, a majority of the respondents to this question agreed with our proposal, while a few disagreed and some neither agreed nor disagreed.
- 2.15 The main reasons for agreement were the stability that this approach would provide for code managers and the industry. It was remarked by a few that enduring licences would allow code managers to undertake better long-term planning and provide them with the ability to dedicate time and resources to long-term challenges. A few noted risks around time-limited licences, such as loss of expertise or a lack of competition for a repeated selection process.
- 2.16 Those who were against the proposal, and some who had mixed views, argued that fixed-term licences could create stronger incentives for code managers to perform well. Of all the responses, the majority agreed that there was a need for effective performance management of the code manager, regardless of whether the licence was enduring or fixed-term. Many also noted that the code manager licence should be able to be revoked as a last resort.

## Decision

- 2.17 We have decided to proceed with our proposal to establish a three-stage selection process, consisting of an eligibility assessment, a licensing assessment and a period of implementation and assurance.
- 2.18 We have decided to maintain the considerations of speed of delivery and value for money when it comes to our choice of selection route. We have also decided to apply these considerations to our decisions on selection route in the following manner:
- for the BSC and REC, we will continue with the assessment of Elexon and RECCo on a non-competitive basis, in line with the determination that we published earlier this year,<sup>8</sup>

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<sup>8</sup> [Determination of the basis of selection of a code manager for the Balancing and Settlement Code | Ofgem](#) and [Determination of the basis of selection of a code manager for the Retail Energy Code | Ofgem](#)

- for the three consolidated codes, we will base our selection route decisions on information gathered during a public Expression of Interest (EOI) process, and
- for the SEC, we will defer our decision on how to select a code manager for now, with an update expected in due course.

2.19 Finally, we have decided that code manager licences should be granted on an enduring basis.

## **Rationale for our decision**

### Three-stage selection process

2.20 We agree with stakeholder feedback that a three-stage process will best ensure that the selection is transparent, proportionate and efficient. By breaking down the assessment into these three stages, we can ensure that only potentially viable candidates can proceed to the next stage and reduce the risk of wasted time or costs to candidates, that may be passed onto the industry and consumers as a result.

2.21 We acknowledge stakeholder concerns around the period of transition once a proposal to grant a code manager licence has been published, and particularly whether there would be disruption to business as usual. We still believe that a period of implementation and assurance is necessary to allow candidates enough time to build capability in their organisation, which may be particularly relevant for new bodies or bodies that may currently rely on subcontracting to deliver certain services. We have consulted further on our approach to implementation and assurance, which includes more detail on how we propose to minimise disruption to business as usual by working with candidates and incumbent code administrators during the implementation period.<sup>9</sup>

2.22 We acknowledge concerns raised by a few stakeholders regarding the conflict-of-interest requirements at the eligibility stage. We address these concerns more fully in section 3 below, where we explain how we will consider any conflicts of interest at the eligibility stage.

### Our choice of selection route

2.23 We note that the majority agreed that the considerations of speed of delivery and value for money should be applied to our decisions on selection route. We believe that this will minimise disruption and ensure that, where a single body with the

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<sup>9</sup> [Energy code reform: second implementation consultation | Ofgem](#)

right experience is identified, we do not open the process up to a costly and time-consuming competition where this would not bring additional benefit.

2.24 We note that some respondents disagreed with our decision tree, particularly the proposed approach of only creating an SPV, or specially formed company,<sup>10</sup> where no one responds to our EOI process or where we conclude that no eligible bodies exist. We agree that there may be cases where asking two not-for-profit bodies to compete for a licence may not necessarily deliver value for money to the industry and consumers. We will therefore retain the discretion in such instances to pursue an alternative approach with the help of our powers under Schedule 12 and 13 of the Act<sup>11</sup> - such as the creation of an SPV (formed from a combination of the relevant bodies) or the non-competitive selection of a particular body combined with the full or partial merger of another. As a result, we have amended our decision tree in the guidance to reflect this discretion.

2.25 However, we are likely to only consider this approach where we have determined that it would be the best way to achieve our considerations of speed of delivery and value for money, and with the consent of the relevant bodies. In the absence of that consent, we believe that facilitating a competitive process between two or more eligible bodies would lead to a more equitable and proportionate outcome for those involved.

2.26 We also note that we may revert to the selection of an SPV if needed, such as where an organisation has – at any point in the process – failed to meet our requirements or where stakeholder representations to our consultations lead us to believe that we should not grant the candidate the licence.

### Licence duration

2.27 We note that performance management was cited as the key benefit of fixed-term licences. Since our November consultation, we have published our second joint consultation with the Department for Energy Security and Net Zero (DESNZ) on the code manager licence, which includes a package of draft SLCs aimed at the code manager's performance.<sup>12</sup>

2.28 Among other things, these conditions would oblige the code manager to include relevant performance incentives in the code, require them to perform at least to a "minimum acceptable standard" (with the possibility of compliance steps and

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<sup>10</sup> As defined in 2(1) of [The Code Manager Selection Regulations 2024](#)

<sup>11</sup> Which allow us to establish transfer schemes, modify pension arrangements, etc

<sup>12</sup> [The second consultation on the implementation of the energy code reform](#)

enforcement action if not) and require them to monitor their performance, culminating in a mandatory performance report each year that will be shared with code parties and the stakeholder advisory forum for comment. We have also proposed to establish a link between any bonus payments (ie “performance remuneration”) for senior staff to the performance indicators in the relevant code, feedback from Ofgem and stakeholders, and any compliance or enforcement action.

- 2.29 As such, we believe that these proposals will allow Ofgem to not only oversee the code manager’s performance, but also to take the necessary steps where non-compliance has occurred (for example, in instances where the code manager cannot demonstrate that it has met the performance requirements). We also intend for revocation to be possible in circumstances where there has been a serious licence breach and where other actions to bring the licensee back into compliance have not been successful.
- 2.30 We acknowledge the benefits of a fixed-term licence mentioned by respondents. However, we believe that, with the above conditions in place, the benefits of an enduring licence would outweigh those of a fixed-term licence. In addition, we note comments around the importance of code expertise to the role, which we believe enduring licences would best ensure code managers can retain and develop over time – facilitating a more effective code management framework.

### Next steps

- 2.31 Elexon and RECCo are currently in the process of completing the licensing assessment for the BSC and REC. Following this assessment, if we believe that either or both of these candidates should be granted a code manager licence, we will publish a notice setting out our proposal to grant them one which will be open to stakeholder representations.
- 2.32 We will continue to engage with stakeholders on our plans for future code manager selection exercises and we note the requests for clarity on timelines for these codes. We envisage beginning the expressions of interest and eligibility assessments for some or all phase 2 and 3 codes at the earliest opportunity. Our April 2025 second implementation consultation contains our current assumptions that we expect to begin the eligibility assessment process for anyone who may be interested in becoming a code manager candidate of a phase 2 code later in 2025 and that we expect to publish our minded-to decisions with respect to the phase



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2 code managers, followed by the start of the following implementation and assurance period in 2026-27.<sup>13</sup>

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<sup>13</sup> [Energy code reform: second implementation consultation | Ofgem](#)

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## 3. Eligibility assessment

### Section summary

This section sets out a summary of responses to the consultation and our decisions on:

- i) the processes and criteria that we intend to use during the eligibility assessment, and
- ii) the guidance document published alongside the consultation, which describes the eligibility assessment process and the content of the eligibility assessment form.

### Background

- 3.1 The Energy Act 2023 provides for GEMA to choose between the competitive and non-competitive selection of code managers, in accordance with the Code Manager Selection Regulations made by the Secretary of State.<sup>14</sup> To help inform that decision, the regulations state that we may seek expressions of interest from any person that we think may become a candidate for selection as code manager.
- 3.2 In our consultation, we proposed how we would use the expression of interest process to undertake an initial assessment of candidate eligibility. We also consulted on the contents of the draft guidance and draft eligibility assessment form published alongside the consultation.

### Consultation position

- 3.3 We proposed an eligibility assessment with what we believed to be reasonable minimum requirements for candidates to meet before progressing to a more in-depth licensing assessment.
- 3.4 To determine candidate eligibility, we proposed to:
- carry out checks on basic information relating to candidates,
  - carry out an assessment of a candidate's suitability to hold a licence,
  - ask candidates to confirm their intention to comply with relevant conflict-of-interest requirements, and
  - assess candidates' experience relevant to fulfilling the code manager role.
- 3.5 We proposed to consider candidates to have met our eligibility requirements where:
- the candidate has demonstrated that considering them for selection would pose low or no risk to the industry and consumers,

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<sup>14</sup> [The Code Manager Selection Regulations 2024](#)

- we have assessed the candidate as 'fit and proper' to hold a licence in our suitability assessment,
- the candidate has confirmed their intention to comply with the relevant conflict-of-interest requirements, and
- the candidate's description of their experience has given us reasonable confidence in their ability to fulfil the code manager role.

3.6 Following our assessment, we proposed to publish a notice of our determination of the basis of selection, whether competitive or non-competitive, in line with the requirements in the regulations.

### **Summary of responses**

Q4. Do you agree with the processes and criteria that we have proposed to use during the eligibility assessment stage?

- 3.7 A large majority of respondents agreed with the processes and criteria that we proposed to use during the eligibility assessment.
- 3.8 Of those that agreed, some respondents endorsed the clarity and time-saving aspects of an eligibility stage before the main selection exercise. A few respondents valued the criteria's comprehensiveness in ensuring only qualified candidates proceed. They also supported the balance between demonstrating corporate suitability, including the requirement on candidates to provide information on any potential conflicts of interest, and assessing relevant experience. A couple of other respondents agreed that our proposed criteria were consistent with other licence applications.
- 3.9 A few respondents disagreed with the processes and criteria that we proposed to use during the eligibility assessment, for differing reasons. A couple had views on the conflict-of-interest requirements, with one arguing that conflict-of-interest mitigation should be stronger at the eligibility assessment stage, while another argued that strict conflict-of-interest requirements could disproportionately affect candidate eligibility.
- 3.10 A few respondents raised concerns about the relevance of the required experience, such as whether there may not currently be an organisation capable of fully satisfying all relevant criteria or that they may unfairly exclude candidates without prior code administration experience.
- 3.11 There was also some concern that changes to the draft guidance resulting from the consultation could mean both RECCo and Elexon would need to retroactively

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amend their submissions to ensure a level playing field for all code manager candidates.

Q5. Do you have any comments on the draft guidance published alongside this consultation, either in relation to how we have described the eligibility assessment process or the proposed content of the draft form?

- 3.12 Many of the respondents provided comments on relevant sections of the draft guidance published alongside the consultation. Overall, they responded that the draft guidance is clear, comprehensive, fit-for-purpose and efficiently explains the eligibility assessment process, detailing each section and the steps involved. Respondents also agreed that the draft forms are adequate to capture the necessary information for prospective code managers.

### **Decision**

- 3.13 We have decided to proceed with the proposed eligibility process and criteria, consisting of verifying candidates' basic information and suitability to hold a licence, confirmation of candidates' intent to comply with conflict-of-interest requirements and a consideration of candidates' past experience.

### **Rationale for our decision**

- 3.14 We acknowledge agreement from the large majority of respondents on our proposals. We have decided that assessing each candidate against the reasonable minimum requirements should help determine which candidates are eligible to be considered for the code manager role. Given that we anticipate that the licensing assessment will require more resource from candidates, we believe that our approach will prevent a considerable amount of industry time and effort being spent on a full assessment process by ineligible bodies.
- 3.15 We have decided not to change the requirements of the conflict-of-interest assessment to oblige candidates to provide more detailed proposals on mitigations or compliance at this stage. We agree with the importance of ensuring a candidate does not proceed where there is an unmanageable conflict. As indicated in the guidance, should a candidate respond to the eligibility assessment that for any reason they cannot meet the requirements of the draft standard licence conditions (SLCs) and may require exceptions to certain conditions, then we will request additional information from those candidates. Follow up discussion may include the nature of any other activities the candidate conducts and their current governance structures, to inform our decision on their eligibility including whether we believe that potential exceptions to the SLCs

would be the best and most proportionate approach. We will continue to engage with candidates at every stage of the selection process to ensure that the right measures are established to mitigate against any potential conflicts of interest.

- 3.16 We note the comments received on the experience requirements of the assessment, which we developed in light of feedback received to past consultations and workshops. We acknowledge that, in many cases, current code administrators may possess the necessary experience, skills and capabilities required of an effective code manager. However, as described in our guidance, we will also accept types of transferrable experience that could be relevant to the role – be it secretariat experience, experience in options analysis or impact assessments, or where employees of the candidate have experience attending either code panels or workgroups.
- 3.17 We also note the concern with assessing RECCo and Elexon in parallel to our consultation. Our intention was to request further information from these two organisations should that be deemed necessary, based on stakeholder feedback to our proposals. However, having considered the responses to our consultation, we decided that nothing additional was required from Elexon and RECCo before determining their eligibility.

## 4. Licensing assessment

### Section summary

This section sets out a summary of responses to the consultation and our decisions on:

- i) the processes and criteria that we have proposed to use during the licensing assessment and
- ii) the draft guidance published alongside the consultation.

### Background

- 4.1 The Code Manager Selection Regulations 2024 contain the processes that we must follow when selecting code managers on a non-competitive basis, as well as requirements that apply to both selection routes. These include the need for us to publish a statement of the criteria that we will apply, and the process that we will follow, when selecting a candidate on a non-competitive basis, as well as various consultation requirements. The regulations also prevent us from selecting a candidate unless we are satisfied that they would have no conflict of interest if licensed, or that any potential conflict would be manageable.
- 4.2 In our consultation, we proposed how we would use the licensing assessment process to fulfil the requirements of the regulations, while also evaluating whether candidates would have the right skills, experience and expertise to perform effectively in the code manager role. We also consulted on the contents of the draft guidance and draft licensing assessment form published alongside the consultation.

### Consultation position

- 4.3 Where a candidate has passed the initial eligibility assessment, we proposed that they would proceed to a fuller licensing assessment, which would include the following (for both competitive and non-competitive selections):
  - a conflict-of-interest assessment,
  - an assessment of any requested modifications to the standard code manager standard licence conditions (SLCs),
  - a capability and expertise assessment against the following criteria: service provision capability, value for money to the industry and consumers, stakeholder management capability, expertise relevant to applying the code objectives and capability in project management, and
  - suitability to hold a licence.

- 4.4 At this stage, we proposed that candidates would not be required to be fully ready for the role. Instead, the licensing assessment would be intended to provide enough confidence that the candidate has understood the requirements of the role and has a credible plan to carry it out, including the acquisition of any necessary resources, capabilities or expertise, for them to commence the role at the point of licence grant.
- 4.5 Following our assessment, we would publish a proposal to grant a licence, in line with the requirements in the regulations. Stakeholders would then be able to make representations in response to this proposal, which we would consider against our licensing criteria.

### **Summary of responses**

Q6. Do you agree with the processes and criteria that we have proposed to use during the licensing assessment stage?

- 4.6 A large majority of respondents agreed with the proposals. Those in favour of the criteria welcomed the requirement of detailed proposals and noted that the criteria were satisfactory, and the framework was effective. A few respondents noted that the proposed criteria should effectively ensure that only those capable of satisfactorily carrying out the code manager role would be selected. A couple also agreed that our proposals appropriately addressed any potential conflict of interest.
- 4.7 A couple of respondents disagreed with our proposals. However, their feedback was related to the process rather than the criteria. Of those who disagreed, one was of the view that more detailed implementation blueprints should be required as part of the licensing assessment. The other respondent who disagreed felt that a more thorough consideration of candidates' potential conflicts of interest and any plans to mitigate potential conflicts should be conducted earlier on in the process – during the eligibility assessment – to allow for a decision on the selection of an SPV where conflicts cannot be satisfactorily addressed.
- 4.8 A few other respondents also raised concerns that where a potential candidate conducts other activities or holds investments the candidate should be obliged to demonstrate that it would still conduct the code manager role both impartially and cost-efficiently. One respondent noted that central system delivery body (CSDB) activities should be in the scope of potential exceptions to the draft SLCs granted by Ofgem.

## **Decision** – Decision on code manager selection

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- 4.9 A few respondents also raised comments on our proposals to assess a candidate's capability, such as that we should conduct a skills gap analysis of candidates' personnel as a measure of the licence obligations and code objectives.

Q7. Do you have any comments on the draft guidance published alongside this consultation, either in relation to how we have described the licensing assessment process or the proposed draft form?

- 4.10 Many respondents provided feedback on the draft guidance. Of those that responded, a few explicitly welcomed that both the guidance and forms served to help candidates understand the process, assessed them correctly against the licensing requirements and captured the relevant information.
- 4.11 A few sought clarity on the level of detail required in submissions and how submissions would be assessed, such as using weightings and risk evaluation.

## **Decision**

- 4.12 We have decided to proceed with the proposed licensing criteria and for these to be applied to both the competitive and non-competitive licensing assessments.<sup>15</sup>

## **Rationale for our decision**

- 4.13 We remain of the view that the criteria and process we consulted on for the licensing assessment are appropriate and proportionate, and we acknowledge the support from respondents on both topics.
- 4.14 For reasons we have described above in paragraph 3.15, we do not believe it would be proportionate to require more detailed proposals from candidates on addressing potential conflicts of interest at the eligibility stage and so we have decided to keep the requirement for more substantive proposals on addressing any conflicts of interest as part of the licensing assessment.
- 4.15 Our consideration of candidates' potential conflicts of interest will include the full scope of the candidate's current and planned future activities. We will require the candidate to describe how it will ensure that the code manager function remains impartial. We agree that the restriction in the licence on carrying out other activities should not require a code manager to cease certain functions, such as delivering central systems, where these are essential to the code. However, it will be for the candidate to consider how best to mitigate or manage any potential conflicts of interest that these other activities may cause. We must be satisfied

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<sup>15</sup> We have also decided to apply two additional criteria to both types of assessment, as detailed in section 5 below.



that any potential conflict of interest is manageable, and we will evaluate the efficacy of the candidate's proposals as part of our assessment process.

- 4.16 We have decided not to require a discrete skills gap analysis or detailed implementation blueprints analysis as part of the licensing assessment. We believe that the information requested in the licensing assessment form will prove to be adequate, as it will require candidates to demonstrate both their vision for delivering the role as well as their understanding of the necessary requirements (including proposals on how they would meet those requirements, where needed, such as the acquisition of additional skills or capabilities). If the candidate is successful, then any gaps that are identified during this process would need to be addressed during the implementation and assurance period to follow, in line with sequencing and timelines put forward by the candidate.
- 4.17 We note the requests for clarity on weightings and how we will assess risk. We do not consider it to be necessary to score candidates during the licensing assessment where it is conducted on a non-competitive basis (see the following section for details on the competitive process), as we would not need to compare candidates and select based on overall score. Each of the criteria will be considered individually and, where a candidate does not meet our requirements, then the candidate will either need to address the particular problem or it will not be selected. We have clarified this in our guidance.<sup>16</sup>

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<sup>16</sup> See page 25 of the attached Guidance

## **5. Competitive licensing assessment**

### **Section summary**

This section sets out a summary of responses to the consultation and our decisions on the competitive selection of code managers.

The section covers the design of the competitive licensing assessment, our approach to regulations, our approach to a tie-break scenario and the additional criteria of “innovation” and “facilitating the move to net zero and clean energy”.

### **Background**

- 5.1 The Code Manager Selection Regulations 2024 contain provisions that must be considered as part of our code manager selection process, regardless of which selection route we choose. However, the Energy Act 2023 (“the Act”) specifies that the selection of code managers via a competitive process must be governed by separate regulations, made by GEMA rather than the Secretary of State. This means we will need to make our own set of regulations if we want the option of selecting one or more code managers on a competitive basis.
- 5.2 Our consultation contained proposals on the design of the competitive licensing assessment, our approach to the regulations, our approach to a tie-break scenario and the inclusion of additional criteria as part of any competitive process, namely “innovation” and “facilitating the move to net zero and clean energy”.

### **Consultation position**

- 5.3 We proposed to design a competitive licensing assessment process that would be fair and transparent and would result in the selection of a code manager that is best able to fulfil its licence obligations and manage the code in a way that results in benefits to the industry and energy consumers.
- 5.4 The consultation included the following proposals:
- A single-stage, competitive licensing assessment, subject to the outcome of our EOI process, using the same criteria as the non-competitive assessment. We also described how certain criteria could be emphasised in the process, by weighting them or requiring minimum scores.

- Our approach to the enabling regulations that would govern the process, as provided for by section 189 of the Act<sup>17</sup>. We said that the regulations would provide details of the competitive process, but that in some cases, where additional flexibility is needed, detail would be provided in accompanying competitive selection guidance rather than the regulations.
- Two options that we could use in a tie-break scenario: making use of evidence already submitted by candidates or asking candidates for new information.
- The introduction of two additional criteria solely as part of the competitive licencing assessment, namely “innovation” and “facilitating the move to net zero and clean energy”.

### Summary of responses

Q8. Do you agree with the processes and criteria that we have proposed to use as part of the competitive licensing assessment, including our proposal that there should only be a single competitive round rather than multiple rounds?

- 5.5 A large majority of respondents agreed with our proposals on the design of a competitive selection process. A majority of respondents focused on our proposal to use a single-stage process, agreeing that it was a proportionate approach. A few also mentioned the likely not-for-profit status of some prospective candidates, agreeing that the process would be proportionate for those candidates.
- 5.6 One respondent disagreed with our proposals. They did not agree that more difficult areas to assess, in particular candidates’ potential conflicts of interest, should be assessed on a pass or fail basis. They instead advocated for applying a score to this area of the competitive assessment and placing a higher weighting on it.
- 5.7 There were also points raised that were neither in favour nor against our proposals. A couple of respondents said that there should be a strong focus on transition planning as part of the competitive assessment. A couple also said that an emphasis should be placed on ensuring the process is objective, and that this might include the ability of Ofgem to ask candidates to clarify the evidence they have submitted.

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<sup>17</sup> Section 189(1) of the [Energy Act 2023](#) states that “The GEMA may by regulations make provision for a determination by the GEMA on a competitive basis of the person who is to be selected to be the code manager in relation to a designated document.”

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Q9. Do you agree that the enabling regulations should set out how the competitive process will work, with the use of draft guidance allowing flexibility in some instances?

- 5.8 A large majority of respondents agreed with our approach to the use of enabling regulations and guidance. A couple of respondents favoured using regulations to define the process as this would aid transparency. No respondents disagreed with our proposals.
- 5.9 Many commented that they considered it to be right for Ofgem to maintain some flexibility by placing further details in guidance, rather than in the regulations. However, one respondent said it would be important to only use this flexibility where essential, and that there should be some degree of consistency between different selection processes.
- 5.10 A few respondents said that we should use a competitive process as defined in current law, rather than a new process, either procurement law or the Utilities Contracts Regulations 2016.
- 5.11 A couple of respondents requested further clarity of the detail of our process, asking for further consultation on the guidance.

Q10. Do you have any views on how we should design a potential tie-break process, such as whether to make use of existing evidence versus requesting follow-up submissions?

- 5.12 Of the two options we proposed, a few respondents preferred the option to make use of existing evidence and highlighted that the option to seek follow-up submissions might cause undue burden on candidates.
- 5.13 A variety of other solutions were proposed, such as basing a tie-break outcome on candidates' scores for the most important criteria, interviewing tied candidates, considering a partnership between tied candidates with the of an independent panel review should this fail, using data on the candidates' past performance, and considering which candidates best met the industry and consumer needs, and facilitated Ofgem's duties.

Q11. Do you agree with our proposal to introduce two additional criteria as part of the competitive licensing assessment, namely "innovation" and "facilitating the move to net zero and clean energy"?

- 5.14 A majority of respondents agreed with our proposal to introduce these additional criteria, including a few who strongly agreed. Reasons for agreement included the criteria's relevance in the wider context of our Strategic Direction Statement (SDS), the code managers' operational objectives and the growing drive for clean energy.
- 5.15 Some respondents stated that the criteria "innovation" and "facilitating the move to net zero and clean energy" should also be used as part of the non-competitive assessment. Respondents focused on the strategic importance of these areas, and one respondent said that an assessment of these criteria was arguably more important in a non-competitive context.
- 5.16 A couple suggested that the criteria should be considered in the context of code management, the administration of services and collaboration with industry parties to deliver innovative net zero trials.
- 5.17 A few respondents also asked how candidates would be compared against the criteria and how candidates might provide assessable and relevant evidence in response to questions on these criteria.

## **Decision**

- 5.18 We have decided to proceed with the competitive process that we proposed in our consultation document. This means that where two or more candidates express an interest and pass the eligibility assessment, we would expect to use a single-stage competitive process to determine a preferred candidate.<sup>18</sup> We will score candidates against the same criteria as the non-competitive licensing assessment, applying weighting and minimum scores as appropriate.
- 5.19 We have also decided to proceed with the approach described in the consultation document to create enabling regulations. These regulations will set out the competitive process, but additional requirements may be placed in guidance, as appropriate.
- 5.20 We acknowledge comments on the design of a tie-break process and will provide further proposals at the point of consulting on the draft competitive selection guidance.
- 5.21 We have decided that we will make use of the two additional criteria of "innovation" and "facilitating the move to net zero and clean energy" as part of

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<sup>18</sup> Although as noted in section 2, we would retain the discretion to pursue non-competitive selection or SPV creation where asking two not-for-profit bodies to compete for a licence may not necessarily deliver value for money to industry and consumers.

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the licensing assessment process, for both competitive and non-competitive selection.

## **Rationale for our decision**

### Competitive selection process and approach to regulations

- 5.22 We remain of the view that our proposals will lead to a fair, proportionate and transparent competitive selection process. The consultation responses show that a large majority agree with this assessment. There was also clear support for reducing the resource burden on candidates and recognition that a single-stage competitive process would help to achieve this.
- 5.23 We acknowledge that the one respondent who disagreed with our competitive selection process raised an important point on how we best assess conflict of interest in a competition. We agree on the importance of ensuring the independence of code managers, and the need for the right governance and organisational structures to be in place. We will continue to consider how the relevant questions should be assessed as part of the competitive process, such as potentially using a combination of scored and pass or fail assessments where appropriate.
- 5.24 We agree with those respondents who commented on the importance of transition planning and ensuring the objectivity of our process, and we will give these areas due consideration when developing the guidance and detailed process for competitive selection. However, as noted in Section 4 above, we believe that the licensing assessment process strikes the right balance between the need to ensure that candidates have credible plans at this stage and the resource burden of needing to develop, or implement, a detailed blueprint before being selected for the role.
- 5.25 In terms of our approach to regulations and guidance, we note the strong support for using regulations to define a competitive process, in combination with a more flexible guidance document. Regarding the degree of flexibility provided by the balance of regulations and guidance, we intend to aim, in so far as is possible and appropriate, for consistency between the different selection exercises.

- 5.26 We acknowledge that it is important to consider current areas of law when designing a competitive process.<sup>19</sup> However, we do not agree that existing processes established in law remove the need to bring forward a bespoke competitive selection process, defined in new regulations. Because code manager selection processes are governed by the Act, it is important that the Act and any regulations stemming from it are the main areas of law that provide for the competitive selection of code managers.

#### Tie-break process

- 5.27 We would like to thank respondents for their time providing views on the design of a tie-break process. The recurring themes throughout these views was the desire to avoid submitting new evidence, which we will consider when developing a more developed tied-break process for future consultation.

#### Additional criteria

- 5.28 We remain of the view that “innovation” and “facilitating the move to net zero and clean energy” are important areas to consider when assessing candidates for a code manager licence. We note that the majority of respondents agreed with this assessment.
- 5.29 We have noted that some respondents felt strongly about the inclusion of these two additional criteria in the non-competitive assessment. We agree that these criteria are relevant to all code managers, regardless of how they have been selected, because of their strategic importance across the energy system. We also agree with the importance of ensuring that all code managers are assessed using the same criteria. We have consequently decided to apply these criteria to both the competitive and non-competitive licensing assessments, rather than solely to the former.
- 5.30 We note the questions and comments regarding how we might choose to evaluate candidates against these criteria in practice and will give them careful consideration (including when developing our draft competitive selection guidance, on which we will consult in due course).

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<sup>19</sup> The Energy Act 2023 (Consequential Amendments) Regulations 2024 came into force in May 2024. Via these regulations, the services provided by a person holding a code manager licence were disappplied from the Provision of Services Regulations 2009. In addition, the appointment of a code manager under the Energy Act 2023 will not, in our view, engage the provisions of the Procurement Act 2023.

**Next steps**

- 5.31 We intend to lay the competitive selection regulations in parliament later this year, subject to parliamentary time. We also intend to consult on draft competitive selection guidance and expect to share more information on the timing of this consultation in due course.



## **6.Implementation and assurance**

### **Section summary**

This section sets out a summary of responses on the implementation and assurance stage, and our proposal to subject all candidates to a final readiness assessment before publishing our notice of licence grant, to ensure that all candidates have the right capabilities, resources and processes in place to fulfil their new obligations.

This section also covers next steps on implementation and assurance, following the publication of our second implementation consultation in April 2024.

### **Background**

- 6.1 The Code Manager Selection Regulations 2024 require us to publish a notice stating our proposal to grant a licence, the reasons why we propose to grant the licence and to allow for stakeholder representations. If, following our consideration of representations received, we decide to proceed with the grant of a licence to the respective candidate, we must publish a notice of grant as soon as practicable thereafter.
- 6.2 Before the final licence grant, we expect that all code manager candidates will require time to prepare for the code manager role. We will also want to have confidence in the candidate's ability to carry out the licensed activity before publishing our notice of the licence grant.

### **Consultation position**

- 6.3 We sought views on the differing approaches to implementation and assurance, and the level of Ofgem's involvement, including:
  - the kinds of implementation activities that we expect would be common to all candidates, such as a detailed plan and governance framework – including changes to meet the requirements of the standard licence conditions (SLCs) where relevant.
  - that before our notice of the licence grant, we would conduct a final readiness assessment to determine whether enough progress had been made against our criteria, consisting of demonstration of compliance with conflict-of-interest and not-for-profit SLCs and enough progress towards developing the right capabilities and expertise, as well as being party to the relevant code.

## Summary of responses

Q12. Do you have any views on how we should approach the implementation and assurance stage, including any potential interaction between these two distinct processes?

- 6.4 The majority of respondents provided views on this question. Some respondents noted the importance of Ofgem taking an active role in the implementation process to provide challenge where any delays or problems arise. A few respondents indicated that it would be best for Ofgem to oversee, rather than be actively involved in, the implementation. For example, where a current code administrator has been selected the code administrator would have the right knowledge of its organisation and project management expertise to implement the transition. However, other instances, such as where a code has been consolidated or where Ofgem is creating a new SPV, would likely require a more hands-on approach.
- 6.5 With regards to assurance, a few respondents argued that the use of an external provider would bring in additional expertise and offer consistency and impartiality in approach to the final selection checks. A couple said that assurance should be regular and ongoing, as this could reduce the resource required at the final stage.
- 6.6 There was concern from some respondents around the transition process more generally, particularly where the code manager candidate differs from the outgoing code administrator. A few pushed for clarity on whether there would be any crossover in responsibilities or obligations. One respondent asked about funding arrangements where there is a change of body, while a few others stressed that disruption to business as usual should be minimised during a period of transition and uncertainty for outgoing bodies and their staff. A few requested that stakeholders be regularly informed of progress or changes during implementation and assurance.

Q13. Do you agree with the proposed scope of the final readiness assessment that would be required of all candidates?

- 6.7 The majority of respondents agreed with the proposed scope of our final readiness assessment and no respondents disagreed. Of those that responded, a couple called for the assessment to consider transitional arrangements that may be in place. A few respondents also indicated a preference for assurance to be incorporated into the implementation period, using regular progress reports. It

was noted that this approach could minimise duplication and the resource burden of a final test.

- 6.8 It was also noted by a few respondents that any assessment of the code manager's performance should not end at the point of licence grant and that the code manager's performance should be kept under review once it is in place.

### Next steps

- 6.9 We welcome the views and insights provided by respondents on our implementation and assurance approach. We have used this feedback to inform the proposals included in our second implementation consultation, published on 3 April 2025, that discusses our overall approach to the implementation of energy code reform.<sup>20</sup> Therefore, we are not making decisions on the questions posed in the November consultation at this time. The intention is for these to be included in our response to the April 2025 consultation, which we expect will be published later this year.
- 6.10 In that consultation, we have proposed the adoption of a regular format of working-level engagement between us and the selected code managers. This approach would let us discuss the candidate's progress with implementation and delivery against relevant milestones and ensure we can oversee their activities.
- 6.11 We have also proposed to conduct a final assurance assessment based on key deliverables required from the code manager as part of its licence obligations, which aligns with the scope of the final assurance described in our November consultation. We have proposed to collate and assess information relevant to this assurance assessment over the course of the period, to minimise the resource burden on candidates and remove unnecessary duplication.
- 6.12 We welcome stakeholder feedback to that consultation, which will further inform our final approach to implementation and assurance. We envisage that we will update the relevant section of the guidance in parallel to the publication of the decision following that consultation.

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<sup>20</sup> [Energy code reform: second implementation consultation | Ofgem](#)

## Appendices

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## **Appendix 1 – Consultation questions**

### **Section 1**

Q1. Do you agree with our proposed, three-stage process for assessing code manager candidates?

Q2. Do you agree with how we have proposed to make our selection route decisions, in line with our considerations of speed of delivery and value for money?

### **Section 2**

Q3. Do you agree with our proposal to grant code manager licences on an enduring basis?

Q4. Do you agree with the processes and criteria that we have proposed to use during the eligibility assessment stage?

Q5. Do you have any comments on the draft guidance published alongside this consultation, either in relation to how we have described the eligibility assessment process or the proposed content of the draft form?

### **Section 3**

Q6. Do you agree with the processes and criteria that we have proposed to use during the licensing assessment stage?

Q7. Do you have any comments on the draft guidance published alongside this consultation, either in relation to how we have described the licensing assessment process or the proposed content of the draft form?

Q8. Do you agree with the processes and criteria that we have proposed to use as part of the competitive licensing assessment, including our proposal that there should only be a single competitive round rather than multiple rounds?

Q9. Do you agree that the enabling regulations should set out how the competitive process will work, with the use of draft guidance allowing flexibility in some instances?

**Section 4**

Q10. Do you have any views on how we should design a potential tie-break process, such as whether to make use of existing evidence versus requesting follow-up submissions?

Q11. Do you agree with our proposal to introduce two additional criteria as part of the competitive licensing assessment, namely “innovation” and “facilitating the move to net zero and clean energy”?

**Section 5**

Q12. Do you have any views on how we should approach the implementation and assurance stage, including any potential interaction between these two distinct processes?

Q13. Do you agree with the proposed scope of the final readiness assessment that would be required of all candidates?

## **Appendix 2 – Amendments to the guidance on code manager selection**

We have carefully considered stakeholder feedback on our proposals and decided to make several changes to the guidance. We have published our updated guidance alongside this decision. These changes take effect immediately and the revised guidance is applicable to ongoing and new selections.

We have discussed these changes, and the reasons for them, in further detail below. We may update our guidance and forms in the future, where we have decided that further amendments are needed.

### **Choice of selection route**

Section 187(1) of the Energy Act 2023 provides that GEMA must determine whether the selection of the person who is to be a code manager is to be made on a competitive or non-competitive basis.<sup>21</sup> The Code Manager Selection Regulations 2024 state that we may establish criteria by which we determine the selection route and that a statement of such criteria must be published.<sup>22</sup> Our determination of the selection route must be made in accordance with any criteria established under the regulations, and in the absence of such criteria or as to matters not addressed by such criteria, at our discretion. Therefore, in accordance with the 2023 Act and the 2024 Regulations, and to help provide transparency about how we intend to approach these decisions, the guidance includes an explanation of how we propose to approach that determination, including the criteria that we will apply (namely speed of delivery and value for money). Respondents supported these being the key considerations in their responses to our November 2024 Consultation on code manager selection.<sup>23</sup>

In our view, these are key factors to consider in any determination we propose to make on selection route. In addition to our compliance with the regulations, we are also satisfied that consideration of these factors is also reflective of our general public law duties and obligations, where we must approach our decision-making in a reasonable, rational, transparent and proportionate manner.

We have decided that we will apply these considerations to our decision following any expression of interest process – either where we invite a particular body to express interest, or where we run a public process - meaning that regardless of the number of

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<sup>21</sup> [Energy Act 2023](#)

<sup>22</sup> [The Code Manager Selection Regulations 2024](#)

<sup>23</sup> [Energy code reform: consultation on code manager selection | Ofgem](#)

eligible candidates that we have identified, we will consider the most timely and best value means of selection. We recognise that a competitive selection process may not always deliver value for money, including when multiple bodies have been identified. Our decision tree has been updated to clarify this.

We remain mindful that there may be other general factors that become relevant and applicable to consider in the future and as such, we will continue to keep the guidance under review and update it where necessary.

### **Exceptions to the standard licence condition on Independent Directors**

When we consulted on the guidance, we said that code manager candidates would be required to have at least 50% independent directors.<sup>24</sup> This was in line with a position published in our joint government response,<sup>25</sup> wherein we explained that we would not proceed with a restriction on director affiliations for all board members. However, to ensure that a balance of independence is maintained, we stated in this response that we were minded to require that at least 50% of directors are independent.

In our draft guidance, we said that where candidates could not confirm their intent to establish a board with a minimum of 50% independent directors at the eligibility stage, then they would not be eligible to proceed to the licensing assessment.

We have since consulted on the full set of draft code manager standard licence conditions.<sup>26</sup> In this consultation we have proposed that exceptions to the requirement for a minimum of 50% independent directors should be allowed subject to authority approval. We envisage that during selection any exception to this condition would be granted in limited circumstances, where a code manager candidate can demonstrate that this would not cause a conflict of interest.

### **Introduction of strategic criteria**

As described in our decision, we have decided to introduce the two additional criteria of 'Innovation' and 'Facilitating the move to Net Zero and clean energy' to our licensing assessment. This was following overall support received for the two criteria when discussing their application to our competitive assessment, but feedback that the approach across competitive and non-competitive assessments should be consistent – and that these criteria were relevant to all selections given the strategic role that the

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<sup>24</sup> Independent of the organisation, any of its affiliates, any external service providers for code services and of code parties

<sup>25</sup> [Energy Code Reform: Code manager licensing and secondary legislation - government response](#)

<sup>26</sup> [Code Manager Standard Licence Conditions](#)



code manager will need to fulfil. We have described in the guidance the kinds of information that we will expect to receive from candidates on these two criteria during the licensing assessment and we have added questions to the licensing assessment form.

### **Clarification to our licensing assessment processes**

Finally, the revised guidance includes further detail on our approach to reaching a decision on whether to propose to grant a code manager licence. Where a licensing assessment is conducted on a non-competitive basis, we will not score candidates as we are not making a comparison between two bodies. Therefore, the guidance now clarifies that we will consider each criterion individually and that we will seek further information from candidates where they do not meet one or more of the criteria.

## **Appendix 3 – Subsidiary Documents**

The following subsidiary documents have been published on Ofgem’s website alongside this decision document:

- Guidance on code manager selection
- Non-confidential responses received to our consultation on the implementation of energy code reform

## **Appendix 4 – Glossary**

### **Acronyms**

<b>BSC</b>	Balancing and Settlement Code
<b>CSDB</b>	Centralised Service Delivery Body
<b>DESNZ</b>	Department for Energy Security and Net Zero
<b>EOI</b>	Expression of Interest
<b>GEMA</b>	Gas and Electricity Markets Authority
<b>Ofgem</b>	The Office for Gas and Electricity Markets
<b>REC</b>	Retail Energy Code
<b>RECCo</b>	Retail Energy Code Company Ltd
<b>SPV</b>	Special Purpose Vehicle