

Consultation on the preliminary Strategic Direction Statement and code governance arrangements – response template

This document provides a template for responses to our consultation on the preliminary Strategic Direction Statement and code governance arrangements, published on 31 January 2025.

If you are interested in responding to this consultation, please complete this word document and send it to industrycodes@ofgem.gov.uk by the end of the day on Friday 28 March 2025.

Guidance

We typically publish consultation responses when we publish our decision. To ensure that we can correctly attribute your response, please ensure that you enter all relevant details in the “your company’s details” section (template part 1).

If you would like us to treat your response as being confidential, either in full or in part, please indicate this to us below. Further information on how we will treat your response, data and confidentiality can be found at the end of this document.

Please use template part 2 to provide your responses. For all questions, the template below provides space for you to enter free text comments. Some questions also ask whether you agree with our proposals. Please indicate the extent to which you agree or disagree with relevant proposals by deleting all but one of the bullets provided.

There is also a section for “general feedback” (template part 3). Please use this section to provide any views on the overall consultation process.

Template part 1: Your organisation’s details:

Contact name	James Hope
Role title	Head of Regulation
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Date of submission	28 March 2025
Do you want your response treated as confidential? (If yes, please indicate whether you would like the whole of your response to be confidential, or just particular parts).	 No

Template part 2: consultation responses

Consultation section 2 – Approach to the Strategic Direction Statement

Question 1 – Is the structuring of SDS content into three time horizons (Act now, Think & plan, Listen & wait) helpful?

- Agree

Comments: We agree that "Listen & wait" entries should be separated from the more specific assessments of future code modification requirements. Our preference leans towards a shorter SDS more focused on action which needs to be taken on codes in the near term. The "Act now" category is fine, the second category could have a more action-oriented title such as "Start Planning" and focus more clearly on areas where policy is largely settled and work on code modification should therefore begin. "Listen & wait" entries can be highly summarised to just signal potential future workloads with links to policy documents for those that wish to do further research.

Question 2 – Do you agree with the way modifications have been categorised into these three time horizons (Act now, Think & plan, Listen & wait)? If not, please specify what changes you suggest and why.

- Agree

Comments: We agree with the classification in the vast majority of cases. In the "Think & plan" category, however, there are a few entries where policy is not yet settled and therefore code reform planning cannot really proceed (for example the entry on enabling competition and investability through financial resilience). Where work on code modifications cannot realistically start because of uncertainty, classification under "Listen & wait" looks more appropriate.

Question 3 – On the basis that the SDS should contain a strategic assessment of government policies and developments relating to the energy sector, that will or may require the making of code modifications, do you think there is anything missing from the SDS that you would expect to require code modifications in the next 1-5 years? If so, please specify.

- No

Question 4 – Did you find the SDS easy to understand and do you think that the level of detail included is sufficient to allow you to begin raising and implementing code changes?

- Yes in terms of understanding and No regarding level of detail

Comments: The SDS is clear, but rather long and not focused solely on areas where code changes are clearly required. The shape of required code changes inevitably still needs to be made clearer in respect of the "Listen & wait" entries and for some of the "Think & plan" entries. Ofgem may want to consider structuring the entire SDS around the three time horizons, with reduced detail for the "Listen & wait" entries and stepping back from attempting to provide detail on what code changes may be required in those cases where it is too early to say.

Question 5 - If you are a code administrator or code panel what action do you intend to take, if any, to implement the SDS following publication?

Comments: Not applicable.

Question 6 - Do you have any suggestions about the best way to implement the SDS in the context of budget setting, delivery planning and the introduction of a harmonised prioritisation process? Please note we will be doing stakeholder engagement in early 2025 to discuss this further.

- No

Comments: We are broadly content that policy-related changes to codes should be prioritised but share Ofgem's view that space should be left for industry-driven code changes as well.

Question 7 - Do you have any other feedback?

Comments: Ideally the SDS should be a living document, updated whenever a new policy direction is settled and that policy has code modification implications. We

understand that the legislation requires Ofgem to produce an annual SDS, but this obligation could perhaps be met through some form of annual report surrounding a continually updated on-line resource. The "Listen & wait" section could perhaps only be completed annually.

Consultation section 3 – Code governance arrangements

Prioritisation of code modifications

Question 8 – Do you agree with our proposed prioritisation process, including the requirements that:

- (a) a proposer of a modification proposal should be required to include an assessment of their proposal against the prioritisation criteria
- (b) that the code panel should then be responsible for determining the prioritisation category of the modification proposal
- (c) that code panels should reassess the prioritisation category of modification proposals on a quarterly basis
- (d) that all codes contain a requirement for a code modification register, that also includes whether a modification is urgent and the prioritisation category

If not, please specify what changes you suggest and why.

- *Agree*

Question 9 – Do you agree with our proposed prioritisation criteria and prioritisation categories? If not, please specify what changes you suggest and why.

- *Agree*

Question 10 – Do you agree with our proposed legal drafting of code modification prioritisation procedure included in Annex A? If not, please specify what changes you suggest and why.

- *No view*

Question 11 – Do you agree with our proposed definitions to form future guidance on Code Modification Prioritisation included in Annex B? If not, please specify what changes you suggest and why.

- *No view*

Question 12 – Do you have views on whether this proposed prioritisation process should apply to all live modifications that exist at the date that the proposed code changes take effect, as well as newly proposed modifications from this date onwards?

Comments: No comment

Role of stakeholders

Question 13 – Do you agree with our proposed drafting of a new principles-based standard condition, for cooperation with code modifications related to SDS, for all gas and electricity licences, included in Annex C?

- *Agree*

Comments: We are not supportive of principles-based licence conditions as they are vague and open to interpretation in different ways – a licensee can justify that it is compliant but Ofgem can also justify that a licensee is not compliant. This ambiguity is not good for customers, licensees or Ofgem. However, mindful of the drafting you have provided, we have carefully considered the proposed new licence condition to ensure full cooperation with code managers when they make “reasonable” information requests relating to code change preparations, which are in pursuit of compliance with the SDS. We are reassured by the proposed conditions around the exercise of such requests and by the terminology “reasonably requested” and “reasonable steps” and have no objection as long as it is further clarified that licensees do not have to divulge information to code managers which they would not have to divulge to Ofgem itself (see below). We also have a few suggestions on exact terminology:

- *Where the three defined terms (Code Manager, Designated Code and Strategic Direction Statement) are used in the proposed licence condition they should be capitalised*
- *All words in the defined term (e.g. Code and Manager in Code Manager) should be capitalised in the definition and in the proposed licence condition*
- *In the bullet about disclosing information, the wording of “significant implication” should be replaced with “material impact” to align with wording used elsewhere in the distribution licence*

- *The cross reference to the Electricity Act in the Code Manager term looks incorrect, we think it should be "section 6(1)(g)"*
- *The Designated Code term is unusable at present because the Schedule 12 it refers to does not itself list the codes, as the relevant decisions to designate have not yet been taken. Ofgem will need to make sure that this issue is resolved before the proposed licence condition goes live. Otherwise the codes covered may have to be listed themselves within this definition and the definition updated by statutory consultation each time documents are newly designated by the Secretary of State*
- *References to "GEMA" or "the GEMA" should be replaced with "the Authority" as this then aligns with how it is already used in the distribution licence*

There should also be a carve out from the obligation to supply information to match that in SLC6.9(b) of the distribution licence ("the licensee could not be compelled to produce or give the Information in evidence in civil proceedings before a court.") which applies to requests from Ofgem i.e. the code managers should not have more power to request information than the regulator.

Question 14 – Do you agree with the proposed criteria the code manager should consider prior to issuing a request for cooperation?

- *Agree*

Template part 3: General feedback:

We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to the following questions.

Question	Response
Do you have any comments about the overall process of this consultation?	We are grateful for the production of the draft SDS and for the opportunity to comment on a worked-up model, rather than in abstract.
Do you have any comments about its tone and content?	No comment. Looks fine.
Was it easy to read and understand? Or could it have been better written?	It was rather long. Could it have been more concise?

Were its conclusions balanced?	Yes
Did it make reasoned recommendations for improvement?	The focus could potentially have been restricted to providing direction to code managers on code reform rather than the more expansive policy analysis document that has been developed.
Any further comments?	No

Your response, data and confidentiality

You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 4.

If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.