

# Energy UK response to Ofgem's Code Governance Review (Phase 3) Final Proposals – consultation on licence modifications

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## 1. About Energy UK

- 1.1. Energy UK is the trade association for the GB energy industry with a membership of over 80 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership encompasses the truly diverse nature of the UK's energy industry, from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.
- 1.2. Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 26 million homes and every business in Britain. Over 619,000 people in every corner of the country rely on the sector for their jobs with many of our members providing lifelong employment as well as quality apprenticeships and training for those starting their careers. The energy industry adds £83bn to the British economy, equivalent to 5% of GDP, and pays over £6bn in tax annually to HMT.

## 2. Introduction

- 2.1. Energy UK welcomes the opportunity to comment on Ofgem's Code Governance Review (Phase 3) Final Proposals – consultation on licence modifications. Code governance varies across the different electricity, gas and retail codes creating a complex, resource intensive regulatory framework which can be challenging for small and large companies alike. This becomes more challenging when multiple large changes occur across the energy industry in a short period of time without being fully considered in the whole across industry systems. Any changes to the code governance framework should look to simplify the framework and increase accessibility for all market participants.
- 2.2. This response does not focus on every question posed by Ofgem but highlights a number of areas which we see as vital and/or where we consider further clarification and analysis is needed and is without prejudice to individual responses provided by some of our members.

## 3. Key points

- 3.1. We are still unclear as to when the different options for progressing a Significant Code Review will be used and what criteria Ofgem will base its decision to use either: Option 1: Ofgem directs licensee(s) to raise modification proposal(s); Option 2: Ofgem raises modification proposal or Option 3: Ofgem leads an end-to-end process to develop code modification(s). The consultation outlines some of the issues Ofgem would consider before deciding which option to choose. However, the updated guidance does not explain when Option 3 would be used over the other two industry-led processes. We therefore consider it important that Ofgem clearly sets out when each option for progressing a SCR would be used.

- 3.2. The final proposal to enhance the existing SCR regime by introducing the option to enable Ofgem to lead the end-to-end process is still a concern to our members. The option, in so far as giving the Authority powers to raise, develop and ultimately decide on the outcome of the SCR (as well as the legal text), reduces the process by which industry and the code Panel can effectively input into the SCR. As a result, it reduces the number of checks and balances needed to ensure that unintended consequences are avoided. In the past the use of high level principles for the direction of a SCR have meant that suitable alternatives have been developed in conjunction with industry experts allowing the Authority to ultimately decide which option to approve.
- 3.3. The industry-led process is arguably more transparent and well-understood compared with the proposed Ofgem-led approach. The involvement of code administrators, especially as a “critical friend”, ensures that the process is more accessible to industry participants. The on-going involvement of the panel in the industry-led approach also enables the panel to share their views before the final conclusions are drawn. Although Option 3 provides a role for the panel, the report they receive does not give them the opportunity to shape the final conclusions. This is a missed opportunity.
- 3.4. The consultation asks whether we consider that the licence drafting would achieve the policy proposals set out in the final proposals. While we have not sought legal advice, the drafting appears to reflect the final proposals in the consultation. Members are, however, concerned that the proposal to enable Ofgem to lead the end-to-end process of the SCR may go beyond what is currently being considered by the CMA. This is because the CMA is specifying “exceptional circumstances” whereas the drafting of the legal text suggests that Option 3 could be used more frequently at Ofgem’s discretion.
- 3.5. It is currently possible for another party to take over ownership of a modification if the proposer withdraws the modification. It would be useful to have clarity over whether this process also happens with a SCR if Ofgem were to withdraw the modification.

Should you require further information or clarity on the issues outlined in this paper, please contact Kyle Martin on 020 7747 1834 or [kyle.martin@energy-uk.org.uk](mailto:kyle.martin@energy-uk.org.uk).

**Kyle Martin**  
**Senior Policy Manager**  
Energy UK  
Charles House  
5-11 Regent Street  
London SW1Y 4LR  
Tel: 020 7747 1834  
[kyle.martin@energy-uk.org.uk](mailto:kyle.martin@energy-uk.org.uk)  
[www.energy-uk.org.uk](http://www.energy-uk.org.uk)