

# BEIS \ OFGEM CONSULTATION

## REFORMING THE ENERGY INDUSTRY CODES

### About OGUK

OGUK is the leading representative organisation for the UK offshore oil and gas industry. Our membership includes around 400 organisations with an interest in the UK's upstream oil and gas sector. As the champions of industry, we work on behalf of the sector and our members to inform understanding with facts and evidence, engage on a range of key issues and support the broader value of this industry in a changing energy landscape. From exploration through to decommissioning and located across the length and breadth of the UK, our members are critical to safely providing security of energy supply, while supporting around 270,000 jobs and contributing billions of pounds to the economy each year. We welcome the opportunity to respond to the consultation and we would be happy to meet with officials following the consultation to discuss the review.

### 1 Background and scope of this review

- 1. Do you agree with our four desired outcomes for the code governance landscape by the mid-2020s? Please explain. If you disagree, please explain what you consider the outcomes should be.*
- 2. Do you agree with the problems we have identified (in chapter 1 – Background – and in later chapters), and that they present a persuasive case for reform of the current framework for energy codes? Yes/No/Don't know. Please explain.*

Gas producers are primarily concerned with arrangements contained in the UNC and, in general, there are not fundamental problems or issues with the UNC or the way that changes are currently administered. Most of the issues raised appear more relevant the electricity market and retail markets. For example, gas does not have the same prospect for consumer production or storage “behind the meter”. Finally, the current regime does not lack independence given the role of Ofgem in approving code changes and in view of their existing powers to initiate change.

- 3. Do you have additional evidence on the performance of the current framework?*

Although the modification of the gas charging regime has taken considerable time, and could have benefited from more strategic direction, this could have been achieved within the current legislative or regulatory framework. Likewise, the UNC code process is not a barrier to the adoption of new technologies or an obstacle to the path to net zero emissions or contrary to consumer interests. Indeed, these issues are already considered in the code objectives and in the decisions taken by Ofgem in approving modifications.

*4. Do you agree with our proposed scope reform? Yes/No/Don't know. Please explain. If not, which additional codes or systems do you think should be included/excluded?*

Although the scope of the review should consider all the codes, there should not be an artificial common process set up which fails to take account of the specific nature of each sector and the functions covered. There are a number of gas specific issues which would risk being side-lined or ignored in a unitary approach to code governance. Detrimental changes to the UNC or its processes must be avoided if these are simply to align with electricity code practices.

*5. Are there any codes or systems that we should only apply a limited set of reforms to? Yes/No/Don't know. Please explain.*

In general, wholesale changes to the UNC codes or processes are not necessary. Revisions to the UNC processes must not simply be swept along with other changes. In addition, the review must recognise the contractual nature of the process and maintain the strong involvement of signatories to the code processes.

## **2 Vision & options**

*6. Do you agree that the four areas for reform are required? Please provide reasons for your position and evidence where possible.*

Any review to the UNC and the way it is administered must:

- recognise that the UNC is a commercial, multi-party contract;
- ensure upstream and wholesale gas market participants as signatories to that contract can remain fully engaged in both initiating and reviewing proposed changes;
- safeguard the sanctity of contracted rights and obligations;
- ensure there are robust challenge and appeal processes.

Regarding simplification, the UNC by necessity a lengthy and complex set of documents as it deals with physical, technical and commercial matters which can be interlinked. Simplification and consolidation should not be an end in itself and the UNC and other codes rightly need to assume a degree of initial understanding. While there may be limited opportunities to simplify the language used in the UNC, to re-write it completely to make it accessible to readers with no prior understanding risks making the document less effective.

*7. Do you agree with the two broad models outlined? Please provide reasons for your position and evidence where possible. – further detail can be found on each model in the chapters that follow.*

*8. Which model do you believe will best deliver on our desired outcomes? Please explain. NB: – further detail can be found on each model in the chapters that follow.*

There is a clear distinction between the strategic direction function and the code manager role so a unitary body would not be appropriate. As noted in section 3 below, the existing framework does already allow the scope for greater strategic direction to be provided by both Ofgem and the Secretary of State although, to date, this has not been implemented sufficiently clearly.

Code management has been accountable and efficient to date and any reforms should build on existing structures. The proposed code manager should not have enforcement functions either alongside or instead of Ofgem. Ofgem has, in recent years, significantly strengthened its enforcement role including the appointment of a decision-making panel and this should not be duplicated in the code management function.

*9. Do you agree with the changes to the role of code signatories we are proposing?*

The current role of code signatories to initiate code changes must be maintained. There are clear benefits in an industry-led process to make improvements and this has been demonstrated by the evolution in the UK since privatisation.

### **3 Providing strategic direction**

*10. Do you agree there is a missing strategic function for codes development in the energy sector and introducing a strategic function with the responsibilities outlined in chapter 3 is the best way to address the lack of strategic direction? Yes/No/Don't know. Please explain. Who is best placed to fulfil the strategic function and why?*

Both the government and Ofgem already have strong powers to provide a greater degree of strategic direction to the code processes, Ofgem can initiate significant code reviews (SCRs) and can approve or reject proposed modification and provide guidance to the various Panels. Likewise, the Energy Act 2013 provides powers for the Secretary of State to designate a Strategy and Policy Statement (SPS) which sets out the Government's strategic priorities and other main considerations of its energy policy, the policy outcomes to be achieved as a result of the implementation of that policy, and the roles and responsibilities of those who are involved in implementation of that policy.

*11. Do you agree with the objectives and responsibilities envisaged for the strategic function, and are there any additional objectives or responsibilities the strategic function should have?*

*12. How may this new function potentially impact the roles and responsibilities of other parts of the framework? Do you foresee any unintended consequences?*

The case for establishing a further administrative function is not particularly strong, especially for the gas sector. Current processes could be speeded up if government and regulators were able to provide real-time insights into their thinking to development workgroups during the development phase, rather than providing limited feedback at the point of deciding upon a change.

*13. What are your views on how the strategic direction should be developed and implemented (including the option of establishing a strategy board to aid engagement)?*

*14. Do you think that the scope of the strategic function should be limited to taking account of the Government's vision for the energy sector and translating it into a plan for the industry codes framework, or are there other areas it should address? (for example, impact on vulnerable consumers)? Yes/No/Don't know. Please explain.*

There should be limits and any strategic function should not engage in activities which will distort the market or look to select particular technologies as part of its strategic forward-looking role.

#### 4 Empowered and accountable code management & independent decision making

15. Do you agree that in addition to the current responsibilities that code administrators have, that a. the code manager function should also have the following responsibilities: a. identifying, proposing and developing changes (analysis, legal drafting etc.), including understanding the impacts; b. making decisions on some changes, or making recommendations to the strategic body; and c. prioritising which changes are progressed. Yes/No/Don't know. Please explain.

There can appear to be a disconnect between the delivery of code changes, and delivery of central system changes necessary to support them. There may be scope to improve this and the role of the code manager in prioritising and planning the code change process (i.e. as in point c. above) may be expanded.

16. What is the best way to ensure coherent end-to-end changes to the codes and related systems? For example, is it through having end-to-end code and system managers?

A single overarching code manager or for code management to be an integrated part of system operation is not appropriate.

17. Should the approach differ on a case-by case basis (i.e. depending on the code or system in question)? Yes/No/Don't know. Please explain.

Any rationalisation of code administrators to reduce the current number should recognise the need to have an adequate number of resources available to each code. Those people should also have knowledge and experience of the code.

18. Do you agree that the code manager function should be accountable to the strategic body and that this should be via a licence or contract? Yes/No/Don't know. Please explain.

19. Are there more effective ways that a code manager function's accountability to the strategic body could be enshrined other than in a licence or contract? Please explain.

For gas, the appointment of the code manager could be subject to a contract and this should involve the UNC signatories.

20. Do you agree that we should not consider further a model whereby code managers are accountable to industry? Yes/No/Don't know. Please explain.

21. Do you have views on whether the code manager function should be appointed following a competitive tender process or other competition? Yes/No/Don't know. Please explain.

The UNC is a multi-party contract and the signatories should continue to have a strong role in appointing the code manager, agreeing its terms and conditions and assessing its performance. There may be value in considering a competitive process.

22. Do you think the code manager function should be established by the strategic body creating a body or bodies? Yes/No/Don't know. Please explain. If the code managers were established in this way, would we need to consider any alternative approaches to funding or accountability? Yes/No/Don't know. Please explain.

No. See answer to previous questions. Code management and strategic direction should remain separate.

23. In terms of establishing/choosing the code manager function, do you agree that we should not consider further: a. requiring an existing licensee to become the code manager; and/or b. requiring a licensee (or group of licensees) to create the code manager? Yes/No/Don't know. Please explain.

The code manager should not be an existing licensee.

24. What would be the most effective way to ensure the code manager function offers value for money (for example, through price controls or budget scrutiny)? More broadly, what is the right incentive framework to place on the code manager function? Please explain.

Code managers' performance could be made more transparent by, for example, publishing an annual report.

25. Are there any factors that: a. would stop parties (including code administrators) from becoming a code manager b. should prevent parties from becoming a code manager (e.g. do you agree that licensees should not be able to exercise control of the code managers).

A licence holder (such as the ESO) would not be an appropriate body to manage the UNC or indeed other codes.

26. How should the code manager function be funded (for example through licence fees or by parties to the code(s))?

There are several options for funding that would be acceptable.

## 5 Code simplification & consolidation

27. Are there any quick wins that could be realised in terms of code consolidation and simplification?

28. How many codes would best deliver on the outcomes we are seeking under these reforms?

29. Which option (one code manager versus multiple) would best deliver on the outcomes we are seeking under these reforms?

30. Which of our consolidation options would best deliver the outcomes we are seeking to achieve? Please provide evidence for your examples.

31. Do you agree that the codes should be digitalised? Yes/No/Don't know. Please explain.

A detailed legal review of the current codes to, for example, remove obsolete elements could be something that would provide relatively quick benefits. However, simplification and consolidation are not an end in itself and the scope for quick wins is likely to be limited given the complexity of energy provision and supply.

Many companies are only in individual elements of the energy value chain and the current separation into separate bespoke codes and processes is appropriate rather than a single code or uniform code management process. The UNC should continue as a separate code with a dedicated code manager.

## 6 Monitoring and compliance

32. What role should industry have in monitoring code compliance or making decisions on measures needed to address any identified non-compliance?

33. Which of the two models we propose would better facilitate effective monitoring and compliance arrangements? Please explain.

Enforcement with licence requirements and codes should remain with Ofgem. It has gone to significant efforts to upgrade its enforcement functions and processes in recent years. It is questionable whether the various Code Panels should have enforcement functions at all.

The code manager may have a role to play in monitoring both effectiveness and compliance and could assist the regulator in prioritising its enforcement activities. We do not support the IRMB model and would not expect the strategic function to have any role in enforcement.

**OGUK**  
**September 2019**