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16<sup>th</sup> September 2019

## WWU response to BEIS consultation Reforming Energy Industry Codes

Thank you for the opportunity to respond to the consultation. Wales & West Utilities is a gas transporter serving 2.5 million supply points in Wales and south west England.

### Key points

We provide answers to the consultation questions in the sections below, but in summary the three key points we make are:

- Getting to net zero by 2050 is a significant challenge for society, industry and decision makers. Changes to energy industry codes will be part of the journey but we may well also require amendments to primary legislation and licence obligations. We have a net Zero vision within WWU and will support code and other evolutions to energy system arrangements to help deliver the change required.
- Fundamentally there is not much wrong in gas but
  - merging IGT UNC with UNC is sensible
  - we do need to do more to make processes and timescales common across all energy codes where this provides a clear benefit.
- The code manager role, in principle looks appears to be a sensible idea but we need to be wary of giving it too many activities and responsibilities because it could result in internal conflicts of interest for example:
  - within the code manager
  - with industry parties which may see it as not being impartial and / or transparent.

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The remainder of this document provides responses to the questions within the consultation.

If you have any questions in relation to our response please contact Richard Pomroy, Commercial Manager [Richard.Pomroy@wwutilities.co.uk](mailto:Richard.Pomroy@wwutilities.co.uk)

Yours sincerely,



Steve Edwards  
Director of Regulation and Commercial  
Wales & West Utilities

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## Detailed responses

### 1 Chapter 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? Yes/No/Don't know. Please explain.

If you disagree, please explain what you consider the outcomes should be.

Before we comment on each of the four desired outcomes later in our answer to this question we have some general observations.

This consultation reads as though it has been written from a very electricity centric viewpoint. This impression is reinforced by the fact that the return address in BEIS is "Code Reform - Electricity Systems Team".

The consultation states:

Government and Ofgem are committed to ensuring the energy system works for consumers and business, to the extent that this benefits competition and consumers. This means updating many of the rules and practices governing the sector that have evolved piecemeal, and that were designed during times when the energy system was very different, where there were fewer and larger generators and suppliers dominating the market

Although the consultation is about industry codes, BEIS could usefully indicate whether they were considering changes to the Gas and Electricity Acts to facilitate a whole systems approach. The Gas Act requires that any investment can only consider Gas consumers and that cross-system benefits to electricity cannot be considered.

A much more fundamental change that BEIS could also consider is to make the Supplier/Shipper arrangement the same in both gas and electricity markets. Arrangements in electricity seem to function well with the Supplier fulfilling both the wholesale and retail functions through one legal entity and it is worth considering whether this could work equally well in gas. Alternatively, if there is benefit of have separate wholesale and retail functions then these could be separated in electricity. We aware that although many businesses in the gas industry are both Shipper and Supplier there are some standalone Suppliers and some Shippers that ship for these standalone Suppliers. BEIS would obviously need to very carefully consider the impact on these businesses. This change would take time to implement but would remove one major area of inconsistency between gas and electricity.

We list the four desired outcomes in the consultation with our comments below:

1. makes it easier for any market participant to identify the rules that apply to them and understand what they mean; making it easier for new and existing industry parties to innovate to the benefit of energy consumers;

This is clearly desirable and we believe that arrangements in gas are clear due to there being a small number of codes. In gas the UNC and IGT UNC deal with transportation and settlements. SPAA (and the REC which will replace it) deal with retail arrangements and SEC covers smart metering arrangements. The one change that could be made would be to incorporate the IGT UNC into the UNC. The industry made moves towards this when Project Nexus was implemented. WWU would be open to this approach subject to IGTs leading

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and funding it. IGTs would benefit from this amalgamation as they would then not have to fund their own Code Administrator. Changes to the arrangements for the Joint Office of gas transporters would be required to facilitate this change.

We agree that the UNC is drafted in legal terms, and contains cross references which mean it is not written in plain English. Cross references are good practice in contracts as this avoids concepts being defined twice or more critically defined twice but in ways that contradict each other. We contrast this with SPAA that was not written by lawyers and is arguably easier to read. The considerable downside of this is that it contains inconsistencies and in places it is not clear whether it is intended to be a contract that states obligations or a user guide that gives advice on what parties should do.

Comments made in the consultation about the lack of readability of codes apply equally to licences.

Given the current structure of regulation in energy, parties have to accept that the industry operates based on a large set of rules and parties need to understand their rights and obligations. Some of the current problems with Suppliers failing in the market appear to be due to their failure to understand the industry arrangements.

The existing arrangements were set up to minimise both operational and commercial risk, this serves to help reduce the network funding costs to the benefit of all. To achieve this the arrangements are quite prescriptive and generally exclude liabilities for non-performance. This was based on the assumption that all parties appreciated that their actions could have an effect on the wider market and so all would do their best to fulfil their obligations. Although this model has come under some strain in recent years it is not broken. A move to a more commercial arrangement risks increasing network funding costs which would have a significant impact on network charges to Shippers and Suppliers.

2. is forward-looking, informed by and in line with the Government's ambition and the path to net zero emissions; and ensures that codes develop in a way that benefits existing and future energy consumers;

We agree that they should facilitate the Government's ambition to achieve the path to net zero emissions. For gas this could include enabling a settlements system that could settle hydrogen as well as natural gas. However, there is no justification for developing the commercial framework or investing in the system changes required until such networks are closer to being realised. Such developments are being progressed using the industry's innovation arrangements. We suggest that changes need to go further than codes and potentially include changes to the Gas and Electricity Acts and BEIS should also consider changing licences where these list the relevant objectives for assessing changes. BEIS may also wish to change licences in conjunction with Ofgem as part of the RIIO price control process to facilitate this move. Currently the Acts and licences do not facilitate whole systems approaches whereby investment on gas networks can be justified by wider benefits to electricity consumers nor investment to facilitate future decarbonisation.

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3. is agile and responsive to change that benefits energy consumers, while able to reflect the commercial interests of different market participants, to the extent that this benefits competition and consumers;

By agile BEIS presumably means that it can be changed quickly. We agree that arrangements should move changes on as quickly as possible consistent with good governance. As an example, some years ago, the UNC panel made a decision to consider responses to consultations at short notice (with papers published less than the standard 5 days in advance) to speed up the decision making process.

Change proposals are the responsibility of the proposer and are dependent on them to progress it so if they are diverted by other demands on their time, then progress will slow down. Most proposers of changes think that their change is well drafted and clearly needs implementing but in practice, for all except the most trivial change, there are usually other views to consider and further clarification required.

There is a balance to be struck between quick changes and those that allow full consultation with all stakeholders and consideration of unintended consequences. These codes are commercial contracts between many parties which potentially affect large sums of money and support services on which many customers rely 24/7. We would only need one change that resulted in serious unintended consequences visible to the public for the emphasis to move from making changes quickly to ensuring that they were well thought out.

If BEIS wishes changes to codes to consider consumers interests or innovation then we suggest that BEIS amends the code relevant objectives against which changes are assessed and sets clear priorities regarding which relevant objective takes precedent in the event of a conflict. It is not helpful to the change panels of each code, that has to assess changes and recommend implementation, to have a set of relevant objectives which they have to apply to each and every change and then be criticised for not recommending implementing a change that supported another aim. Good governance requires clear principles, consistency, transparency and impartial application of the rules.

4. can accommodate a large and growing number of market participants, with effective compliance in an inter-dependent system.

We agree that codes should do this and there is a role for code administrators in engaging with small and new parties to encourage them to participate. This in no way absolves parties from understanding their obligations and making sure that they comply. The recent changes to Supplier entry processes announced by Ofgem are a good move in this direction. These correct a previous over enthusiasm to encourage entry without acknowledging that the industry arrangements were written to minimise liabilities on the unspoken understanding that parties understood the inter-dependencies and costs imposed on others by a failure to comply. The industry could move to a more commercial arrangement with liabilities and legal disputes but that would probably only benefit some commercial lawyers and may well increase network funding costs.

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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.

We note that virtually all the examples given in Chapter 1 relate to electricity codes. This may be due to lack of familiarity with gas codes or because the concerns mainly relate to electricity codes.

Table 1 lists the evidence of challenges from the consultation, we have copied this below and added a column with our comments.

Challenge		Evidence	WWU comment
<b>Fragmentation and lack of co-ordination</b>	<b>Slow to implement change</b> Changes are slow to progress, with some straightforward modifications taking considerable time to go through the modification process.	Broadly, it took an average of between 200 and 250 calendar days to make a change to the and Settlement Code (BSC), Distribution Connection Use of System Agreement (DCUSA) and Uniform Network Code (UNC)	<p>The challenge refers to straightforward modifications but the evidence relates to all modifications.</p> <p>For the UNC changes have to be raised 8 days before the modification panel meets. Unless they have legal text and are simple they will need to go to at least one workgroup, then come back to panel, then go out to consultation. The absolute minimum time for this is just over 2 months. 200 to 250 days is between 6 and 9 months, taking 2 months off this for the modification panel process gives 4 to 7 months. Since workgroups are monthly, (minutes have to be provided within 5 working days of the meeting and papers for the next one 5 working days before the meeting to allow for parties to read them in advance), this gives an average of 4 to 7 industry meetings for each modification. This seems reasonable to us given the complexity of some of them and the need to identify unintended consequences.</p> <p>A useful comparator could be the time taken for BEIS to deliver changes to secondary legislation starting from the date of the first consultation on the subject.</p> <p>The question that has not been addressed is what is an appropriate length of time. Until this is known it is impossible to judge whether the current period is too long.</p>

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	<p><b>Lacking co-ordination between different code bodies</b></p> <p>Changes are typically reactive to existing problems rather than forward-looking in preparing the energy system for future changes. This is partly due to the lack of a single organisation providing a strategic direction to the development of codes and industry systems.</p>	<p>Major changes often cut across multiple bodies – e.g. meter splitting to enable peer-to-peer trading, local energy schemes, vehicle to grid</p>	<p>We agree that coordination of changes across codes is important. In gas this has improved recently. The UNC and IGT run joint workgroups where appropriate. The UNC and SPAA also run joint workgroups for example on theft reporting in gas. Parties also raise both UNC and SPAA changes where required and cross reference them so parties are informed of related changes.</p> <p>Parties also raise Xoserve changes and the DSC Change Committee and Xoserve facilitate the initial investigation of options while the UNC or SPAA change is being progressed. This facilitates the earliest delivery of changes without exposing the industry to significant avoidable cost were the change to be withdrawn, significantly amended, or rejected. Spending resource on detailed design or build before the change is approved would be unjustified in our view except in exceptional circumstances.</p>
	<p><b>Fragmented with a large number of code panels and bodies, which provides for a complex institutional landscape</b></p> <p>There is fragmentation and lack of co-ordination between the different code panels and bodies, making it difficult to take forward strategic changes to the rules for example on faster switching (where Ofgem has had to step in as a result to implement a policy decision).</p>	<p>11 different codes with 6 code bodies and varying governance and ownership arrangements</p>	<p>We believe that the number of codes is not a significant problem in gas. In gas there is the UNC, the IGT UNC, SPAA and the dual fuel codes SEC and REC which will replace SPAA.</p> <p>The only change that could be made in gas is to bring the IGT UNC into the UNC.</p> <p>Where there is a very large change to deliver a policy change we think that it is reasonable for Ofgem to take the lead.</p> <p>We agree that processes and timescales should be standardised where possible across codes</p>
<b>Lack of incentive for change</b>	<b>Reactive to existing problems, rather</b>	There has been increasing need for	We would have welcomed Ofgem launching an SCR for changes to

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	<b>than forward-looking in preparing the energy system for future changes.</b>	intervention from Ofgem in response to changes in the energy system (e.g. Significant Code Reviews (SCRs) on charging, access, switching, time-limited, purpose-specific primary legislation to implement cross code changes, e.g. half-hourly settlement, and balancing)	<p>transmission charging in gas however they declined to do so.</p> <p>The codes will largely be reactive as parties (particularly networks) are constrained by legislation, licence and price control arrangements.</p> <p>We would welcome a more proactive, long term and consistent approach both across fuels and between transmission and distribution from Government and Ofgem with appropriate changes to legislation and licences.</p>
<b>Complexity</b>	<b>Overly complex</b> The complexity and length of the current codes could act as a barrier to new entrants and to innovation. The current codes are complex and code administrators have limited incentives or powers to monitor and undertake compliance activities ensure compliance or enforce.	Current codes are over 10,000 pages (over 50kg when printed), while a significant proportion of parties eligible to propose changes have never done so (e.g. only 4% of CUSC signatories have proposed changes since 2010 and as of summer 2019, around 5% of those eligible to raise a BSC change have taken up the opportunity since 2016 and around 17% historically <sup>14</sup>	<p>The industry is complex and needs to function 24/7. There are parts of code that have been used rarely if ever, for example entry of non-compliant gas. These could be removed but should that event occur then having rules about how to deal with it are very useful.</p> <p>We note that both the examples given relate to electricity</p>
	<b>Resource-intensive to engage in the process</b>	Average of 16 full day workshops for each modification	Based on the information on the length of time to progress a change given above this suggests an average of 2 meetings a month. Except for some exceptional changes one meeting a month is the standard in gas. In the UNC several changes are often discussed at one workgroup, the discussion on one particular change may take an hour of a 5-hour meeting and people can dial in for particular parts of a meeting.

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			<p>It is important to get changes right and industry engagement is key to thorough discussion. The alternative is to have discussion by a select few and change imposed on the industry without consultation. This is equally unattractive.</p> <p>The question that has not been addressed is what is an appropriate number of workshops. Until this is known it is impossible to determine whether 16 is too long</p>
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3. Do you have additional evidence on the performance of the current framework?

The current arrangements allow parties, should they wish, to delay or frustrate proposals they dislike by raising alternatives or by attempting to prolong discussion at workgroups. It is difficult to introduce measure to stop this without cause other potentially adverse consequences. .

One option is to restrict the period during which alternatives can be raised but for a complex proposal an issue may only come to light relatively late in the discussions. The current arrangements also allow proposers to change proposals during the workgroup discussions and if they make a material change then others may legitimately then decide to raise an alternative.

A second option would be to have a time period of, perhaps 2 months, following a material change for alternatives to be raised. The change panel would need to rule on whether a change was material. Even if this was in place and an alternative was ruled inadmissible, a proposer could raise a new proposal that the change panel may decide should be considered with the original as they covered the same area.

The final option would be to give the Code Manager powers to rule on this type of issue and to decide whether alternatives or related changes should be allowed to be raised. This is verging on deciding on the motives of the proposers and is likely to put the Code Manager into conflict with some code parties at some point.

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?

We agree that the gas codes listed should be included. Regarding including Xoserve we note that in 2017 Xoserve governance was changed to give Shippers more direct control over Xoserve. Funding was also changed with Transporters having an allowance and parties being charged by Xoserve for services delivered.

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The proposal being discussed in the GD2 price control discussions is to move to a position of pass through of costs charged by Xoserve. This model could move into an arrangement where Xoserve had a licence and was subject to its own price control process.

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.

As all the examples given in chapter 1 relate to electricity codes it suggests that the problems largely lie in electricity. We think that other than bringing the IGT UNC into the UNC that the changes in gas are broadly limited to making common processes and timescales consistent across codes.

## Chapter 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.

We list the four areas proposed for reform and comment on them below.

### Providing strategic direction

We agree that having a strategic direction that is informed by the government's vision for the energy system, particularly the achievement of the 2050 net zero target is essential.

### Empowered and accountable code management:

We agree that that a code manager can add more value than a code administrator, we comment further on this later in this response. Our main concern is potential conflicts of interest that might arise.

### Independent decision-making:

This area raises many issues including:

- who can raise changes,
- how changes are progressed and how to balance openness and speed
- who decides on whether to make changes,
- whether the current relevant objectives are still appropriate,
- who funds the code manager

These issues need careful discussion and we comment on them in various answers to this consultation.

### Code simplification and consolidation:

We agree that codes should move to more standardisation of processes and timescales. We think that there is limited scope in gas to consolidate codes. We think it is important to draw a distinction between unnecessary and seldom used parts of codes. That stated we are not aware of any unnecessary content in gas codes for those that will endure post faster switching. Clearly consolidating codes is likely to remove one section of boiler plate for example dealing with change from the total volume of the codes but it may not remove much in the way of substantive provisions. We comment further on these points later in our response.

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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.

The two models are the two obvious models. Model one has separate strategic boards and code managers and model two has one integrated organisation.

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.

Our view is that it is for Government to regulate and set policy and for industry to operate according to the policy. We think that the strategic body falls under the scope of setting policy and the Code Manager under operating according to that policy. This means that we think that the two bodies should be separate and hence we support model 1.

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

We have copied table 4, which shows the proposed roles, from the consultation document comment on each of them below. Changes on the scale proposed will require licence changes to allow these changes to be implemented for at least some codes. Before commenting on the proposed roles, we have a comment about the range of activities proposed for the code manager.

#### Code manager

The proposal gives the code manager an extensive range of activities and powers. We think that this is too wide and will lead to conflicts of interest with the roles listed as well as the current critical friend role for proposers of modifications. The critical friend role has been omitted from the activities of the code manager although we can find no proposals relating to the ending of this activity. We think the critical friend role is valuable even to parties that are used to raising modifications.

	Who the code manager is accountable to	Organise mod process	Propose mods	Develop mods	Recommend mods for approval	Prioritise mods	Approve mods	Lead significant code change
Code signatories			X	X	X*			
Code manager**		X	X	X	X*	X	X	
Strategic Body**	X						X	X
Economic Regulator								

\*development and decisions on modifications by the code manager would be undertaken in consultation with industry

\*\*code manager function and strategic body might be a single integrated rule making body

#### Who the code manager is accountable to

If the code manager is accountable to the strategic body then the strategic body will effectively define its work programme and resource requirements. This brings up the subject of funding. The parties funding the code manager should have control over its expenditure.

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If the strategic body funds the code managers then it is reasonable that the code manager is accountable to it. It is not clear why the strategic body would be interested in the activities of a code manager that were not relevant to delivering the strategic direction.

If the code manager is funded by other means then we suggest that the code manager that should be accountable to the funding parties but with an obligation to deliver the published strategic plan of the strategic body. This would mean that the code manager could look at the strategic plan and put a budget together to deliver it together with its day to day activities and be funded accordingly.

#### Organise the mod process

We agree that the code manager should do this.

#### Propose mods

We agree that code signatories should be able to propose modifications.

We agree that the code manager should be able to propose modifications in very limited circumstances such as those that are purely administrative. This should be subject to a test by the change panel. The code manager should not be able to raise material changes nor should they be the vehicle for Significant Code Reviews which should rest with the strategic body.

We note that the proposal does not include a role for other third parties to raise changes and we agree with this.

#### Recommend mods for approval

We think that this role should be reserved for the change panel. We disagree with the proposal that the code manager should have a role in this process.

#### Prioritise mods

We can see the argument for prioritising modifications to achieve the strategic plan but there will inevitably be conflicts with other modifications and this may affect the code manager's ability to fulfil all its roles. There are two options that may address this. The first is to devise a scoring arrangement but this will inevitably be subjective to some extent. The other option would be to restrict the prioritisation role to those that relate the strategic direction. This would be assisted if the strategic direction itself set priorities.

#### Approve mods

We disagree that the code manager should be able to approve mods.

We disagree that the strategic body should be able to approve mods.

We do not see why the strategic authority should have any interest in modifications that do not relate to the strategic plan. Having the economic regulator continue in its role of approving material modifications seems sensible as it provides an element of independence particularly if the economic regulator loses its role in relation to Significant Code Reviews.

#### Lead significant code change

We agree that that giving this role to the strategic body is sensible for significant code changes that relate to the strategic direction. This leaves open the question of who leads any significant code change that is not related to the strategic direction.

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### Chapter 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.

We agree that there is a missing strategic function. This can only reflect government policy which has in recent years been unclear at best. The recent announcement that the UK Government has set a net-zero target to be achieved by 2050 is a clear statement of intent. It remains to be seen whether this is carried forward by the new administration but we expect that little of substance will happen until the UK 's relationship with the EU is resolved and has adjusted to any resulting changes.

Our view is that the strategic direction needs to look at least 5 years ahead. Work in years 1 to 5 will be largely focussed on delivering on current commitments. For example, currently the energy industry is focussed on faster switching and the smart meter rollout. We expect that Suppliers have little capacity for further change until 2022. The strategic direction needs to be clear and settled and not subject to sudden changes in priorities.

To succeed in this role, the body fulfilling the strategic function would need to engage with a broad range of stakeholders. This would include working closely with industry, for example consulting on its strategic direction.

Who is best placed to fulfil the strategic function and why?

We think that a body separate from both the economic regulator and code manager is required to allow it to focus on a few key strategic and long-term objectives.

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?

We have listed the key roles outlined in the consultation for the strategic body and comment on each below.

1. Setting the strategic direction for codes, **steering changes to the codes to deliver a smarter, more sustainable energy system that best protects the interest of consumers**, by:

- taking account of the Government's policy direction and wider market developments and translating this into a programme of necessary changes to industry codes;

We broadly agree with this, though how much of the programme is designed by the strategic body and how much by the code manager or industry parties needs discussion. It is important that industry codes are not seen as the only means to achieve the policy direction. Changes to primary and secondary legislation and licences may be required but we would hope that BEIS would discuss this with the strategic body.

- making non-binding recommendations to Ofgem/BEIS on changes to licences/legislation needed to facilitate code change;

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We agree. This is important as there may need to be major changes to allow gas and electricity networks to work together to achieve the net-zero target.

- overseeing the business planning process to facilitate delivery of the strategic direction, ensuring consistency across the sector;

We agree. Coordination between gas and electricity is likely to be an increasing requirement.

- overseeing the code manager function, including the responsibility for appointing code managers and accountability for their performance;

This should not necessarily be the role of the strategic body.

- approval of all significant modifications, and a route of appeal for decisions made solely by the code manager function (under Model 1).

We disagree. Approval of modifications and appeals of decision should still go to Ofgem who would be able to provide a degree of independence from the strategic body.

**2. Ensuring codes and code governance remain agile** and adapt as the sector transforms, including proactively identifying changes required to ensure a low cost, robust, effective energy system. This could include:

- taking forward cross-cutting and complex code change programmes (similar to current SCRs), including the ability to propose modifications;

This could be done by the strategic body but Ofgem's powers in this area would need to be removed.

- maintaining a holistic market-wide perspective on codes and related IT systems so they remain coherent and identifying opportunities for simplification and streamlining;

We do not think that going into this level of detail is the role of a strategic body. In gas there is only one main systems provider so it is not so much of an issue.

- keeping under review the scope of reforms to consolidate the industry codes.

We agree.

**3. Working with the code manager function to unlock innovation by:**

- streamlining and simplifying codes (by considering, for example, where outcome-based regulation may be appropriate);

We agree that innovation should be encouraged but it is vital that the impact is properly understood and any unintended consequences identified. If encouraging innovation is sufficiently important then the relevant objectives, against which change proposals are assessed, should be changed. Outcome based regulation would be a significant change for the energy industry.

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- overseeing significant projects such as creation of a single interactive regulatory on-line portal for all energy rules; and  
This could be a function of the strategic body but may detract from focus on achieving the 2050 net zero target.

- establishing and overseeing the framework for transitioning innovative sandbox proposals into business as usual.  
This could be a function of the strategic body but may detract from focus on achieving the 2050 net zero target.

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

It is important that the roles of the strategic body are clear and do not overlap nor conflict with existing bodies. As noted above if the strategic body took on the Significant Code Review responsibilities then these would need to be removed from Ofgem. The same would apply should the strategic body take over approving modifications, although in our view this should stay with Ofgem.

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)?

The strategic direction needs to be based on UK government policy, subject to such regional changes that are required by the devolved administrations. To be useful it needs to look over 5 years ahead; under 5 years the industry is largely focussed on existing programmes for example the smart meter rollout and faster switching. It needs to be relatively stable and not subject to sudden changes which we are aware is difficult when there is no policy consensus across the main political parties.

The strategic body clearly needs some funding if it is to be more than an occasional meeting of interested parties. This funding could either be through Ofgem or directly, Which approach is chosen may depend on which is legally easiest to put in place. It will probably need some form of advisory board made up of all interested parties. This board needs to be focussed on advising the strategic body on how to achieve the UK Government policy goals not on whether those policy goals are correct.

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.  
Yes, we agree. We think that 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. Work on other areas is important but should be left to the economic regulator or other bodies. To do otherwise will risk the following:

- The strategic body getting bogged down on important but complex non-strategic issues
- Potential overlap and confusion of the roles of the strategic body and the economic regulatory or other bodies.

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## Chapter 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

The codes are commercial contracts to which the code manager is not a party and we think that giving the code manager all these powers will effectively give it power to run the code. We do not think that the code manager should be able to propose changes. There may be some benefit in having them help develop the change but this should not be done without industry involvement or there is the risk that the change is developed in a way that the proposer does not support.

We can see that central provision of legal text is sensible but as this is expensive it needs to be well managed to avoid wasted expenditure on changes that are not sufficiently developed. In particular, legal advice should not be used by proposers to aid development of a proposal which should be done by the proposer in industry meetings or with the code manager.

- b. making decisions on some changes, or making recommendations to the strategic body

Our view is that this should be done by the change panel. There may be a need for the code manager to have some discussions with the strategic body but we would expect that these would be reported to the change panel.

- c. prioritising which changes are progressed

Unless this is governed by clear non-subjective rules then this is likely to lead to conflicts between the code manager and some proposers. We think that any rules are likely to need to contain an element of discretion or subjectivity. Alternatively, the code manager powers to prioritise could be limited to changes that implement the strategic direction.

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?

Since more than one code can affect the same systems this would lead to consolidation into one or two bodies. For example, both UNC, IGT UNC and SPAA may all affect Xoserve systems so the logic would be that they would all share the same manager. REC will impact Xoserve, CSS and MRA so the logic would be for them to share the same manager. Since Xoserve is impacted by REC, UNC, IGT UNC and SPAA the logic is then that they all share the same manager. Extending this logic to SEC and Elexon will probably lead to the conclusion that there should be one manager managing everything. This then leads to the problem of lack of comparators for establishing best practice.

At first sight the idea of having an all-encompassing manager for codes and systems seems attractive but this person will inevitably have interests that could affect their view. For example, some changes will be easier to implement from a systems point of view than others. This may lead a combined code/systems manager favouring one or the other depending on resource constraints or commercial benefit to them. Currently

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in gas these considerations are reasonably transparent. If one organisation is in charge of the whole end to end process these decisions will still be made but it may not be clear why they were made. This may mean that a proposer could propose a change and subsequently be presented with the solution without having any input into the options. This approach may be quicker and require less input from industry but it seems unlikely to be better at meeting customer requirements. This example is clearly an extreme case but there is always a balance to be struck between speed/minimising resources used and transparency/consultation.

One of the drivers behind the change in governance for Xoserve was a perception that transporters made all the decisions about changes and that Shippers were not consulted. The proposal to have end-to-end code and system managers risks recreating this problem.

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.

It seems sensible to have the same model for each code unless there is a good reason to do otherwise.

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.

Our view is that the strategic body should provide a direction of travel for the next 5 years or so. The code manager should have an obligation to implement the strategic direction or to facilitate its implementation but we do not think that the code manager should be directly accountable to the strategic body. We discuss this accountability in relation to funding in our response to questions 19 and 20.

If the code manager is licensed then giving it an obligation to implement the strategic direction is feasible, this in turn would require it to have more of a role in raising modifications and potentially implementing them.

If the licensed parties have the obligation to jointly implement the strategic direction then the code body could have a license obligation to facilitate the implementation of the strategic direction. This would mean it would not need to have the same powers to raise and implement modifications. Putting the obligation on licensed parties would also give the option that the code manager's relationship with code parties could be contractual with the licensed parties. This then requires the code manager to facilitate the implementation of the strategic direction as a contractual obligation to them rather as a licence obligation to the regulator.

*Please note questions 19- 26 only apply in respect of Model 1 (code manager function and a strategic body).*

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. This question pre-supposes that the code manager should be accountable to the strategic body. The question is how it fulfils this obligation and for what it is accountable. The code manager cannot force industry to make a change or implement a new technology. It could try and raise some changes that it thinks might help. We

believe it would be more likely it would try and get parties together to come up with a plan.

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.

We disagree. The model of code manager being accountable to industry should be considered. If industry parties are obliged to implement or facilitate the strategic direction then this model would be viable.

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 key assets of a code administrator or code manager are the people it employs. If a competitive tender was run then TUPE would apply to the existing employees of the existing code administrator so the new code manager would most likely be using most or all of the existing staff. Nevertheless, a procurement event will be required to comply with procurement legislation given the likely total value of the contract.

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.

We are not convinced that this is a role for the strategic body.

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.

Yes, there would need to be a review of all these areas and also a review of licence conditions. In gas, the gas transporters are responsible for setting and funding the code administrator for the UNC so this would need to be changed.

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.

We do not think that it is appropriate for the National Grid as the Electricity System Operator and to become code manager for gas codes. The second option exists in gas for the UNC and is a viable option. We do not see why it should be discarded at this stage.

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.

It is vital that the organisations funding the code manager have control over it. If this is not the case then the party controlling the code manager is spending someone else's money but without any accountability.

25. Are there any factors that:

- a. would stop parties (including code administrators) from becoming a code manager

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There is nothing that would stop code administrators becoming code managers; clearly, they would need to take on additional roles and funding and other arrangements would need to change.

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). If licencees fund the code manager then they should have control over how the money is spent otherwise the party controlling the code manager is spending someone else's money but without any accountability. What is required is that the code manager is, and is seen to be, both impartial and transparent.

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

The code manager needs to be adequately funded to fulfil its obligations and to provide the expected standard of service. If the code manager is set up under a licence then that licence could enable it to levy charges to fund its activities. Alternatively, the code could provide for funding by parties to the code who would set the budget and hence the scope and quality of the services. The second approach would give parties to the code more influence over the code manager's activities.

## **Chapter 5 Code simplification & consolidation**

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

In gas the only code consolidation that suggests itself is including the IGT UNC in the UNC. To make this work the set-up and funding of the Joint Office of gas transporters would need to be changed as well as the provision of legal text.

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

We do not see the benefit in combining multiple codes unless there is common content that applies to both. For example, we are not persuaded that combining gas and electricity settlements into one code will achieve anything as there are still likely to be two separate sections. There could be some areas of commonality between gas and electricity distribution charging for example credit arrangements and notice arrangements for charging but these seem relatively small areas. A study would need to be done to establish how much consolidation could be achieved and the cost and benefits of doing so.

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

Only having one code manager would mean that there were no comparators in energy for the purposes of establishing best practice. We would have to look at other sectors such as rail, airlines, payments systems or water for comparators which may or may not be appropriate.

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

Option A: consolidated into one - unified single code

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The problem with this approach is that it will inevitably contain a lot of information on areas which may not be of interest to a particular party. Almost inevitably it will be in sections. The change panel for this code would need to decide on changes ranging from interconnector arrangements to prepayment metering arrangements. In our view panel members already have to handle a wide range of topics and this would exacerbate the issue. Panel meetings would probably need to take two days requiring a major commitment of time from the people on the panel. Where panel members have to consider matters with which they are not familiar they have to spend quite a lot of time understanding the issues, particularly if they are complex. Option A would add to this workload and companies may be unwilling to release key employees to serve on the change panel if they had a significant commitment of time in preparation and attendance particularly if a significant amount of time had to be spent on changes that were not relevant to that company.

The consultation contains various comments on redundant text. We need to distinguish between text that is seldom or has never been used but which clearly has a role in some circumstances and redundant text. Text that deals with emergencies is useful should such an event occur although we hope that it does not. Redundant text is text that has no useful purpose. Recently gas transporters discussed whether some UNC text relating to Special Metering Supply Points had become redundant as a result of changes in the industry so it would not be correct to assume that parties do not consider such matters.

It is true that if codes were consolidated then the total length of the combined code would reduce as it would not be necessary to have both code's "boiler plate text" for example that relating to change management.

#### **Option B: consolidated by industry activity type – dual fuel, retail, wholesale and networks**

This approach is more practical than option A. It still places a requirement on change panel members to be willing and able to consider changes that may be outside their area of knowledge but this is reduced compared to option A. We have this concern regarding the REC change panel and it will require change proposals to be very well written so non-specialists can understand them. This places additional responsibilities on proposers and the code manager as a critical friend.

This approach builds on the REC and SEC as a cross fuel approach, whether it is beneficial for wholesale or network related codes depends on how much consolidation can be achieved. Although we can see that in a wholesale code there could be some consolidation in the areas of credit arrangements and notice periods for charges we would expect limited or no consolidation between gas and electricity settlement processes so we question the actual benefit that would be delivered.

**Option C: partially consolidated by industry activity type, partially consolidated by fuel**  
For gas this would be the current position except that the IGT UNC would be merged with the UNC.

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

The website [legislation.gov.uk](http://legislation.gov.uk) is useful as it gives links to consolidated legislation with links to other documents.

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When in a section of code having links to related documents such as schedules and defined terms would be useful.

## **Chapter 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?

WWU was involved in the original setting up of the Performance Assurance Committee of the UNC but has been much less involved recently. Our observation is that getting agreement on reports that should be available to the committee is relatively straightforward but putting in sanctions for failure to meet obligations or an incentive regime to encourage certain behaviour is very difficult. There seem to be differing views on the effectiveness of the regime in electricity.

Based on our observations in gas, putting industry in charge of the performance regime seems likely to lead to slow progress. Having a separate body to do this might mean the regime developed faster but since this body was not necessarily acting with the agreement of all parties an appeal process might be needed.

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

We are not closely involved with the performance monitoring in gas and think that this question is best answered by Shippers.

34. With Model 2 - integrated rule-making body - should the IRMB have responsibility for imposing measures (where a party is non-compliant with the code) or should this be for another organisation? Please explain.

We do not support option 2 for the reasons given in our answer to question 8.

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