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&

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Dear Sirs,

### **Consultation on Reforming the Energy Industry Codes**

Thank you for the invitation to respond to the above consultation. Bristol Energy is a national gas and electricity supplier that is making a positive difference by building a sustainable energy company that has social value at its heart. Bristol Energy has delivered over £12m in social value, since launch, and is committed to working with city partners to help Bristol hit ambitious social and environmental goals as set out in the Council's One City Plan.

#### Executive Summary

Bristol Energy warmly welcomes the proposals to reform the industry code environment. We agree with many of the deficiencies identified and support much of the proposed reforms.

We do however believe that industry should remain accountable at a high level for the Industry codes and their management, whilst freeing up an empowered code manager to act independently in the best interest of the industry and its customers, both present and future. We do not support the setting up of a formal strategic direction function, nor any formal setting out of priorities from Government. However, we do support the view that any body should be mindful of Government policy.

We strongly believe that in order to deliver the outcomes identified a single code manager, held accountable by industry is the best way forward. That body should then act as an overarching Industry change programme manager to ensure changes (including significant non-code changes), are properly co-ordinated in terms of deliverables and resources available. It should also have a clear objective to simplify the codes moving them from overly prescriptive clauses to a more outcome-based approach where this is seen as appropriate. This should then reduce the amount of change subsequently required as new business models which operate differently but achieve the required outcomes could be accommodated without changing the codes.

We believe the new code manager should be a new body which all licensed parties should be eligible to be shareholders, and that they then appoint a Board of non-executive directors to act as experts to hold the executive team to account in terms of financial prudence and quality of service. All these non-executive directors should be properly remunerated and act independently in the interest of the industry and its customers without being beholden to any code party.

We have answered your specific questions below, expanding our response where necessary.

**Q1. Do you agree with our four desired outcomes for the code governance landscape by the mid-2020s?**

We are supportive of the four desired outcomes. However, we are concerned at the wording of the 3<sup>rd</sup> Outcome. One of the biggest problems currently facing the industry is that it has multiple change programmes running which are costly to participants and create market instability as parties struggle to adapt to the changes. In our view the markets need to be capable of allowing new market participants and business models without the need for a major change programme to facilitate it.

The market rules themselves must be agile enough to accommodate other ways of meeting customer's demands without the need for change by being less prescriptive and more principle based. Making it easier to change the market rules could in fact cause increased chaos by allowing multiple, overlapping and possibly contradictory change at a speed which market participants cannot manage, and become a barrier to entry.

**Q2. Do you agree with the problems we've 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?**

We agree with the challenges identified, although we believe that the current prescriptive nature of the codes leads to ever increasing complexity as new rules need to be added to facilitate innovation, whereas if the rules were less prescriptive on the "how" and focussed more on the outcome, innovative solutions could be developed that do not need rule changes to be implemented. It would be wrong to develop a new framework that makes it easier to make changes thus increasing the rate at which the complexity increases. Any new framework should focus on removing prescriptive rules and replacing them with outcome requirements.

We agree that there is a persuasive case for reform, but it must be fundamental and not just a redistribution of code clauses into new rule books and an amalgamation of code managers under fewer roofs.

**Q3. Do you have additional evidence on the performance of the current framework?**

We have no additional evidence to present.

**Q4. Do you agree with our proposed scope of reform?**

We agree with the scope but would bring SMICoP and ALT-HAN into the mix as both are codes suppliers must comply with and which have the same governance issues as identified in the challenges in chapter 1.

**Q5. Are there any codes or systems that we should only apply a limited set of reforms to?**

It would be impossible to answer this at this point in time. At present, our view is that everything should be in the mix. Once the nature of the reform is decided, then it will become apparent if any code or system should be subject to less reform.

**Q6. Do you agree that the four areas for reform are required?**



#### Providing strategic direction:

The industry always seeks to have due regards to the Government's policy and seeks to address them. The risk of formalising this into a strategic direction is that industry ceases to take responsibility for change unless it has a strategic direction from the Government. Equally, it risks making the government of the day responsible for the actions of the industry.

We are also concerned that in times of constrained resources, there is a risk that the Government's strategic direction may overwhelm those resources such that parties will not be able to resource the change, or that other non-governmental policy changes, with equal or greater benefit to the customer will be delayed.

We would support a requirement for a code manager(s) to have due regard to the Government policy in developing the codes, but believe a formal strategic Direction would be unhelpful, counter-productive and create by the back door a state-run industry.

#### Empowered and Accountable code management:

We would welcome a single empowered code manager to oversee the change process and compliance with the codes. The current multi-code administrator environment makes it difficult for smaller parties to engage with the process causing a continuation of the current incumbent way of working. However, the code manager must be accountable to industry and ensure that they are consulted on changes so that delivery is optimised, and unintended consequences identified and mitigated. This includes performing Cost-Benefit analysis across the industry (i.e. Not just central systems) on any significant change proposal.

#### Independent decision making:

Moving to a more responsive, agile decision-making process would be welcome, but any such body should not become a de-facto regulator able to impose its will against the wish of industry, or indeed Ofgem. Any body should try and achieve consensus to any proposed change by demonstrating the benefits outweigh the costs, and that any timescales for implementation are reasonable, including consideration of other changes already in progress.

We support the view that for the purpose of agility and responsiveness, any code body should be able to make decisions, but there must be a strong governance regime that holds it to account, and a route of appeal should parties believe the decision-making process was flawed, or certain evidence was not given proper consideration, especially if the decision maker is the instigator of the change.

#### Code simplification and consolidation

In our view this is the most important of the reforms proposed. The simplification of the codes such that they become more focussed on the outcomes rather than prescribing each of the steps required will be the best way to make the codes work in the interest of consumers and meet the Governments net-zero requirements. If done effectively, then fewer changes will need to be raised as the codes will be able to accommodate different business models, and ways of working without changes needing to be raised. We also feel that any code manager, on receipt of a change proposal should consider if the desired outcome of the change proposal could be met by simplification of the relevant codes rather than adding additional text to a code.

We firmly believe that consolidation of the code managers into a single body will be far more powerful than consolidating the codes themselves. This would allow changes to be progressed across codes in a seamless

and co-ordinated way such that it would be up to the code manager to identify which codes any change would impact, including consequential changes caused by a change in one code on the other. We would propose that a single code manager is appointed first, and they can then develop any consolidation of codes as part of the simplification process where it seems a reasonable thing to do. It may be, once simplification is carried out, the best way for the codes to be consolidated may be different than those proposed at present.

**Q7. Do you agree with the two broad models outlined?**

As stated above we have concerns about the creation of a strategic body and the impact this may have on the industry and Government. We believe a single code manager, able to make independent decisions but accountable to industry is a much better solution. This body should be required under its remit to have due regard to Government policy but should not be subject to a formal strategic direction potentially influenced by short term political issues out of context of the wider delivery of the energy to current and future customers.

If a strategic body is considered the way forward, then industry expertise and knowledge must be a part of the body and it must be capable of advising Government, formally and informally on the impact of delivering its vision, and not just be there to interpret the Government's vision into deliverables. We would suggest the strategic body should be seen as an advisor to Government in the same way as the Committee for Climate Change or the Infrastructure Commission.

**Q8. Which model do you believe will best deliver on our desired outcome?**

Bearing in mind our reservations highlighted above about the strategic body, we believe the most important change to deliver the desired outcomes will be the consolidation of the code managers into a single body. Therefore, we feel model 2 is superior to model 1. Model 1 could work if a single code manager is appointed but feel that having a separate strategic body just adds a layer of bureaucracy with no discernible advantage over combining it within the code manager function.

**Q9. Do you agree with the changes to the role of code signatories we are proposing?**

We strongly feel that the code manager must be accountable to the industry (The code signatories) not least because the industry will be responsible for covering the costs of the body(s) appointed. This should not prevent the code manager acting in an independent manner but would allow industry to participate in the appointment of the code manager and hold it to account in terms of budget and KPIs.

We also feel it would be wrong for the code manager/strategic body to approve its own modifications unless there is an appeal route for signatories should they feel the process was flawed or certain presented evidence was not properly considered. We would propose that Ofgem should be the appeal body.

**Q10. Do you agree there is a missing strategic function for code development in the energy sector and that introducing a strategic function with the responsibilities outlined in chapter 3 is the best way to address the lack of strategic direction?**

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

We agree that the industry needs a body to co-ordinate strategic change, the industry is too fragmented with over a hundred suppliers, plus network companies and code managers. All with different views on every change depending on their vested interest or capacity to engage with the proposals.

It is not that industry does not want to step up to the strategic challenges it and the country faces, but the lack of a single body, to provide leadership and drive the change hinders at a practical level the ability to take this forward in a timely manner, especially where interrelating changes are being run in parallel. Ofgem, by its own admission does not have the skill set to do this and as we have seen from Nexus and the switching programme has had to bring in external support from consultancy firms. We also believe it compromises its role as the industry regulator as it cannot hold itself responsible for programme delays or deficiencies.

In our view an empowered single code manager would be best placed to deliver the strategic delivery of change, including the simplification of the code environments. However, we are concerned that any strategic body will end up delaying industry-initiated change for its own objectives and become a de-facto regulator. We strongly believe a suitably empowered, single code manager, appointed and funded by industry would be sufficient to meet the desired outcomes set out in chapter 1, and a defined strategic function would hinder progress by allowing industry parties to abdicate responsibility to deliver onto the strategic function, and the body to whom it will be accountable.

We are not opposed to the code manager having an obligation to be mindful of Government policy and would even support the right of the Government to raise its own change requests where appropriate.

**Q11. 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?**

As stated above we do not believe there is a justification for a strategic function, and that a suitably empowered code manager could better deliver the desired outcomes.

If a strategic function did exist then its prime responsibility would be to oversee the code manager(s) and co-ordinate change in line with Government policy, regulatory intervention or industry-initiated development. We also agree that the function should provide guidance to both the Government and the Regulator on the impact of any proposed policy or regulatory change, including providing cost/benefit analysis of any proposals during the consultation phase.

The appointment of, and accountability to of the code manager(s) should rest with the parties who fund them. If it is intended that code parties will fund these arrangements, then we believe the appointment of, and accountability should be to them. With a licence obligation on parties to ensure the code manager is adequately resourced and funded.

We do not believe it would be good practice for any strategic function to approve changes it has itself initiated, without an appeal route, although it should be able to approve changes raised by other parties.

As stated above, the key role will be as set out in responsibility three, but we are not convinced that this cannot be handled by a suitably empowered code manager without a strategic function which will only add a layer of complexity and bureaucracy. Crucially we would add an overarching responsibility to co-ordinate changes running in parallel and if necessary, delay some proposed changes to ensure industry could focus on the most important changes at key points in the programmes. To do this effectively it would have to take oversight of non-code changes and act as an overarching industry change planner.

**Q12. How may this new function potentially impact the roles and responsibility of other parts of the framework? Do you foresee any unintended consequences?**



If a strategic function is developed as set out in this consultation, we believe it will side line industry players (new and existing) in taking away from them responsibility to deliver and to be held to account for its failings if the result of changes implemented under the direction of the strategic function. Crucially, as a small supplier, we are concerned that in the rush to deliver the Government's challenging agenda the pace of change may overwhelm smaller suppliers who become disengaged from the process and subsequently exit the market. This is already an issue with Ofgem's multiple and overlapping SCRs already in train and we see nothing in these proposals that will solve these issues unless this strategic function had the power to direct all these programmes into a masterplan that optimises industry resources.

**Q13. 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)?**

Our preferred option would be for any function to operate by taking account of wider Government policy and energy market vision alongside other developments such as technological advances or changing patterns of customer behaviour. We fully agree that there should be significant informal contact between the strategic function and BEIS, but feel a formal process risks the Government been seen to be directly controlling industry with consequences for both industry and the Government's reputation.

We strongly oppose the development of a formal strategy board to decide strategy, although we do not preclude any strategic function or code manager developing informal advisory boards to help it develop the long-term strategy road map.

**Q14. 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?**

It is worth noting that not all changes are implemented through industry codes and sometimes delivering the government's vision may require both licence and statutory changes. Restricting any strategic function to codes only, may make it impossible to deliver the desired outcomes and therefore the function should highlight areas it sees as outside the codes but require change to deliver.

In addition to just implementing code changes, any function should be responsible for developing and maintaining a wider industry change plan. Including not just code changes, but licence and statutory changes. It should also consider non-energy changes that impact the industry for example data protection. It should then be able to work with industry to identify resource pressure points and if possible, mitigate them by rescheduling certain elements of various change workstreams.

**Q15. Do you agree that in addition to the current responsibilities that code administrators have, that the code manager function should also have the following responsibilities?**

- a. Identifying, proposing and developing change (analysis, legal drafting etc), including understanding the impacts;**

We support this enhancement in particular we would support the code manager taking responsibility to keep the codes as streamlined as possible and over time move suitable parts from detailed prescription to a more outcome-based approach.

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

We would support the proposal for the code manager to make decision on changes having taken into account the views of stakeholders. However, the right of appeal must exist, particularly where the code manager or strategic function has proposed the change in the first place.

**c. Prioritising which changes are progressed.**

As mentioned above we would like to see the code manager acting as a strategic change programme planner, and scheduling change based on the wider programme. We would expect them to take into account the wider industry resource, and the impact of certain change proposals on changes already proposed or in the process of implementation. i.e. What are change proposals been baselined against, the codes as at the point a change is raised, or the codes at the point of implementation.

**Q16. What is the best way to ensure coherent end-to-end changes to the codes and related systems?**

The best way to manage end-to-end change is for a single code manager to be responsible for keeping and maintaining an industry wide change programme plan. This would allow all parties to work together and identify and mitigate conflict or ambiguity. They should also have a role in identifying and managing consequential change, so that change is co-ordinated rather than a proposed change in one area leading to further subsequent changes in other areas.

**Q17 Should the approach differ on a case-by-case basis?**

We do not see any justification for this, especially if the code manager is playing a role of change co-ordinator as set out above. Although if multiple code managers exist it may have to be the case if they operate differently and thus co-ordinating change between them needs a different approach. For example, which body makes decisions on changes overlapping code managers.

**Q18. Do you agree that the code manager function should be accountable to the strategic body and that this should be via licence or contract?**

We do not agree with this. In our view the code manager and the strategic function should be accountable to industry at a higher level, but with a remit to act independently in its day to day operation. If the code manager is accountable to a strategic body, then this raises the question as to whom the strategic body is, and who it is accountable to. For reason set out above, divorcing the industry from being accountable for a key part of how it operates could lead to industry problems laid at the door of Government.

**Q19. Are there more effective ways that the code manager function's accountability to the strategic body could be enshrined other than in a licence or contract?**

We believe that the contractual route would be the most effective especially if the actual delivery of the function is contracted out. That said, consideration must be given to how a code manager who does not meet their contractual obligations is removed and replaced with minimal disruption to the process. One way could be for the strategic body to be the shareholder of the code manager which would give it the right to dismiss and replace the senior team without having to retender the contract.

**Q20. Do you agree we should not consider further a model whereby the code manager function is accountable to industry?**

We do not agree with this and believe that industry should be responsible for holding the code manager to

account on its performance against its KPIs and budget, especially if industry is responsible for funding the code manager function. This does not mean that industry should have a say in the day to day running of the code manager and its independence could be enshrined in the licences of code parties. One of the key deficiencies in the current arrangements is that in many cases the Board of the code manager is the same as the code panel which require different skillsets and members are also unremunerated as Directors, and thus often sit as their sponsoring party's representative.

If Industry parties nominated non-executive Directors, who were remunerated and thus not beholden to any single party, then they could hold the executive directors of the code manager to account in the same way as any other commercial body.

**Q21. Do you have views on whether the code manager function should be appointed following a competitive tender process or other competition?**

Whilst competitive tenders are a good way of ensuring value for money, the high level of expertise and finite pool of possible suppliers means this may not be the case. If a single code manager is appointed, then it follows that all other potential candidates will lose that expertise, primarily to the winning party, and arguably may have to take them under TUPE arrangements which means future tenders may not be possible, nor could the code manager be replaced should the appointed party fail to meet its contractual obligations or the business goes into administration.

To this end we believe it would be better to create an industry-owned company limited by guarantee to act as the code manager and concentrate more on establishing a non-executive board of industry experts holding the senior executive team of the code manager to account for its performance, and if necessary, replacing them for poor performance.

**Q22. Do you think the code manager function should be established by the strategic body creating a body or bodies?**

For the reasons stated above, we believe it would be more sensible to create a body to act as the code manager, funded by and accountable to industry. That said, because of the code managers strategic importance in the industry, it must be held to account by a suitably qualified board who can act on behalf of, but independently from any code party. This will require them to be properly remunerated for the role. It is worth noting that the enduring RECCo Board is intending to reflect this arrangement.

**Q23. 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?**

We certainly support the view that an existing licensee should not be asked to act as code manager, nor should a single licensee be asked to create the code manager. As stated above, we believe the code manager should be accountable to industry, and thus we do believe all code signatories should be involved in creating the code manager function, although acknowledging they may need to procure a 3<sup>rd</sup> party expertise to help set the function up.

**Q24. What would be the most effective way to ensure the code manager function offers value for**



**money? More broadly, what is the right incentive framework to place on the code manager function?**

As stated above a competitive tender is unlikely to be effective in ensuring value for money due to the finite number of possible actors. Price controls are also difficult as it is likely, at least in the early years that the costs of the function will be pretty speculative. The most effective way would be for a strong Board holding the executive to account for its spending and ensuring where it can it seeks the best price solutions.

As stated above, if a body is created to act as code manager, then any incentive framework should focus on the executive team with rewards for meeting KPIs set by the Board around both financial prudence and quality of service.

**Q25. 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?**

As stated above, our preferred approach would be to create a new body rather than appointing an existing body, but if an existing body is appointed, then we would expect any appointee to be independent of code parties, or if owned by a consortium of code parties, demonstrate that it is able to act independently. We would not seek to exclude any current code administrator who is jointly owned by parties as long as all (not just some) licensed parties to the relevant code(s) are entitled to be an equal shareholder. This is also our view on how any new code manager body should be set up as set out above.

**Q26. How should the code manager function be funded (for example through licence fees or by parties to the code(s))?**

In our opinion, funding and accountability go together, thus whoever the code manager is accountable to, should fund it. If the code manager is accountable to code signatories, then they should fund the function. If the code manager is accountable to a strategic body, then it should fund the function, or the funding should come from whoever, the strategic body is beholden to.

**Q27. Are there any quick wins that could be realised in terms of code consolidation and simplification?**

Recognising the direction of travel for simplification, a new code managers' simplification protocol could be worked up and shared with existing code administrators to ensure any proposed changes meet the new protocol to keep things simple. Code administrators could also be empowered to root out defunct areas of code.

In terms of consolidation, this is less of an issue. From an industry party point of view, 10,000 pages across 10 codes is the same as 10,000 pages across 100 codes. The real crux of the matter is the number of code administrators and the inconsistency of approaches. Therefore, if current code administrators could agree to harmonise their change process, so they all worked the same way, that could be a quick win without the need for consolidation.

**Q28. How many codes would best deliver on the outcomes we are seeking under these reforms?**

The number of codes is pretty academic, the key issues is the size of the combined codes in their entirety, and

the inconsistent approaches to issues such as the way changes are processed. It is becoming increasingly clear that the new Retail Energy Code is likely to become bigger in pages than the combined SPAA and MRA it is supposed to consolidate, so consolidation for consolidations sake serves little purpose. It is the number of code managers, and consistency of processes that are more important than the actual number of codes and resolving these areas should be prioritised over consolidation.

If a single code manager was appointed across the codes with a remit for simplification, then as part of that work the logical number of codes should become apparent and the case for consolidation put forward by the code manager. Deciding on the number of codes before any simplification work has been done seems to us to be premature.

**Q29. Which option (one code manager versus multiple) would best deliver on the outcomes we are seeking under these reforms?**

We are strongly of the view that a single code manager is a paramount to delivering the outcomes listed. If multiple code managers are allowed, then there will continue to be fragmentation of the code environment and inconsistent processes for processing changes. It will also negate the ability of a code manager acting as a change co-ordinator and therefore there will need to be a more strategic function above them at an increased cost and complexity and will make digitisation more difficult.

It is worth stating that a single code manager could still recognise distinct differences between codes and that it is likely within its organisation to have subject matter experts pertaining to aspects of a single code, although over time we would expect it to develop subject matter experts on aspects of the code environment across codes.

**Q30. Which of our consolidation options would best deliver the outcomes we are seeking to achieve?**

As stated above we believe it is too soon to decide on the appropriate consolidation option at this stage. The first stage should be to bring all the existing codes under one code manager and a process of simplification, alignment of processes for change and governance and digitisation should take place. As this process progresses, then a better view of consolidation options may appear, but in truth, 10,000 pages under one code or 10,000 pages under several codes makes very little difference if changes are not made to reduce code managers and simplify the codes.

**Q31. Do you agree that the codes should be digitalised?**

We agree that the codes should be digitalised. One of the current issues many in the industry have is that they are aware of the rules, but if an issue arises which requires the exact wording to be consulted many hours are lost identifying which code the relevant rules are, where in the right code(s) they are located, and then seeking clarification on any defined term which may be differently defined in different codes.

Consistent digitalisation across the codes would help even those well versed in code speak but will be of real benefit for outsiders to understand what the obligations upon them are, and whether the solution is prescribed or more outcome based.

We do not envisage the codes becoming plain English documents, as some have suggested, because they are at heart legal documents, but the ability to use digitalisation to provide plain english guidance, or work examples along side the actual text would assist users greatly.

**Q32. What role should industry have in monitoring code compliance or making decisions on measures needed to address any identified non-compliance?**

We believe it would be appropriate to rely on the code manager take responsibility for monitoring compliance and working with non-compliant parties to become compliant. The industry should maintain a role in advising the code manager on areas of concern including areas where compliance is problematic, or where the code manager is inappropriately focusing its attention but should not be directly involve industry members in assessing their peers as is currently the case in several codes.

**Q33. Which of the two models we propose would better facilitate effective monitoring and compliance arrangements?**

We support model 1 as this is where the expertise will lie. The onus should be on the code manager seeking to assist any non-compliant party to achieve compliance, perhaps by aiding the party to establish the root cause of its non-compliance or by sharing good practice it has observed at other parties. If the second model is used, then the IRMB will need to duplicate the expertise held by the code manager and there is also the risk of inconsistency of understanding between a code manager and the IRMB.

**Q34. 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?**

Where measures are proposed to help the party achieve non-compliance, then this could be carried out by the IRMB, or delegated to the code manager. Where the non-compliance action is one of persistent failure to comply, or the non-compliance is of great significance (i.e. bringing the market into disrepute.) then this should be referred to Ofgem for enforcement action.

I hope you find this response useful. If you have any queries, please do not hesitate to contact me.

Kind regards,

A handwritten signature in black ink that reads 'Chris Welby'.

Chris Welby  
Head of Regulation