



Reforming the Energy Industry Codes - response form

The consultation is available at: www.gov.uk/government/consultations/reforming-the-energy-industry-codes

The closing date for responses is: 16 September (23.45)

Please return your completed form to the following email addresses. As this is a joint review, please ensure you respond to **both** email addresses below.

Email to: codereform@beis.gov.uk & industrycodes@ofgem.gov.uk

If you would like to send a hard copy then please send copies to the following. As this is a joint review, please ensure you send copies to **both** postal addresses below.

Write to:

Code Reform - Electricity Systems Team
Department for Business, Energy and Industrial Strategy
Abbey 1, 3rd Floor,
1 Victoria Street
London
SW1H 0ET

Ofgem
Industry Code and Licensing Team
Office of Gas and Electricity Markets
10 South Colonnade
Canary Wharf
London, E14 4PU

BEIS and Ofgem will share with each other all responses that are received.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Please be aware that we intend to publish all responses to this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the

access to information regimes. Please see the consultation document for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential ☐

Comments: [Click here to enter text.](#)

Questions

Name: **Paul Youngman**

Organisation (if applicable): **Drax Group**

Address:

Please select a box from the list of options below that best describes you as a respondent. This allows views to be presented by group type.

| | Respondent type |
|-------------------------------------|---|
| <input type="checkbox"/> | Business representative organisation/trade body |
| <input type="checkbox"/> | Central government |
| <input type="checkbox"/> | Charity or social enterprise |
| <input type="checkbox"/> | Individual |
| <input checked="" type="checkbox"/> | Large business (over 250 staff) |
| <input type="checkbox"/> | Legal representative |
| <input type="checkbox"/> | Local government |
| <input type="checkbox"/> | Medium business (50 to 250 staff) |
| <input type="checkbox"/> | Micro business (up to 9 staff) |
| <input type="checkbox"/> | Small business (10 to 49 staff) |
| <input type="checkbox"/> | Trade union or staff association |
| <input type="checkbox"/> | Other (please describe) |

Question 1 [page 17 in consultation document]

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

☒ Yes

☐ No

☐ Don't know

Please explain.

Comments: The four outcomes are desirable and should be delivered without altering the rights all code signatories have to propose and contribute to improvements to these multiparty agreements. We would not support a return to arrangements that restricted market participants' ability to propose changes or the

panel's capacity to vote on changes and propose their recommendations to Ofgem. We also believe that the current code governance arrangements have had success in delivering discrete incremental changes as well as more substantive areas of reform. We would recognise that in delivering wider holistic change across multiple codes there has been more measured progress through the Code Administrator Code of Practice (CACoP) arrangements and the Significant Code Review (SCR) process.

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

Comments: [Click here to enter text.](#)

Question 2 [page 17 in consultation document]

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.

Comments: We agree that there is merit in reviewing the current arrangements and frameworks.

We agree that the codes are lengthy and complex. This reflects the complexity of the industry and the need for legally enforceable obligations and rules. In the short term we anticipate an increase in code complexity as new parties with complex new business models are fully incorporated into codes after a period of sandbox arrangements. We would support intelligent rationalisation of codes to ensure complexity is minimised. We do not believe there is a case to dilute the role of code panels or the technical and commercial expertise that code parties' representation offer to panels.

We do agree that there is still fragmentation and a lack of co-ordination across codes and that the Significant Code Review process has not delivered what was anticipated by industry. We believe that Ofgem has enough regulatory powers and a clear route to utilise the arrangements. Where there is industry frustration is in delay with the SCR process, and sometimes a lack of clarity or direction from Ofgem if / when they are contributing to more everyday issues that are discussed in industry code workgroups.

It is our experience that industry participants rarely aim to stifle change where it is demonstrably in the interests of consumers and/or competition. Indeed, changes have to satisfy the relevant objectives of the code. Although, we do see some issues which could be addressed through altering governance arrangements and resolving the significant risk of conflicts of interest from what should be wholly independent and impartial code administration functions, for example, industry parties being Code Administrators and profitmaking Code Administrators rather than not-for-profit entities. We believe that there is merit in standardising and simplifying

code governance and addressing common cross code issues such as quoracy; differing criteria for self-governance; and rationalising code modification consultation stages. These measures in themselves would make the code change processes swifter and more responsive.

Question 3 [page 18 in consultation document]

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

Comments: We do accept there are frustrations with the current process and believe there needs to be more evidence presented before undertaking fundamental reform that will diminish Industry parties' ability to amend the contracts they're signatories to. More granular information for each code administrator of the time spent at workgroup stages, through panel and consultation, and ultimately awaiting decision from Ofgem, may assist in understanding the true nature of any roadblocks in the current processes. We would also attest that the performance of the BSC, where code administration is accountable to all code parties, is considerably better than where the code administrator is not accountable to all code parties.

Question 4 [page 18 in consultation document]

Do you agree with our proposed scope of reform?

☒ **Yes** ☐ **No** ☐ **Don't know**

Please explain.

Comments: We do not think that any code should be excluded from this review and reform. We do however question the need for a Strategic Body as this replicates what we believe is Ofgem's current role, and for which they have Significant Code Review (SCR) powers. If Ofgem does not fulfil this role then we question who would be better able and equally impartial to fulfil it. Indeed, if a party other than Ofgem is required to conduct this role then there is considerable risk of overlap of vires and duplication of resource.

We do think code reform is necessary and should include methodology statements and other rules that currently reside outside of code governance and should be incorporated within any future arrangements. We recognise that the scope is large and will require prioritisation and implementation in discreet stages. To this end, we would prioritise identifying and implementing quick-wins whilst in parallel longer-term development is focussed on any proportionate change to frameworks. In our view quick wins that could be broadly agreed and implemented could include: Standardising governance arrangements; introduce clear criteria for self-

governance modifications; ensure code administrators are accountable to panels and all code signatories; ensure that all panel members are electable by code parties; ensure code administration is independent of commercial interests and risks of conflicts of interest, for instance the ESO's role as code administrator for the CUSC and Grid Code should be transferred to another code administrator or not-for-profit independent body.

If not, which additional codes or systems do you think should be included/excluded?

Comments: [Click here to enter text.](#)

Question 5 [page 18 in consultation document]

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

☐ Yes

☒ No

☐ Don't know

Please explain.

Comments: We do not currently see a case for excluding any of the relevant codes or systems from the scope of reform.

Question 6 [page 21 in consultation document]

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

Comments: We are not in agreement with all of the elements outlined for reform in the consultation, as discussed below:

Strategic Direction - We do not agree that there is a case for another regulatory body to provide strategic direction other than Ofgem utilising its SCR powers. It is unclear what strategic direction Ofgem feels it cannot influence or manage with its current vires and statutory duties. We have noticed that in the last couple of years Ofgem has increasingly resourced fewer work groups and has not been as constructively engaged as it has in previous years. This may be a case of the regulator not wanting to fetter its discretion in its subsequent decision-maker capacity, but we feel it is a missed opportunity for them to play a constructive part in the development process. Alternatively, it may simply be due to resource / capability constraints, but we do not believe that is an appropriate reason not to engage. We remain unconvinced the proposals in the consultation to introduce a new bureaucracy to provide a strategy for codes is the efficient way forward.

Empowered and accountable code management - We do agree that the administration of codes currently needs reform. Firstly, there needs to be removal of any potential or perceived bias in code administration. To this end the ESO should

not perform code administrator functions. Secondly, there does need to be clear coordination of cross code governance reforms and modifications. Market participants and possibly Ofgem expected the CACoP to mature into this role. It is clear that this opportunity to collaborate and co-ordinate between administrators has failed. Given this failure, we are unconvinced that giving code administrators increased powers to propose modifications and rebrand as code managers will rectify the issues with coordination or ensure any improvement in accountability. What may be more effective is establishing an Ofgem-led co-ordinating body with elected industry representation with the focus to swiftly improve processes and deliver the changes such as digitalisation that are needed by existing and new industry participants.

Independent decision making – We do not agree that industry oversight of the codes should be reduced. The consultation is not clear how reducing the current level of industry oversight of the modification process will improve decision making. Our view is that the vast majority of decision making is currently independent. Apart from self-governance modifications, the relevant code panel can only submit a modification to GEMA for decision. In the vast majority of cases, GEMA is the body responsible for any decision and is totally independent of industry control. We believe that accountability could be improved by having more elected positions to better represent the interests of code signatories. Currently, each of the code panels contain *unelected* positions for Networks, Ofgem and consumer representatives, and *elected* membership for all other parties. Extending the number of panel members elected would ensure that current and future parties to the codes can be represented.

Code Simplification and consolidation – We agree there are merits in examining different methods of consolidating and simplifying code arrangements. The energy industry and its rules are complex and need to be legally robust. As a priority we would suggest redrafting and consolidation of electricity codes. We would anticipate that the simplification and consolidation process could be resource intensive and should include some elements that are currently outside of industry code arrangements. Over the longer term there may be benefits for all parties in having a combination of electricity and gas codes. For instance, through consolidating industry credit arrangements.

Question 7 [page 21 in consultation document]

Do you agree with the two broad models outlined? Please provide reasons for your position and evidence where possible.

Comments: Notwithstanding our view that a strategic body is not necessary given Ofgem's current suite of powers and accountabilities, in our view Model Two is the least desirable option as it is premised on the strategic body being organisationally part of an expanded code manager function. To use an imperfect analogy- the code manager would be in the position of marking its own homework.

In our view, any strategic body must be established on a statutory basis, and in the case it is not Ofgem/GEMA then the respective powers and authority be removed from GEMA / Ofgem to ensure clarity of roles and responsibilities.

Question 8 [page 21 in consultation document]

**Which model do you believe will best deliver on our desired outcomes?
Please explain.**

Comments: Model one of the two models appears to offer the opportunity to have some form of independent direction guided by longer term policy objectives that is not aligned to the interests of the code manager.

Question 9 [page 21 in consultation document]

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

Comments: We are pleased to see that the role of code signatories in the modification process is largely unaltered when comparing the tables of the current and future roles on pages 22 and 23. As explained in the answer to question six code panels do not approve modifications except for those that are self-governance.

Although we are pleased with this recognition, we are concerned that this is not replicated in the rest of the consultation. We are also concerned that code administrator accountability to code signatories is being removed. This currently exists for the BSC, which we feel is the best performing and best administered code currently. We believe that is because it is accountable to all code signatories and we would strongly support this being adopted by all codes.

Question 10 [page 29 in consultation document]

Do you agree there is a missing strategic function for codes 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?

☐ Yes

☒ No

☐ Don't know

Please explain.

Comments: It is our view that Ofgem already possess the relevant powers and authority to provide strategic direction where it is required. We accept the argument that there should be a rationalisation of the numbers of codes and code administration should be improved, but it does not translate that it is necessary or desirable to have a new/different enduring strategic body. It is not clear if the strategic body will have a duty to act in the interest of competition and we are highly concerned that in this draft the routes for challenging a decision appear opaque. It is also greatly concerning that accountability for the direction of travel for energy industry codes (which are multi-party legally-binding contracts) should be placed in a body that is not accountable to the parties of those contracts.

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

Comments: If a strategic body were constituted, we would urge BEIS to ensure that there are elected representatives of established and newer industry parties views with the requisite experience to ensure that the missteps of the CACoP and SCR initiatives are not repeated.

It is our view that the ESO should be discounted from undertaking the strategic role as this would be highly contentious and inappropriate given their obvious commercial interests.

Question 11 [page 29 in consultation document]

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?

Comments: The objectives and responsibilities are wide ranging and would require significant, skilled resources. There would necessarily need to be a transfer of relevant duties from Ofgem to enable the body to, for instance, approve modifications. There is the potential for gaps in the objectives and responsibilities between the 'regulators'. For instance, responsibility for developing regulatory impact assessments and analysis which should inform the independent decision the strategic body should take. This is especially relevant where there are cross-cutting issues such as changes to the gas market that impact on power markets.

It is not clear how the day-to-day necessary changes to codes that are promoted by industry parties would integrate with the role of the strategic body where those changes do not align with the current strategy. Using the expanded role of the code manager as a gatekeeper of change is not in our view an appropriate task and risks increasing inertia within the industry. It is also not clear how the appeal function would apply for decisions taken by the code manager. We would expect that the current appeal routes to Ofgem and the CMA (or via Judicial Review) would continue to apply.

Question 12 [page 29 in consultation document]

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

Comments: There is a risk that the strategic body lacks accountability and relies more heavily on the increased role of the code manager to embed change without appropriate consideration of costs and benefits to market participants and the consumer. There is also a further risk that the strategic body may be more reactive having to alter tack when government policy is changed and altered without due consideration of the practicalities and increased costs to businesses and consumers of those changes. It is not clear if the role of panels will be maintained in the model. This is of concern as there is a wealth of commercial and technical expertise within panels that act as important validation throughout the modification process and provide reasoned recommendations to the decision-making authority.

Question 13 [page 29 in consultation document]

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)?

Comments: We believe it is vital that the strategic direction is developed with industry input and insight, and only implemented following open consultation. A strategy board made up of representatives with the right balance of skills and experience from across the sector would be imperative.

Question 14 [page 29 in consultation document]

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.

Comments: The scope of the strategic function should be informed by Government policy but should also be mindful of Industry's views and its own analysis across the energy sector. For instance, we would expect that the Strategic Body would not restrict parties' ability to propose and progress changes and should facilitate engagement where there are interactions with in-flight strategic projects.

Question 15 [page 36 in consultation document]

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 changes (analysis, legal drafting etc.), including understanding the impacts;

☐ Yes ☒ No ☐ Don't know

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

☐ Yes ☒ No ☐ Don't know

c. prioritising which changes are progressed.

☐ Yes ☒ No ☐ Don't know

Please explain.

Comments: We believe there is broad agreement that some of the code bodies should have additional expertise and resource for legal drafting, analysis and where relevant systems / business analysts. We have no issue in principle with a code body developing modifications on discrete topics where authorised by the relevant authority, however we think only parties to the codes should be able to raise modifications as the modification may not be in the interests of industry and/or consumers.

Equally we do not think it is appropriate for a provider of services to industry to make decisions on which modifications should be allowed to progress, prioritised or approved. We believe that this fundamentally limits the very positive changes that Open Governance has brought to industry codes.

Question 16 [page 36 in consultation document]

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?

Comments: The issue is not one of having end to end code and system managers, but of provision of accurate timely and evidenced information. Not all changes impact on systems, but where they do the quality of information provided is variable between current code administrators.

The best code admin / system managers will provide a relatively accurate preliminary impact assessment when a modification is raised. This will then mature into accurate costings of system and process changes as the modifications impacts are more clearly defined. At the other end of the scale, accurate costings or assessments are not completed beyond a generic and inaccurate rough-order-of-magnitude with no provision of supporting information for the potential costs incurred.

Our opinion is that regardless of the model there need to be obligations on system providers to work with proposers to provide accurate evidenced costings to accompany modifications.

Question 17 [page 36 in consultation document]

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.

Comments: As outlined above we don't think this is a structural issue but one of standards. We think that the same standards should apply across all providers of systems, and code administrators should strive and drive for consistency.

Question 18 [page 36 in consultation document]

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.

Comments: We believe that code managers should be accountable to code signatories in the way that Elexon is for the BSC. We note that under this model Elexon has performed consistently better than its counterparts.

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

Question 19 [page 36 in consultation document]

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?

Comments: We think that any code body needs to be accountable to the parties that are subject to the code it manages.

Question 20 [page 36 in consultation document]

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

☐ Yes

☒ No

☐ Don't know

Please explain.

Comments: As explained in answer to previous questions, the code administrator with the best performance, Elexon, is accountable to the signatories of the code it administers, the BSC. The evidence supports the facts that accountability to industry is a driver of continuous improvement and better performance of core functions. We believe that the changes needed are more accountability to industry not less across all codes, and that Ofgem need to utilise the SCR powers and responsibilities it already has better where it identifies strategic cross-code changes.

Question 21 [page 37 in consultation document]

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.

Comments: We believe a tendering process should be used but we also believe the code manager should be a not for profit entity/organisation. In that scenario where price/cost is not the deciding factor, careful consideration needs to be given to assess the organisation's competency, experience and technical expertise.

Question 22 [page 37 in consultation document]

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.

Comments: We do not think the strategic body is necessary and therefore any change to code administration / manager functions, or organisations that execute the function should be established by Ofgem and be accountable to code signatories.

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.

Comments: [Click here to enter text.](#)

Question 23 [page 37 in consultation document]

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

☒ Yes ☐ No ☐ Don't know

b. requiring a licensee (or group of licensees) to create the code manager?

☒ Yes ☐ No ☐ Don't know

Please explain.

Comments: We see no impediment for existing bodies that do not have direct conflicts of interest fulfilling the code manager role in the future. Our preference would be a not-for-profit organisation.

Question 24 [page 37 in consultation document]

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.

Comments: We recommend that a similar framework as the one that exists for Elexon is used. Elexon is a not for profit organisation that is accountable to code signatories. This accountability of the senior managers is a clear incentive and driver of performance.

Question 25 [page 37 in consultation document]

Are there any factors that:

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

☒ Yes

☐ No

☐ Don't know

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)?

☒ Yes

☐ No

☐ Don't know

Please explain.

Comments: Our key concern here is establishing that the code manager function has no conflicts of interest and is accountable to the signatories of the respective code. We agree that with respect to a prospective tender, licensees should be prevented from being code managers and should not exercise undue control of the code managers.

Question 26 [page 37 in consultation document]

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

Please explain.

Comments: We think that code managers should be funded by parties to the respective code.

Question 27 [page 44 in consultation document]

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

Comments: Question four contains a number of areas where we believe there could be quick wins: Standardising governance arrangements for instance by having

single modifications across codes; minimising the number of work group consultations; introduce clear and consistent criteria for self-governance; Ensure code administration is independent of commercial interests perceived or otherwise. We would also recommend that Ofgem undertakes a holistic review of the performance of current code administrators using the performance metrics and surveys it has conducted to help identify other quick wins.

Question 28 [page 44 in consultation document]

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

Comments: We think option C best reflects our view. We do not feel there is necessarily a correct number of codes or construction. We do believe there is a case to merge the electricity codes (BSC, CUSC, GC, STC, DCUSA). Clearly there would be a dilution in the number of panels which may need to be reconstituted to reflect Commercial and Technical modifications. At the moment, we do not see a compelling argument to merge across Gas and Electricity Codes or divide into as proposed by Elexon which could create risks particularly for smaller parties or distributed energy resources.

Question 29 [page 44 in consultation document]

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

Comments: We think multiple managers will best deliver the outcomes. In the future under model C there will be the REC (we believe incorporating SMICoP), Electricity, Smart and Gas codes. Each code should have a separate code manager and those can be benchmarked to compare and improve performance.

Question 30 [page 44 in consultation document]

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

Comments: We believe option C will deliver the best outcomes.

Question 31 [page 44 in consultation document]

Do you agree that the codes should be digitalised?

☒ Yes

☐ No

☒ Don't know

Please explain.

Comments: Ideally yes, as the codes are consolidated or updated.

Question 32 [page 47 in consultation document]

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

Comments: The role of performance committees has led to improved performance and constructive action being taken to address non-compliance. It is not clear what additional benefit removing industry participation will have. If parties are in breach measures can be taken forward by Ofgem to enforce actions.

Question 33 [page 47 in consultation document]

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

Please explain.

Comments: It is not clear if either model has substantive benefits above the current arrangements.

Please note this question only applies in respect of Model 2 (integrated rule-making body).

Question 34 [page 47 in consultation document]

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.

Comments: This is a matter for Ofgem if licensees do not comply with the codes then ultimately they are in breach of their licences

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

[Click here to enter text.](#)

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☒

At BEIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

☒ Yes

☐ No